

Join *the*

Resolution



The Maryland ADR Commission's
Practical Action Plan

The Honorable Robert M. Bell
Chief Judge, Maryland Court of Appeals
Chair, ADR Commission • December 1999

To get involved:

- Call the ADR Commission at 410-321-2398.
- Visit our website at www.courts.state.md.us/adr.html and/or e-mail us at lou.gieszl@courts.state.md.us
- Write to us at Maryland ADR Commission
113 Towsontown Blvd., Suite C, Towson, MD 21286-5352
or send comments by fax to 410-321-2399.
- Identify other individuals or groups around the state that might be interested and help us reach them.



Join *the* Resolution

The Maryland ADR Commission's Practical Action Plan



The Honorable Robert M. Bell

Chief Judge, Maryland Court of Appeals

Chair, ADR Commission

December 1999



Dear Fellow Marylanders:

On behalf of the Maryland Alternative Dispute Resolution (ADR) Commission, I am pleased to present this Practical Action Plan. This document reflects over a year and a half of work by hundreds of individuals who served as members of the ADR Commission, its six working committees, its four regional advisory boards and its national advisory board.

Together, we are committed to turning our “culture of conflict” into a “culture of conflict resolution” as we progress into the new millennium.

As Chief Judge of the Maryland Court of Appeals and as chair of the ADR Commission, I recognize that it is essential for the court to take the lead in promoting the use of ADR where appropriate. As you will read within, the ADR Commission was formed and operates under the court’s leadership, but its scope is not limited to improving the courts and increasing litigant satisfaction. While these are important Commission goals, this Action Plan further outlines a broad and sensible strategy to help improve the way we, as a society, manage conflict. With this in mind, the ADR Commission is working to advance the use of mediation and other ADR processes in schools, neighborhoods, businesses, government agencies and other areas, which will help prevent disputes from reaching a stage at which court intervention is needed.

Based on extensive outreach and discussion, we have reached a statewide consensus in favor of moving forward on each action outlined in this Plan. Recognizing the need to continue our momentum, the Commission is pulling together diverse groups to “Join the Resolution” and help implement this Action Plan across the state. If you would like to get involved, I encourage you to call Rachel Wohl, Executive Director of the ADR Commission, at (410) 321-2398.

Very truly yours,

A handwritten signature in black ink that reads "Robert M. Bell". The signature is written in a cursive, flowing style.

Robert M. Bell
Chief Judge
Maryland Court of Appeals

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Executive Summary

Family tensions
Communication breakdowns. Divorce.
Workplace disputes. School violence.
Neighborhood disputes. Bankruptcy.
Government red tape

These are just a few sources of conflict in our society—we experience many more on a daily basis. Some can be ignored, others fester and grow, and a few explode into violence.

Fortunately, this is only a part of the picture. There are, and traditionally have been, productive and dignified ways of managing conflict, both within and outside of our legal system. Indeed, today there is reason to have a sense of “cautious optimism” when it comes to conflict resolution. Innovative ways of resolving disputes that have existed for years but have not been widely used, are quietly and steadily on the rise. Victims of minor crimes are sitting down with mediators and offenders to work out restitution agreements. Government agencies are inviting business, consumer and environmental groups to the table to help set policies and draft new regulations. Divorcing parents are brought together to negotiate child custody and visitation arrangements that address the needs of each parent and each child.

Dispute resolution
techniques are growing
because they work.

Responding to the need for more and better ways to handle conflict situations, a field of dispute resolution methods has developed under the umbrella term “alternative dispute resolution” or “ADR.” This field is made up of a number of different processes including mediation, arbitration, settlement conferencing, and consensus building, which help people resolve disputes peacefully and often in a manner that improves relationships and builds social skills.

These dispute resolution techniques are growing because they work. When schools start teaching conflict resolution and create peer mediation programs, suspensions decrease and teachers spend less classroom time dealing with disruption. When neighbors bring their disputes to mediation, they develop creative agreements that last and often lead to friendship. When business disputes settle without prolonged legal battles, working relationships remain intact. When families are in crisis, mediators help reestablish communication and rebuild relationships. These effective ways of resolving conflict

The Commission hopes to generate significant advancements in our fundamental interactions with one another, creating a “culture of conflict resolution” for the new millennium.

can save time, money and relationships, prevent violence, help rebuild communities, ease the burden on our courts, help develop the character of our youth, and expand public participation in government decision making.

Recognizing ADR’s benefits, the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals, appointed the ADR Commission to advance the use of innovative conflict resolution methods statewide. In this effort, and several others, Maryland’s judiciary is actively promoting justice in society and reaching out to help prevent disputes from getting to court. Chief Judge Bell charged the diverse, 40-member, multi-disciplinary ADR Commission with the challenging task of advancing the use of ADR statewide, not only in the courts, but also in communities, schools, businesses, government agencies, the criminal and juvenile justice systems and other settings.

To carry out this task, the ADR Commission took the innovative approach of using ADR to advance ADR by conducting a statewide consensus building process.

After recruiting about 100 people to work with Commission members in six working committees, Chief Judge Bell appointed four large Regional Advisory Boards covering Western Maryland, Southern Maryland, Central Maryland and the Eastern Shore to bring hundreds of interested Marylanders into the ongoing dialogue about how best to advance ADR statewide. The Commission also formed a National Advisory Board made up of ADR experts in different fields across the country.

The Commission believes that these actions will increase public access to justice, promote more peaceful and civil communities, empower people to control the outcome of their own disputes, make the courts more efficient and user-friendly, and substantially improve the way that we, as a society, manage conflict. In the future, as we adapt to complex new technological advancements, the Commission hopes to generate equally significant advancements in our fundamental interactions with one another, creating a “culture of conflict resolution” for the new millennium.



After much research, discussion and a successful statewide consensus building effort, this Practical Action Plan explains **the Commission's plan** to work with other groups and individuals to:

- Launch a comprehensive public awareness campaign about ADR and its benefits
- Create an ADR Awards program to recognize major contributions to the dispute resolution field
- Deliver targeted education and training programs to: teachers, school administrators and students; court, government and law enforcement officials; attorneys and prospective litigants; the business community and others
- Incorporate ADR into the core curricula at Maryland colleges, universities, and professional schools
- Create a variety of ADR networks and educational conferences for people working in schools, communities, courts, state and local government, the criminal and juvenile justice systems, and the business community
- Disseminate clear definitions and descriptions of ADR processes, so people can decide for themselves when it is appropriate to use ADR
- Establish an ethical code, set high standards for ADR practitioners and trainers, and protect the confidentiality of mediation
- Conduct independent evaluations of currently operating ADR programs in Maryland's schools, communities, courts, government agencies and the criminal and juvenile justice systems
- Launch pilot ADR projects in communities, courts, state and local government agencies, and the criminal and juvenile justice systems
- Create a non-profit Community Mediation Association, establish stable funding for community mediation services, and help develop new community mediation programs
- Encourage the expanded use of ADR in appropriate family law cases in the circuit courts and "peace order" cases in the District Courts
- Expand the use of ADR in government and help Maryland's Attorney General increase resources for ADR training, staff and innovative ADR programs in the Attorney General's Office
- Work with the Governor on an Executive Order encouraging the appropriate use of ADR in the public sector
- Promote a "no retaliation" principle to protect victims and alleged offenders who decline to participate in mediation
- Create a Maryland Corporate ADR Pledge program to promote businesses that agree to use ADR in all appropriate cases
- Promote business-government ADR partnerships
- Establish a State Dispute Resolution Office to promote and coordinate continued ADR advancements in Maryland

Background—Overview

Why Do We Need to Take Action?

Most people face a wide variety of conflicts on a daily basis, whether at home, work, school, or in their communities, but few recognize that conflict—when managed effectively—can be tremendously beneficial. Despite the high physical, emotional, and financial stakes inherent in many disputes, few people have learned to harness the power of conflict and direct it toward positive outcomes.

Good ideas are not adopted automatically. They must be driven into practice with courageous patience.

—Admiral Hyman Rickover

Instead, given limited knowledge of dispute resolution options, many have a natural tendency to avoid dealing with conflict. While

this may be an appropriate first response in many circumstances, avoidance rarely addresses the underlying issues in a dispute and can contribute to mounting tensions.

When tensions are allowed to fester, they can erupt into violence, especially where there is a general sense of powerlessness and a lack of understanding about how to get one's needs met in a socially acceptable way. In this age of rising concerns about the safety of our schools and communities, it is clear that better conflict resolution skills and options are needed, especially in potentially violent situations.

A venue for civil and peaceful dispute resolution has historically been provided by our courts. A public adversarial process and judicial determination can be

critically important in a number of situations. Courts punish serious crimes and decide precedent-setting cases that establish legal standards, which govern future behavior. Courts handle disputes in which there are significant power imbalances, such as domestic violence cases, try cases that parties want aired publicly, and hear a wide variety of cases after settlement efforts have failed to resolve all of the issues.

The burden on our courts, however, has increased dramatically. Over two million cases were filed in Maryland's combined trial courts in 1998. These cases crowd court dockets despite the likelihood that many could be better resolved through mediation or some other alternative to litigation. Many such civil and minor criminal cases involve interpersonal disputes that result in charges and cross-charges being filed repeatedly because the courts are unable to resolve the underlying conflicts. All too often, the court is the only known option for people, even when their disputes have little or no connection to legal issues.

A tendency to avoid conflicts until they escalate to unmanageable levels, heightened concerns about violence, and the ever-increasing burden on our courts all point to a need to expand the use of alternatives to the traditional means of resolving disputes. Unfortunately, ADR techniques that have been proven effective for resolving a wide variety of conflicts remain unknown to

many people and are not readily available in most communities.

What Is ADR and What Good Is It?

ADR recognizes conflict as an opportunity to bring people together, clarify issues, identify common ground, discuss options that meet the participants' needs, rebuild relationships, and reach new understandings and, if possible, agreements that will prevent future disputes. In appropriate situations, ADR can help people find creative ways to resolve their disputes and manage conflict effectively.

There are a variety of dispute resolution methods that fall under the umbrella term "ADR," although the Commission focused primarily on mediation, arbitration, settlement conferences, and consensus building (see the "Definitions and Dispute Screening" section of this report). Other ADR processes include conciliation, ombuds programs, neutral case evaluation, and a host of other processes designed to address a variety of conflicts. The different forms of ADR share some basic characteristics that differentiate them from the traditional path of trial by judge or jury. Foremost, they are not limited to legal disputes. ADR processes generally give the participants a more active role in resolving their own conflicts, and they tend to be more private, faster and less expensive than resolving disputes through litigation. It is important to note that mediation,

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settlement conferences and many other non-adversarial ADR processes are geared toward helping participants reach their own *voluntary* decisions, while court in-



volvement continues as an option if all of the issues are not resolved. Although the Commission is interested in advancing all types of ADR where appropriate, its efforts thus far have focused most significantly on mediation since it is the major form of ADR growing around the country and the state.

For many years, ADR use has been growing slowly in some states, including Maryland, and more rapidly in others. ADR processes are being used for a multitude of purposes. These include resolving disputes between neighbors, improving communication skills within families, settling business disputes out of court, developing government regulations, addressing employment disputes, allowing offenders to take responsibility for minor crimes, and resolving conflicts that arise among students in schools.

The growing popularity of ADR, and mediation in particular, is due to the array of benefits associated with ADR. In a survey of Fortune 1000 companies conducted by Cornell University, businesses across the country reported that ADR creates substantial time and cost savings, and helps them preserve good working relationships. In exit surveys following court-related mediation sessions, the vast majority of participants in mediation sessions report a high level of satisfaction with playing an active role in resolving their own conflicts. Participants can be creative in tailoring the results of mediation to meet their needs, unlike the limited outcomes available in court or by resorting to violence. Thus, it is not surprising that studies show participants comply with mediated agreements to a greater extent than solutions that have been imposed by courts. Participants also report valuing the interpersonal understanding that can be achieved, especially in mediation, which can rebuild or preserve their relationships with one another. Finally, some ADR methods used by gov-

ernment agencies and others, such as consensus building, are beneficial for producing creative solutions that shape sound public policies. Over and above the delight with cost and time savings, in states where ADR is used extensively, it receives enthusiastic reviews from the judiciary, bar associations, participants, educators, government officials, the business community, religious organizations, and the community-at-large.

ADR methods are gaining popularity and becoming more available as part of the standard continuum of dispute resolution options, which has caused many to question the use of the term “alternative.” A growing number of groups around the country are referring to mediation and other ADR processes as “*appropriate* dispute resolution” or simply “dispute resolution.” As Maryland’s efforts evolve, the Commission envisions creating a state “dispute resolution” office, recognizing that ADR is no longer an “alternative” but rather is part of the mainstream.

What is the ADR Commission?

Recognizing the benefits of effective dispute resolution processes and conflict management practices, the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals, created the Maryland ADR Commission in February of 1998 to help expand dispute resolution options both inside and outside the court system, and ultimately improve the way in which our society manages conflict. Chief Judge Bell charged the Commission with reviewing the state of ADR in Maryland and around the country, as well as developing and implementing a practical action plan to advance the appropriate use of ADR in our courts as well as in our schools, neighborhoods, businesses, state and local government agencies, and in our criminal and juvenile justice systems. Providing visionary leadership and showing dedication to improving Maryland’s

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overall approach to dispute settlement, Chief Judge Bell, who chairs the ADR Commission together with vice chair Donald G. Gifford, former Dean of the University of Maryland School of Law, shepherded a consensus-based process to develop this Action Plan.

The ADR Commission's membership is multi-disciplinary and brings together representatives of the different stakeholder interests to shape the future development of ADR in Maryland. ADR Commission members include judges, legislators, state and local government officials, bar association representatives, ADR practitioners, business representatives, community members, educators, court personnel and other policy makers from across the state. A number of ADR Commission members have expertise in the field of ADR and have been intimately involved in efforts to advance ADR, both in Maryland and nationally, for many years.

The ADR Commission recruited approximately 100 additional people to work on six committees that examined definitions and screening, courts administration, professional responsibilities, community issues, business applications and education, as each relates to the use of ADR. Working together, our outstanding Commission and committee members brought a wealth of experience and expertise to the table. This Action Plan is the result of their hard work.

To expand consensus building efforts further, the ADR Commission also formed four multi-disciplinary Regional Advisory Boards covering Western Maryland, Central Maryland, Southern Maryland and the Eastern Shore. These large Boards provide diverse perspectives on regional needs

and have also participated in the development of this Plan.

The Commission recognized that assessing the current state of ADR in Maryland was an essential first step in determining how to move forward in this area. Thus, the Commission and its working committees looked around the country and the state, held public forums in each region, surveyed Maryland judges, court personnel, educators, business representatives, community mediation programs and ADR practitioners, and launched a comprehensive fact finding process. This effort informed Commission members about cur-

Ultimately, the ADR Commission's work will catapult Maryland to the forefront of states successfully using ADR.

rent practices and led to a common understanding of dispute resolution issues as they relate to each committee's work. A separate appendix that documents the Commission's fact

finding process and contains committee reports, survey documents, and other information collected can be obtained by calling the ADR Commission at (410) 321-2398. Additionally, each committee's "baseline research" is briefly summarized in applicable sections of this Action Plan.

During this fact-finding process, nationally acclaimed ADR scholar, Professor Nancy Hardin Rogers of Ohio State University's College of Law, selected the Commission as a pilot project for her efforts to develop a national court consultation service on ADR. With Hewlett Foundation funding, Professor Rogers wrote a report for the Commission based on selected national ADR research in each of our six committee areas. She also serves as a member of the ADR Commission's National Advisory Board, which is made up of a diverse group of acclaimed ADR experts from across the country (please see acknowledg-

ments). Copies of Professor Rogers' "Report to the Maryland ADR Commission a Synthesis of Applicable National ADR Research and Background" can be obtained by calling the ADR Commission at (410) 321-2398.

Based on ADR journal articles and discussions with national ADR leaders, we have learned that Maryland is unique in its approach of using widespread public participation, joint fact-finding, statewide consensus building and other dispute resolution techniques in the Commission's process. Maryland is the first state to purposefully "use ADR to advance ADR" with a high-level, statewide, multi-disciplinary group. We are also unique because the Commission's scope goes well beyond the boundaries of the judicial system in an effort to help prevent disputes from reaching the courts by stimulating the use of ADR in the business community, in state and local government, in neighborhoods, in families, in the criminal justice arena, in schools, and in the realm of educating the general public. Finally, the Commission is charged not only with playing an advisory role but also with taking action, setting it apart from most Commissions.

Based on its research and its best thinking, as well as feedback received from interested individuals and groups throughout the state, the Commission and its committees developed this Practical Action Plan to advance the appropriate use of ADR throughout Maryland's courts, neighborhoods, families, schools, businesses, government agencies, criminal/juvenile justice systems, and other organizations and settings. The Commission anticipates that by implementing this Plan we will achieve measurable results that will enhance the quality of life in our communities, improve Maryland's business climate, decrease court delays, increase access to justice, enhance satisfaction with the legal system, broaden public participation in government decision-

making, rebuild relationships and build future capacity by teaching students and adults the skills necessary to prevent conflicts from escalating into litigation or violence. Ultimately, the ADR Commission's work will catapult Maryland to the forefront of states successfully using ADR.

What is the Commission's Role?

The Commission sees its role as inaugurating and providing initial support and assistance to efforts that will be established to implement this action plan statewide. Many of these projects will be led by other organizations or agencies, and it is hoped that they will take on independent lives of their own. The Commission will play a transitional role during its implementation phase, while working to create a Maryland Dispute Resolution Office to supercede the Commission. Such an office would carry on the Commission's coordination function, oversee long-term projects, serve as an information clearinghouse, advocate for the use of ADR and carry-out other functions as needed.

Consistent with its work so far, the Commission will use collaborative consensus building processes to advance ADR efforts and will work closely with stakeholder groups throughout Maryland to ensure that planned initiatives are consistent with local needs and that all interested groups have a role in implementing this Practical Action Plan.

The Commission also recognizes the extent to which mediation and other ADR processes may be effectively used in the pro bono legal services arena. As such, the ADR Commission anticipates coordinating some of its efforts with the Maryland Legal Services Corporation and the Maryland Judicial Commission on Pro Bono, which was recently established by Chief Judge Bell. The mission of that Commission is to promote and encourage pro bono legal work for those unable

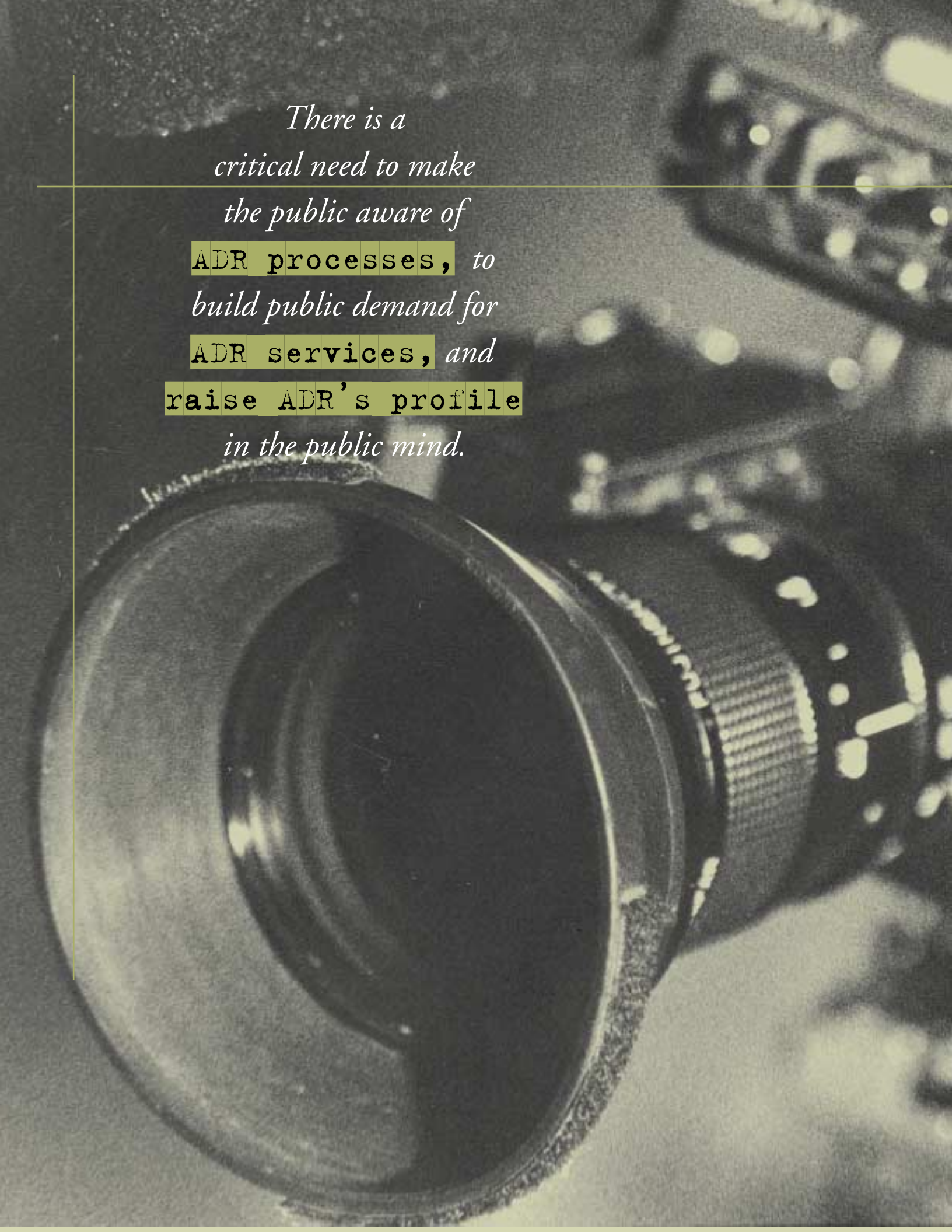
to afford legal assistance and to increase access to the civil justice system for low to moderate income individuals in Maryland. The ADR Commission will assist in these efforts by helping the Pro Bono Commission to increase the use of mediation in pro bono cases.

In short, the Commission aims to provide more dispute resolution options for people than they now have, and to acquaint and educate people about the potential benefits that can be achieved through a range of dispute resolution processes. It is the Commission's intention not to impede any progress related to ADR that is already being made. Rather, the Commission is interested in otherwise highlighting and assisting such efforts.

This Action Plan does not attempt to do everything with regard to ADR in any of the fields that the Commission is addressing. Rather, the Commission will under-

take those actions that are supported by a broad consensus across the state, are significant, meaningful and feasible, and can be adapted to meet local needs. The Commission believes that such actions are described in this document. It is the Commission's intent to be instrumental in advancing the appropriate use of ADR statewide and to improve the way in which we, as a society, manage conflict.

The Commission's operating expenses are covered by the judiciary, and both the legislature and the governor have allocated funds totaling \$500,000 for the Commission to seed projects outlined in this Action Plan during state fiscal year 2000, which began on July 1, 1999. To implement the Plan, the Commission will draw on the active participation of interested individuals and groups across the state, identify additional funding sources, and capitalize on existing resources.



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Public Awareness and Targeted Education



The ADR Commission has found that most people in Maryland are not aware of ADR processes and their benefits. Moreover, many of those who have some familiarity with ADR have not learned to harness its full potential. During regional forums around the state, Marylanders repeatedly emphasized the critical need to make the public aware of ADR processes, to build public demand for ADR services, and raise ADR's profile in the public mind. Thus, some of the ADR Commission's top priorities are raising public awareness of ADR processes, educating groups that deal with potential users of ADR services, recognizing and promoting effective conflict management, and increasing the use of appropriate conflict resolution skills.

Thus, the ADR **Commission plans** to:

- Coordinate a large-scale, multi-media public awareness campaign
- Establish a high-profile awards program for achievements in the dispute resolution field
- Launch educational initiatives targeted to the needs of Maryland's families, neighborhoods, courts, law enforcement agencies, criminal and juvenile justice systems, bar associations, government agencies, business community and other groups
- Create networks of dispute resolution advocates in various fields and host conferences that bring people together to learn about the use of ADR and its benefits

Public Awareness

In tandem with other recommendations to encourage growth in the ADR field and to cultivate high quality ADR services statewide, the Commission must make the general public aware of ADR processes and their benefits. To launch a significant public awareness campaign, the Commission plans to recruit local and national celebrities, and to engage satisfied ADR consumers to promote ADR and its benefits using radio, television and print media.

As part of this effort, the Commission plans to produce a documentary video that can be aired on local television stations and used in promotional events to educate the public, in an emotionally gripping manner, about the power and benefits of using ADR in different contexts. Other components of the Commission's public awareness agenda include working with networks of ADR

advocates to promote court, community, family, and government ADR programs, develop a variety of brochures, produce public service announcements, get media coverage of ADR issues, create an interactive Maryland ADR resources and information website, sponsor ADR events such as "Mediation Week," recruit ADR ambassadors to

The Commission's Education Committee conducted survey research to examine ADR education and conflict resolution training within schools, communities, the court system, and mediation training programs, to assess their outreach efforts. The Committee found many promising and highly successful programs in each of the areas studied, but also found that they were sporadic with significant inconsistencies statewide. The Committee found that with the exception of some community mediation centers, no significant outreach efforts are being conducted to educate the public about ADR in Maryland. Thus, the Committee identified the need for a comprehensive public awareness campaign to make mediation and other dispute resolution processes part of our household vocabulary.

In addition to its survey research efforts, the Committee also gathered considerable information from national sources and educational organizations, and advised the Commission on developments within the education and training arenas.

Reports developed and collected by the Commission and each of its working committees are included in a separate Appendix. To receive a copy, please call the Commission's office at (410) 321-2398.

Baseline Research

make presentations to interested groups, develop partnerships with ADR proponents in the business community, help ADR practitioners get media coverage, and create opportunities for people to learn about ADR and its benefits.

The Commission will emphasize the many uses of ADR by highlighting the benefits of mediation and other innovative conflict resolution processes as they are applied in court, family, neighborhood, criminal, juvenile, education, government, business and other contexts. There will also be an emphasis on using ADR outside of the court context so people will more frequently seek ADR services without first taking legal action. Informational brochures and mass media messages will simply and clearly explain ADR processes and inform the public that in many instances, ADR can produce better results than more traditional approaches to dispute resolution. Educational messages will be geared toward helping people determine whether ADR processes may benefit them and will let them know how they can access ADR services.

Ultimately, mediation and other dispute resolution processes should become commonly understood by all Marylanders as part of our household vocabulary. We are working to shape a future in Maryland

where, as disputes arise, the general public will have sufficient knowledge to choose the ADR process that is most appropriate for them and have ready access to outstanding service providers who can meet their needs.

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Ozzie Bermant ADR Excellence Awards

As part of its effort to build statewide momentum in the ADR field, the Commission plans to establish an annual ADR awards program that recognizes outstanding contributions to the ADR field in Maryland, highlighting effective examples of ADR as it is applied to various types of disputes. Such an ADR awards program could be used to recognize practitioners who were instrumental in pioneering Maryland's ADR landscape, as well as to express appreciation for ADR advocates in the judicial, executive and legislative branches of government, in schools, in community organizations and in the private sector, along with outstanding ADR programs and success stories. Media coverage of the awards ceremony will also contribute to the Commission's efforts to educate the public.

Ozzie Bermant was a great leader in Maryland's ADR community. His dedication to professionalism and ethics had a profound effect on the Commission, and we all hope to advance many of his ideas and his values as Maryland moves forward to increase the use and quality of mediation and other consensual dispute resolution practices statewide. Ozzie passed away during the course of the Commission's work and has been sorely missed by the many ADR professionals who had the pleasure of working with him over the years. To honor his contributions to the ADR field, the Commission proposes establishing its ADR awards program in his name.

Ideally, this program, combined with other initiatives to advance ADR statewide

and to promote professionalism in the field, will help cultivate the next generation of ADR champions in honor of Ozzie's memory, his integrity, and his professionalism.

Targeted ADR Education

To complement its public awareness strategy, the Commission plans to coordinate targeted educational initiatives in areas that will be critical to advancing the use of ADR and transforming the way in which we as a society manage conflict. Educational programs will be designed to meet the needs of specific groups, to help improve conflict management in key sectors of society, and to teach people who deal with conflict situations on a regular basis how and when they can use ADR processes most effectively. Groups that serve as referral sources for ADR users need training to maximize appropriate referrals. The Commission identified the following educational initiatives for some of its target groups:

Courts

Use existing resources such as the Maryland Judicial Institute, the Judiciary's personnel training divisions, and the Maryland State, Local and Specialty Bar Associations to develop and deliver targeted ADR education to judges, masters, court commissioners, court personnel, attorneys and litigants, so that each group understands their particular role within each ADR process. Include ADR courses in judges' and attorneys' continuing education courses. Educational programs should be designed to meet the needs of each audience, should give participants a general understanding of ADR processes and when they should be used, and should help advance efforts to increase the court's use of ADR.

Litigants

Educate litigants by developing informational brochures about the availabil-

ity of ADR services and distributing them at courts to litigants when cases are filed as well as at libraries and other public information sources. The Commission will also provide information about ADR options via the Judiciary's website and will encourage litigants to contact the ADR Commission for further information. A notice that ADR is an option and the ADR Commission's phone number should also be incorporated into court documents that are currently provided to litigants. Informational videos and brochures about court ADR services should also be made available in potential jurors' waiting rooms in the courts, where possible.

Juvenile Justice

Develop ADR awareness training programs in cooperation with the Department of Juvenile Justice to help juvenile justice intake workers recognize cases that are appropriate for mediation and other ADR processes, as well as to improve their use of conflict management techniques in their daily contact with juvenile justice youths and their families, as well as with victims, police, and other parties involved in juvenile cases. The program will also be designed to help intake workers develop ongoing relationships with local community mediation programs and other ADR service providers.

Law Enforcement

Create similar mediation awareness in-service training programs for police officers, police academy cadets, and other appropriate law enforcement staff by working with the Maryland Police and Correctional Training Commission and other law enforcement training units. Work with the Governor's Office of Crime Control and Prevention to coordinate training for law enforcement teams in identified "HotSpots Communities" and Police Corps cadets. These training programs

Ultimately, mediation and other dispute resolution processes should become commonly understood by all Marylanders as part of our household vocabulary.

The Commission envisions hosting conferences, developing newsletters and using its website to help the networks identify shared priorities and build partnerships where possible.

will be aimed at helping law enforcement officers understand the benefits of mediation, make referrals to community mediation centers and/or private practitioners when appropriate, and incorporate effective conflict management techniques into their daily contact with citizens.

Government

Identify outside funding sources to support an ADR training program for the Office of the Attorney General. The Attorney General wants to ensure that Assistant Attorneys General understand ADR processes and their benefits, and can advise government agencies about the appropriate use of ADR in regulatory and transactional activities, as well as in legal disputes. In tandem with this effort, the Commission will also encourage state local agencies to develop training programs for appropriate staff.

Networks and Educational Conferences

To build on these educational efforts and to reach other groups and individuals, the ADR Commission will work to create specialized networks of people involved in ADR in different fields so that they can learn from each other and increase awareness of ADR and its benefits in their fields. Additionally, the Commission plans to work with these networks and other co-host institutions and organizations to sponsor a series of ADR conferences, and to promote communication and joint projects among the networks. The following identifies the networks and conferences planned to increase ADR awareness and use in each area:

Schools

Build upon a small network of school personnel who are teaching conflict resolution and running peer mediation programs. This expanded network

could serve as a forum and provide some technical assistance for new school personnel who join the network as their schools start-up programs. The Commission will offer assistance to network members, co-host a conference on school ADR programs with the Maryland State Department of Education (MSDE), and initiate other efforts to highlight successful efforts in public and private schools throughout the state.

Community Mediation

Establish a statewide association for all community mediation programs. In addition to bringing community mediation advocates together to learn from each other, to offer technical assistance to new programs, and to develop resources for current and planned community mediation programs, the Commission envisions this group evolving into a non-profit organization that advocates for community mediation and helps secure stable funding for new and existing community mediation centers. The association will also work to educate families, neighborhoods and others about the benefits of community mediation. (More information on this proposal can be found in the Community Mediation section of this document.)

Courts

Create networks of local court ADR coordinators, Differentiated Case Management coordinators, judges and others who are currently working on ADR programs in the circuit courts and in the District Court. These initiatives would bring together those already working on ADR within the courts to share experiences and resources, and to help strengthen and expand existing programs. These groups will encourage other courts or circuits to develop ADR programs and join the networks, which will provide them with information

and technical assistance. The networks will work with the Commission to coordinate a conference on court ADR services, to develop a directory of court ADR programs and service providers, to disseminate information about ADR, and to promote court programs.

These court ADR networks can also be instrumental in educating practicing attorneys about the roles they can play in ADR processes and their responsibility for encouraging their clients to use ADR in appropriate cases. The Commission will work with the Maryland Judicial Commission on Pro Bono, the Maryland State Bar Association, the Maryland Legal Services Corporation, and local bar associations to host mini-conferences in each jurisdiction about the respective roles of lawyers, judges and mediators, and about the benefits of mediation for legal services recipients.

Criminal and Juvenile Justice Systems

Organize an educational conference for State's Attorneys, District Court judges, juvenile court judges, community mediators and other stakeholders in the criminal justice system. Co-sponsored by the University of Maryland School of Law and co-hosted by the Chief Judge of the Court of Appeals and the Chief Judge of the District Court, the conference would highlight effective ADR applications in the criminal and juvenile justice systems and would be geared toward helping local jurisdictions develop effective mediation programs for minor criminal and juvenile justice cases.

Government

Bring together those already working on ADR in government to share experiences and resources to help strengthen and expand existing programs. The state and local government networks will encourage other agencies to insti-

tute ADR programs and to join the networks, which will provide them with information and technical assistance. They will also work with the Commission to coordinate a conference on state and local government uses of ADR.

Business

Bring together ADR leaders in the business community and the ADR service provider community to form a network to share experiences, advocate for advancing the appropriate use of ADR in business and government settings, and encourage other businesses to launch ADR initiatives. As businesses begin using ADR, they can join this network, which will provide them with information and technical assistance. The network will also help promote businesses that embrace ADR and serve as a speakers bureau.

The Commission will also work with the business network to plan a conference on ADR in business settings, possibly in partnership with the Department of Business and Economic Development, the Greater Baltimore Committee, the Maryland Chamber of Commerce, the Better Business Bureau, the University of Maryland School of Law, the University of Baltimore Negotiations and Conflict Management Center and other organizations. The conference will highlight the benefits of ADR for businesses in terms of cost/time savings and preserving relationships. The conference will feature testimonials from corporate representatives successfully using ADR and information on how businesses can advance their use of ADR to resolve internal and external conflicts. The Conference can be used to kick-off the Maryland "Corporate Pledge Program," which is described further in the Business section of this document.

The Commission will work to maintain ongoing communication and coordination among these networks. This will help each network understand how it can work with the others to build new relationships among stakeholder groups. The Commission envisions hosting conferences, developing newsletters and using its website to help the networks identify shared priorities and build partnerships where possible.

Results: The Commission believes that its public awareness campaign, ADR awards program, targeted educational initiatives, ADR networks and conferences will significantly raise the profile and level of understanding of ADR within Maryland's courts, communities, schools, businesses, justice systems, government agencies and other organizations. Taken together, these efforts will build the demand and momentum for increasing the appropriate use of ADR statewide and will expand the use of conflict resolution skills throughout Maryland.

A photograph of a person's legs from the waist down, wearing khaki pants and white sneakers with black laces. The person is standing on a stack of several books. The background shows a locker room with a metal locker door on the right. The text is overlaid on the image.

*It is critical
that we teach our children*

how to manage

conflict

effectively

*without resorting
to violence.*

School Programs and Educational Advancements



he ADR Commission believes that more emphasis needs to be placed on teaching children appropriate ways of responding to conflict situations. Especially given heightened

concerns at the national level about school safety and youth violence, the Commission believes it is critical that we teach our children how to manage conflict effectively without resorting to violence. Achieving this goal requires a significant ongoing effort aimed at incorporating effective conflict resolution curricula for all students as well as creating strong peer mediation programs in every Maryland school.

Conflict resolution curricula for all students and peer mediation programs, which train certain students to mediate student disputes, are being used in some elementary, middle and high schools in every jurisdiction in Maryland. The problem is that these programs, some of which are outstanding, tend to be sporadic. Some students get no exposure, while others may have a program in elementary school, but not in middle school, resulting in a general lack of continuity among schools statewide. To address this problem, the ADR Commission will work with the State Department of Education, school boards, superintendents, school administrators, principals and faculty to raise the profile of the successful programs operating around the state and to pro-

mote the creation of new programs, using effective comprehensive models.

For these models to work successfully, it is critical that school teachers, administrators, guidance counselors and parents be taught conflict resolution skills. If students are taught these skills, but school personnel model a very different form of conflict resolution, students get a weakened mixed message, and the school atmosphere cannot truly be transformed. Promoting conflict resolution skills training for school personnel and parents will be an important part of the Commission's efforts.

In the realm of higher education, the Commission will work to have ADR incorporated as part of the core curricula for future teachers, lawyers, business people, social workers, psychologists and others. Bowie State University took the lead in 1985 by establishing the University of Maryland system's first alternative dispute resolution center. Today, this program offers an eight-course certificate program for ADR studies, trains ADR practitioners, and takes other steps to promote comprehensive approaches to dispute resolution to serve the needs of a culturally diverse society. Salisbury State University has also developed a conflict resolution center and is establishing an undergraduate conflict resolution major. The University of Maryland's Institute for Governmental Service has also become active in recent years by providing educational programs and assistance with

The Commission's Education Committee used survey research and interviews to examine peer mediation and conflict resolution skills training in Maryland's elementary, middle and high schools. It also gathered information about conflict management and other ADR courses offered in Maryland's colleges, universities and professional schools.

The Committee found many highly successful school peer mediation programs and conflict resolution curricula, as well as a number of effective higher education courses. It also found that these programs are sporadic and limited. Thus, the Committee identified a need for a more systemic approach to institutionalize the state's ADR education efforts.

Reports developed and collected by the Commission and each of its working committees are included in a separate Appendix. To receive a copy, please call the Commission's office at (410) 321-2398.

Baseline Research

public dispute resolution, training local government representatives in conflict management, and providing consensus building services for government agencies. Some other higher education institutions in Maryland offer some dispute resolution courses or are developing programs. None, however, is teaching these vital skills to all students. The Commission is interested in helping them advance in this area.

Both of Maryland's law schools are well ahead of others in their emphasis on ADR and ADR course work. The University of Maryland School of Law operates an outstanding ADR clinical program and offers a wide variety of courses that focus on ADR techniques and theory. The

University of Baltimore also offers significant ADR course work at its School of Law and has an interdisciplinary Negotiation and Conflict Management Center which offers a Masters Degree program. While these ADR courses and programs are laudable, they are all electives in Maryland law schools. Although the ADR Commission believes that all lawyers should advise their clients of their ADR options, a law student could graduate in Maryland with little or no knowledge of ADR. The picture is grimmer with regard to teacher training, business schools, and higher education in general.

Program Evaluations

The Commission plans to work with a university research unit to conduct independent evaluations of an elementary, middle and high school feeder system that teaches conflict resolution skills to all students and has peer mediation programs in each school. The evaluations will use appropriate and consistent measures to identify any potential improvements, document the program's benefits, if any, and, if and when appropriate, be used to encourage the creation of new

Thus, the **Commission plans** to work with educational authorities and other interested groups to:

- Evaluate existing conflict resolution and peer mediation programs in an elementary, middle and high school feeder system
- Establish conflict resolution and peer mediation pilot programs with built-in evaluation components in an elementary, middle and high school feeder system that does not offer these programs
- Promote the importance of conflict resolution and peer mediation education for teachers, school administrators, guidance counselors, other school-related staff and parents
- Highlight current and promote new conflict resolution curricula and peer mediation programs in schools
- Work with a network of school personnel involved in conflict resolution and co-host a conference with MSDE on school-based conflict resolution and peer mediation programs
- Promote the incorporation of ADR into higher education core curricula for future teachers, lawyers and other professionals

programs and justify increased funding for current and future programs. The evaluations will be methodologically sound and have quantitative and qualitative components, including case studies.

Pilot Programs

Similarly, the Commission will work with at least one elementary, middle, and high school feeder system that does not teach conflict resolution or have a peer mediation program to start pilot programs, adapting models that have been successful elsewhere. The programs will have built-in evaluation components, use replicable models, and emphasize violence prevention.

Conflict Resolution Education in Higher Education for Future Teachers, Lawyers and Other Professionals

The Commission will work to have course materials on “how to use and teach conflict resolution” incorporated as part of the core curricula in Maryland colleges’ education departments for college students studying to be teachers. Working with MSDE and the Maryland Higher Education Commission, the Commission will emphasize that training teachers in conflict resolution and peer mediation will produce more effective teachers, safer schools, and better student performance. Teachers who understand conflict resolution and peer mediation will use these skills to manage their classrooms and to model good conflict resolution behavior for students. Research indicates that this causes a decrease in classroom disruptions, freeing up more instruction time for teachers.

To ensure ongoing emphasis on conflict resolution education, the Commission recommends incorporating problems that can be solved using conflict resolution skills into Maryland School Performance Assessment Program (MSPAP) tests as an

Peer Mediation

Mount Washington Elementary School

A fifth grader made a presentation to the ADR Commission in December, 1998, explaining how his Baltimore City public school had been transformed since establishing a peer mediation program the previous year. The young man—a peer mediator himself—said that the program had changed his life. He also said that students at his school used to be frightened and bullied in the lunch room and on the playground, but now, with peer mediators on duty, he said that the entire school atmosphere had changed.

Unfortunately, the middle school that young man will soon attend does not have a peer mediation program or conflict resolution curriculum. His story illustrates the need to institutionalize these concepts within the educational system, creating a continuum of progressive, age-appropriate programs from kindergarten through high school.

incentive for schools to teach these skills. MSPAP tests are designed to test schools, and as such, they would also serve to indicate how well schools are teaching conflict resolution skills. The Commission will work with MSDE to identify other incentives and rewards for schools and individuals who significantly advance the use of school-based conflict resolution and peer mediation. Ultimately, the Commission’s vision is for all members of the school community—parents, students, teachers and staff—to have the training and experience needed to manage conflict effectively.

The Commission will also work with Maryland’s law schools to incorporate ADR into their existing core curricula and will work with the State Board of Law Examiners to include ADR as an issue to spot on the state Bar Exam. The Commission will coordinate these efforts with the Maryland State Bar Association (MSBA) and will encourage the MSBA to include ADR in its professionalism course for new lawyers, emphasizing the

Training teachers in conflict resolution and peer mediation will produce more effective teachers, safer schools, and better student performance.

need for attorneys to advise their clients of their ADR options.

Additionally, the Commission will work with business schools, social work programs, psychology departments, and other professional schools, colleges, universities and the Maryland Higher Education Commission to help institute ADR courses as part of their core curricula. The Commission will also work with colleges that are interested in expanding their conflict resolution focus further, either by establishing in-house conflict resolution programs or creating a conflict resolution discipline. The Commission will also encourage professors from all related disciplines to participate in planned ADR networks and conferences, where appropriate.

Promote New and Existing Programs

As part of its public awareness efforts, the Commission plans to highlight current and promote new uses of conflict resolution curricula and peer mediation programs in schools. Giving students the opportunity to tell their own mediation success stories is an effective way to capture the attention of funding sources and policy makers. Exceptional school-based efforts may also be rewarded through the planned “Ozzie Bermant” awards program explained in the previous section.

Ultimately, bringing positive attention to school conflict resolution and peer mediation will promote public demand for replicating successful programs in other school systems.

Network and Conference

The Commission plans to work with a network of school personnel involved in conflict resolution and to co-host a conference with MSDE on school-based conflict management. The conference will provide teachers, administrators and students with the tools to expand their use of conflict resolution skills to improve the quality and safety of Maryland’s schools.

The Commission will work with groups such as the Citizen’s Law Related Education Project and other organizations and ADR practitioners who have been setting up conflict resolution and peer mediation programs in Maryland schools for many years. The Commission will also encourage community groups, civic organizations, ADR providers and community mediation programs to partner with schools and students involved in conflict resolution programs. These community members could participate in the ADR school network and conference, while helping to advance school-based conflict resolution and peer mediation programs.

Results: The Commission believes that implementing these plans will make conflict resolution a central part of the educational system in Maryland, from the elementary school level on through college and professional schools. These efforts will create safer and more manageable schools and will help prepare students to be effective problem solvers and productive citizens. The Commission hopes to help cultivate a new generation of teachers, attorneys and other professionals who understand the importance and the benefits of effective, non-violent, non-litigious conflict resolution.



Definitions and Dispute Screening



The ADR Commission found that many different ADR practices are being used across Maryland. The Commission was repeatedly asked to clarify definitions, especially the definition of “mediation.” To date, the term “mediation” is used to describe several practices that are significantly different from one another. The Commission recognizes that educating a wide range of groups and individuals across the state about the benefits of ADR necessitates developing a consensus on the definitions of various ADR practices, as well as on some general guidelines to help people decide if and when to use different forms of ADR.

ADR Practitioners come from a wide variety of backgrounds and include community leaders, business people, lawyers, psychologists, social workers and others. Reaching consensus on definitions proved to be a difficult process because ADR is a diverse and evolving field, and because ADR practitioners have adapted a variety of techniques to a wide range of disputes in different contexts. For example, in reviewing current practices statewide and holding public forums in

each region of the state, the Commission found differences of opinion about what a mediator’s role should be, especially with regard to the extent to which the practice of mediation should follow a transformative model—where creating new understanding is the major focus—or a purely facilitative model—drawing out all of the ideas about possible solutions from the participants—or an evaluative model where a mediator suggests or evaluates possible options for the participants and plays an active role in developing solutions for them.

Thus, **the Commission plans** to:

- Promote the use of appropriate definitions and descriptions of ADR techniques among the general public
- Revise circuit court Rules to clarify definitions of ADR processes
- Encourage self-screening by making information about ADR processes readily available

Definitions and Descriptions

Based on its review of current practices and opinions, as well as feedback from Marylanders in each region of the state asking for simple, clear explanations, the Commission offers the following definitions and descriptions:

Term	Definition	Description
“Alternative Dispute Resolution” (ADR)	A process or collection of processes for resolving disputes without going through a trial or committing violence	Generally refers to a broad category of “ADR processes” that include settlement conferences, arbitration, mediation, consensus building, which are defined below, as well as other “alternative” ways of resolving disputes without using violence or having a court decide.
“Mediation”	A process in which a trained neutral person, a “mediator,” helps people in a dispute to communicate with one another, understand each other, and if possible, reach agreements that satisfy the participants’ needs.	A mediator does not provide legal advice or recommend the terms of any agreements. Instead, the mediator helps people reach their own agreements, rebuild their relationships, and if possible, find lasting solutions to their disputes. Mediation is a process that lets people speak for themselves and make their own decisions.
“Arbitration”	A process in which people in a dispute present their views to a knowledgeable neutral person, an “arbitrator,” who decides how the dispute will be resolved.	Arbitrators review evidence and arguments from people in the dispute and make a decision or “arbitration award.” Arbitration is generally “binding” which means that the participants must abide by the arbitrator’s decision.
“Neutral Case Evaluation”	A process in which people in a dispute present their views, often in written form, to a knowledgeable neutral person who evaluates their dispute and expresses an opinion about the most likely outcome in court.	The neutral person usually has substantial knowledge or experience with issues involved in the dispute. This person’s opinion about how the court would probably decide the dispute helps people come up with appropriate out-of-court settlements.
“Settlement Conference”	A process in which people in a dispute in court present their views to a knowledgeable neutral person who evaluates the case and suggests ways to settle the dispute without a trial.	The settlement conference facilitator is usually a judge or experienced lawyer who can give informed opinions about how the court might decide the case, discuss how similar cases have been settled, provide advice and suggest agreements.
“Consensus Building”	A process in which a neutral person brings “stakeholder” groups and individuals together and facilitates their efforts to solve a common problem or address a complex issue in a way that best meets the participants’ needs.	Consensus building resembles mediation because the process is about people making their own decisions, opening lines of communication, and developing agreements that everyone can support. Consensus building is different because it usually involves a larger group of people and is generally used to prevent or resolve disputes about public policy or other complex issues involving several parties.

Circuit Court ADR Rules

To make these definitions operational within a court context, the Commission proposes revising the definitions in the circuit court ADR Rules so they will read as follows:

“Alternative Dispute Resolution” means the process of resolving matters in pending litigation through a settlement conference, neutral case evaluation, neutral fact finding, arbitration, mediation, consensus building, other non-judicial resolution process, or combination of those processes.

“Mediation” means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of all or part of their disputes. A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their respective positions, and assist the parties in embodying the terms of their agreement in a written document. The mediator does not engage in other alternative dispute resolution processes, such as arbitration, neutral case evaluation, or neutral fact-finding and does not recommend the terms of an agreement, unless the parties agree otherwise.

“Arbitration” means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument supporting their respective positions, and (2) the arbitrators render a decision in the form of an award that, in court-referred arbitration is not binding, unless the parties agree otherwise in writing. [In addition, the Commission proposes amending this circuit court Rule by adding a printed committee note stating that, “Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, at common law and in common usage outside the context of court-referred

cases, arbitration awards are binding.]

“Neutral Case Evaluation” means a process in which (1) the parties, their attorneys, or both appear before an impartial person (who may have specialized knowledge and/or experience with similar disputes or issues in the dispute), and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action were to be tried.

“Settlement Conference” means a conference at which the parties, their attorneys, or both appear before an impartial person to discuss the issues and positions of the parties in the action in an attempt to settle the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement.

“Consensus Building” means a process generally used to prevent or resolve disputes and/or to facilitate decision making, often within a multi-party dispute, group process or public policy making process. In consensus building processes,

The Commission’s Definitions and Dispute Screening Committee used sampling techniques to gather information and hear presentations from a wide variety of ADR practitioners who conduct mediation sessions, arbitration hearings, settlement conferences, consensus building processes and other ADR proceedings. The Committee also surveyed mediators across the state to get information on their professional background, their mediation experience, training and techniques. Additionally, the Committee reviewed a variety of articles and outside research on ADR definitions and dispute screening.

Based on its research, the committee developed the definitions in this section and determined that the Commission’s first “screening priority” should be to educate the public about ADR processes so that individuals can make informed decisions about what ADR process might best meet their needs. The Committee developed a detailed report on various ADR processes, and a statistical report summarizing its survey results.

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**Baseline
Research**

one or more neutral facilitators may identify and convene all stakeholders or their representatives, and use techniques to build trust, open communication, and enable all parties to develop options and determine mutually acceptable solutions.

Self-Screening

Having reviewed several dispute screening instruments and research indicating that a wide variety of disputes can be effectively resolved using ADR processes, the Commission believes it is important to emphasize “self-screening” among people in disputes. This means giving people enough information about ADR processes to be able to determine for themselves whether ADR is appropriate for them. As an example of this, the ADR Commission developed a brochure entitled “**Is Going to Trial Really Your Best Option?**” which presents versions of the above definitions along with questions to consider when deciding whether to use ADR and, if so, which ADR process to use. Written for prospective litigants, the Commission envisions that this simple brochure could be widely distributed by the courts and would reach a wide variety

of people who might consider using ADR before bringing their disputes to court. Similar versions and other informative brochures will be developed for other audiences including pro se litigants, community mediation clients, business groups, labor unions, etc.

Results: The Commission believes that these definitions describe ADR practices accurately, can help resolve confusion over terminology, and will assist ADR educational efforts. Additionally, these definitions provide a framework for screening disputes for ADR on a case-by-case basis and will serve as a foundation on which to build best practice standards. The Commission hopes that the Standing Committee on Rules of Practice and Procedure and the Maryland Court of Appeals will consider amending MD Rule 17-102 for the circuit courts where necessary to reflect these definitions (red-lined copies of the Rule are available upon request). The Commission will develop informational brochures, and educational materials that include these definitions or appropriate versions thereof.

ADR Practitioners and Trainers



The Commission recognizes that the success of any attempt to increase the use of ADR processes will be entirely dependent on access to high quality dispute resolution practitioners and trainers. Thus, the ADR Commission conducted an extensive review of current practitioner standards, surveyed ADR professionals across the state, evaluated an array of practice standards that could be implemented in Maryland, surveyed ADR trainers and reviewed training program curricula. As a result of these efforts, the Commission believes that Maryland has a small cadre of ADR practitioners and trainers that are well trained, highly skilled, experienced, ethically responsible, and concerned about quality control. Many of them report adhering voluntarily to one or more sets of standards and guidelines that have been established by national ADR associations.

National organizations including the American Bar Association, the Society for Professionals in Dispute Resolution, the American Arbitration Association, the Academy of Family Mediators and others are also involved in developing model ethical standards, mediation statutes, confidentiality rules, and certification programs. The Commission has been, and will continue, monitoring and, when appropriate, participating in these national efforts.

To maintain and safeguard the high quality of ADR services in Maryland as the Commission works to advance the field, and as new practitioners enter the Maryland ADR market, **the Commission will:**

- Propose an ethical code and practice standards for ADR practitioners
- Propose a mediation confidentiality Rule
- Propose amending the current circuit court ADR Rules to address training requirements, qualifications issues and other court ADR practices
- Work on guidelines for ADR trainers and training
- Encourage developing mentoring, co-mediation and apprenticeship opportunities for new practitioners

Ethical Code and Practice Standards for ADR Practitioners

The ADR Commission is drafting an ethical code and practice standards for all ADR practitioners. The ethical code and practice standards will address issues such as confidentiality and neutrality. Applicable to ADR in every context, the Commission believes that the ethical code and practice standards should be adhered to by practitioners of diverse backgrounds in both court and non-court settings, and the Commission will propose that the Maryland Court of Appeals adopt the code and standards. The Commission will work with networks of ADR providers to build support for the code and standards. The Commission plans to initially use a

The Commission's Professional Responsibilities Committee took the lead in examining practitioner qualifications, ethics, confidentiality, court rules and other issues affecting the ADR profession. The Committee gathered considerable information from national ADR organizations, and surveyed ADR practitioners, court personnel, community mediators and others. Before his death, Ozzie Bermant spearheaded an assessment of ethical standards for ADR professionals and drafted a detailed report on his efforts, contributing considerably to the Committee's work. The Committee also prepared reports on professional standards among Maryland's community mediation programs and compiled a report on its survey of ADR practitioners.

Based on its research and fact finding efforts, the Committee prepared the proposed Rule amendments, confidentiality Rule, ethical code and practice standards explained in this section. The Committee has also monitored national ADR developments and other practitioner issues during the course of the Commission's work.

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mediation is useless or worse. As such, quality assurance is a major priority for the ADR Commission. The Commission is considering ways to promote mentoring, co-mediation, apprenticeships, supervised practice and other quality assurance mechanisms.

“voluntary compliance model” for the code and standards and to establish a “seal of approval” system that highlights practitioners who abide by them. The Commission plans to work with practitioners to develop a roster system of practitioners who certify that they follow the ethical code and practice standards, and to develop consistent standards for ADR in court and non-court settings. The Commission also plans to develop a system for receiving complaints about ADR practitioners and to devise methods to respond to them, including the development of remedial programs.

Quality Assurance

The Commission recognizes that as the use of ADR grows in Maryland, it is imperative to have an active cadre of well-trained, highly skilled ADR practitioners. If people attend mediation sessions, for example, conducted by a poor or mediocre mediator, it will be their last ADR attempt and they will spread the word that

The issue of certification for practitioners has been a topic of particular concern for the Commission. Having reviewed practitioner certification programs in other states, and having listened to concerns about creating bureaucratic approval processes, cumbersome regulatory systems, and exclusionary or subjective practices, the ADR Commission is not creating a practitioner certification program at this time. Certification is, however, still among the quality assurance mechanisms being considered. The Commission has discussed “skills-based” certification as a means to move away from degree-based and training-certificate-based qualifications. There is, however, at present, no national agreement about the best method to conduct skills-based certification. Certification models are currently the subject of significant national research efforts. Data that may clarify some difficult practitioner evaluation issues are expected to be available next year. Thus, the Commission believes that, at present, setting voluntary standards and guidelines is the most logical first step.

In light of the feedback we received at our public forums and compelling reasons for establishing a skills based certification methodology and certification program, as well as significant concerns about over-regulating or limiting the ADR profession, the Commission plans to expand its efforts to build a broad-based consensus on this issue. A high priority of the Commission will be to work with practitioners around the state to develop a strong quality assurance system that will protect the public and will help cultivate a skilled practitioner base to support other ADR expansion plans.

Confidentiality

Across the state, the Commission has been repeatedly told by people involved in community, court and private mediation that there is a high priority, immedi-

ate need to clarify and protect the confidentiality of mediation, both within and outside of the courts. Thus, the Commission is drafting a proposed confidentiality Rule for mediation. In its public forums, the Commission was asked to broaden the draft proposed Rule to extend confidentiality to other forms of ADR. The drafting committee attempted to do so, but complications over differences in the processes caused the committee to limit the proposed Rule to mediation. The Commission will consider the confidentiality needs of other ADR processes in the future.

The draft below is a work in progress, but the Commission plans to submit the final confidentiality Rule to the Standing Committee on Rules of Practice and Procedure and the Maryland Court of Appeals with hopes that they can consider adding it to Title 17, which contains the ADR Rules for the circuit courts. The Commission will then propose legislation that will codify this privilege as a statute to be applied outside the context of court-based ADR.

This draft Rule protects the confidentiality of the process, but not the confidentiality of the outcome. If agreements are reached in cases where litigation is pending, those settlement agreements are generally filed with the court. In pending criminal cases in particular, while the process is confidential, if an agreement is reached, a prosecutor may review the agreement and place the case on the “stet” docket so that it can be reopened if the alleged offender fails to honor the agreement. In other instances, potential options for closing or delaying the pending case may be subject for discussion during the mediation. If no agreement is reached in a pending civil or criminal case, however, all that should be reported to the court is that the mediation was “unsuccessful.” Courts should not be informed why an agreement was not reached nor

whether any party halted the process, except in the event that a party fails to appear and listen to an explanation of the process in response to a court order. The revised draft Rule will also require adding the terms “mediator” and “mediation communication” to the definitions contained in Rule 17-102 as detailed below.

DRAFT MEDIATION CONFIDENTIALITY RULE

Add the following to the definitions contained in Rule 17-102:

- (-) Mediation Communication
“Mediation communication” means speech, writing or conduct made as part of a mediation, including those communications made for the purposes of considering, initiating, continuing, or reconvening a mediation or retaining a mediator. “Mediation communication” does not include a written agreement drawn-up as a result of a mediation, the fact that a mediation occurred, who attended a mediation or documents otherwise publically available and not generated specifically for the mediation.
- (-) Mediator
“Mediator” means a neutral person engaged by the parties or appointed by the court to conduct mediation as defined above.

MEDIATION CONFIDENTIALITY DRAFT RULE 17-109

- (a) A mediator and/or the mediator’s staff shall maintain the confidentiality of all mediation communications, which include speech, writing, or conduct, beginning with the initial contact between the mediator and/or the mediator’s staff, and the parties and/or parties’ counsel, except as specifically stated below in subsection (c). Neither the mediator nor the mediator’s

staff may disclose or be compelled to disclose mediation communications in any judicial, administrative or other adversarial proceeding, except as stated below in subsection (c).

- (b) The parties and/or the parties' counsel shall maintain the confidentiality of all mediation communications, which include speech, writing, or conduct, except by written agreement of all of the parties or as stated below in subsection (c). Neither the parties, the parties' counsel nor others present at the mediation session on the parties' behalf may disclose or be compelled to disclose mediation communications in any judicial, administrative or other adversarial proceeding, except by written agreement of all of the parties or as stated below in subsection (c).
- (c) In addition to the legal requirement to report suspected acts of child abuse, contained in MD Code Ann., Fam. Law §5-705, a mediator and/or mediator's staff, and a party and/or party's counsel may disclose and/or report mediation communications to a potential victim and/or to the appropriate authorities, when and to the extent that they, in their own judgment, believe it necessary to help:
 - (1) prevent physical and/or sexual child abuse or elder abuse;
 - (2) prevent serious bodily harm or death;
 - (3) prevent environmental or safety hazards that may threaten the health, safety, or economic well being of an individual or the public;
 - (4) prevent criminal actions that would result in serious financial harm; or
 - (5) allege mediator misconduct or defend the mediator in the face of allegations of misconduct.

- (d) Information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

RATIONALE FOR MEDIATION CONFIDENTIALITY RULE

- (a) This subsection binds the mediator to keep all mediation communications confidential and prevents the mediator from testifying in court about mediation communications, except as provided in subsection (c). It will protect mediation as a safe forum for party candor and protect public confidence in mediation as a confidential process.
- (b) This subsection binds the parties to keep all mediation communications confidential and prevents them from testifying in court about mediation communications, except by written agreement of all of the parties or as provided in subsection (c). This subsection also serves the dual purposes of protecting mediation as a safe forum for party candor and protecting public confidence in mediation as a confidential process. Furthermore, it gives the parties the power to agree to lift confidentiality for themselves as to all or part of the mediation.
- (c) This subsection balances the needs for disclosure against the needs for confidentiality to serve the public interest in protecting others. It also allows parties to report mediator misconduct and serves the need for fundamental fairness by allowing accused mediators to respond.
- (d) This subsection recognizes the general societal support for disclosure of evidence by preventing mediation from being used in an attempt to protect otherwise admissible discoverable evidence from disclosure in court.

Results: The ethical code, practice standards, seal-of-approval system and complaint system will be designed to ensure that Maryland ADR practitioners have clear, wise guidance about appropriate behavior. At the same time, these plans respect the need to develop a diverse pool of mediators to serve the needs of our communities. The confidentiality standard is designed to ensure the integrity of ADR processes for both court-related and non-court-related disputes, allowing participants to have open and honest communication, without fear of subsequent legal consequences and protecting the public perception of mediation as a confidential process. The issue of quality assurance will be a major subject of the Commission's ongoing efforts. A quality assurance project team will begin working in the early fall and will regularly report on its progress to the Commission and its Advisory Boards.

Circuit Court ADR Rules

For several years, MD Rule 9-205 has provided for mandatory mediation in most child custody and visitation disputes. As a result, some very well-established, court-based child custody and visitation mediation programs have been developed in Maryland.

More recently, in October of 1998, the Maryland Court of Appeals adopted new ADR Rules for the circuit courts, codified in a new Title 17, which became effective on January 1, 1999. MD Rules 17-101 et. seq. define ADR practices, establish statewide circuit court ADR procedures, and set forth training and qualification requirements for mediators and other ADR practitioners taking circuit court referrals. When the ADR Rules were adopted, the ADR Commission was still in the fact-finding phase of its work and was not prepared to make any substantive recommendations about the draft Rules. Therefore, when the Court of Appeals

adopted the ADR Rules, it acknowledged an expectation that the ADR Commission would propose Rule amendments in its Practical Action Plan.

Based on its review of circuit court ADR practices and the effects of the new ADR



Rules to date, the Commission hopes that the Standing Committee on Rules of Practice and Procedure and the Maryland Court of Appeals will consider amending the ADR Rules to address training requirements, qualifications issues, and other ADR practices in the Maryland circuit courts. **The proposed Rule amendments would:**

- Ensure high quality mediators in divorce cases by requiring mediators seeking referrals of divorce cases with financial issues to take an additional 20 hours of skills-based training about how to mediate these issues (above the required 40-hour basic training and 20-hour child custody and visitation mediation training) and specify the general content of that training, and require mediators to observe or co-mediate eight hours of divorce mediation sessions involving financial issues, conducted by court-approved divorce mediators or to review approved video taped mediation sessions as a substitute if nec-

essary. The observation requirement can also be waived by the court for those who have substantial experience mediating divorce cases involving financial issues.

- Set a training standard for practitioners outside the mediation field (arbitrators, early neutral evaluators, fact-finders and settlement conference facilitators) by requiring 12 hours of training and specify the general content of that training, if the practitioner has not been an ADR practitioner in at least five circuit court, or other state, or federal court cases. Both this training requirement and the above-mentioned 20-hour divorce mediation training program should be weighted heavily toward developing needed conflict resolution skills in each field.
- Make it easier for judges to waive the existing bachelor's degree requirement. Specifically, the Commission proposes removing the good cause standard for exemptions from the bachelor's degree requirement, so courts could waive this requirement "in connection with a particular action" without stating a reason.
- Require that mediators take eight hours of continuing education every two years to strengthen their mediation skills and to keep abreast of developments in the ADR field.
- Acknowledge the possibility that young people can be effective mediators, especially in peer settings, and encourage the use of co-mediation by adult and juvenile mediators in some juvenile justice and parent-teen conflicts, by allowing judges "in connection with a particular action" to waive the requirement that a mediator be at least 21 years old.
- Amend the Rules which currently permit the courts to order parties

and their attorneys to attend non-fee-for-service settlement conferences over their objections, so that the Rules would also give courts the discretion to order objecting parties and/or their attorneys to attend non-fee-for-service mediation. Parties would be required to listen to an explanation of the mediation process and then decide whether to participate in mediation. This would permit expanding understanding of the mediation process and could contribute to the growth of mediation programs using court personnel, volunteer mediators and/or community mediation programs, in selected cases.

- Promote judicial discretion in cases where parties are unrepresented by attorneys, known as *pro se* parties, by clarifying language to specify that the court has the discretion to order them to attend child custody and visitation mediation.
- Simplify practitioner application forms by providing that they be affirmed under the penalty of perjury to be true. This would substitute for the current documentation requirements.

Results: These proposed Rule changes (red-lined copies of the Rules available upon request) will improve the quality of ADR services provided in circuit court cases and will reduce "red tape" so qualified ADR practitioners can be listed by the circuit courts more easily. The Commission also believes that Maryland's ADR Rules and any ADR legislation should be subject to ongoing review and periodic revision to reflect the evolving nature of the ADR field, and to ensure the appropriate use of ADR.

Practitioner Training Guidelines

The Commission will also work with ADR trainers around the state to develop and promote training guidelines. As with the ethical code and practice standards for practitioners, the Commission plans to initially use a “voluntary compliance model” for these guidelines and to establish a “seal of approval” system that highlights the trainers and training programs following the ADR Commission’s guidelines. The training guidelines will also emphasize the importance of gaining experience, and the “seal of approval” concept will also be structured as a business development incentive for trainers. The guidelines will also encourage “apprenticeships” within the ADR community, and the Commission will promote experienced trainers and practitioners who are willing to mentor, co-mediate with or offer apprenticeships or supervised practice to new practitioners.

Once the guidelines are in place, the Commission will begin working with ADR trainers around the state to develop and promote model training curricula, beginning with basic mediation and progressing to more specialized courses. Consistent with plans for safeguarding quality control within the practitioner community, the option of creating a certification system for ADR trainers and training programs will also be examined once a consensus on training guidelines has been developed.

Results: As the Commission works to increase the demand for ADR services, it will be essential to have an ever-growing diverse pool of well-trained, highly skilled practitioners. These recommended actions will help ensure that Maryland ADR practitioners are well trained, will promote mentoring, co-mediation and apprenticeship opportunities so that new practitioners can hone their skills, and will improve the quality of ADR training programs statewide.



*Community mediation
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and
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Community Mediation



To increase the use of ADR at the community level and to encourage the resolution of disputes before they escalate into violence or legal battles, the ADR Commission paid particular attention to community mediation and its potential to improve the way in which people respond to conflict in their neighborhoods. The Commission reviewed practices at Maryland's nine community mediation centers via surveys and direct contact with each community mediation program. Although each of Maryland's community mediation centers is unique, they all provide mediation services at the community level, regardless of participants' ability to pay, making mediation accessible to all members of the community. Some have developed strong referral relationships with courts, police, juvenile justice agencies, private sector ADR service providers, and other groups. The Commission strongly supports community mediation and is very interested in encouraging its growth throughout Maryland by providing funding for community mediation services.

Unfortunately, most community mediation centers in Maryland operate under severe resource constraints. The Commission believes that community mediation is a valuable service to Maryland citizens and that community mediation services should be encouraged, expanded and financially supported. As such, the

Commission plans to work with community mediation advocates, ADR practitioners, and other interested groups to:

- Create a Community Mediation Association
- Establish a stable funding mechanism for community mediation services
- Evaluate an established community mediation center
- Develop programs in counties not yet served by community mediation

Tangier Island—Watermen's Dispute

During a public forum on the Eastern Shore, staff from the Salisbury Conflict Resolution Center relayed a story about a remarkable mediation process on Tangier, a remote island at the mouth of the Chesapeake Bay where the islanders and watermen have made only minimal lifestyle changes since Colonial times.

A community mediator worked through the local church in hopes of helping the islanders resolve a water quality dispute with a major environmental group. Not only did the two groups reach agreement, resolving their dispute, but the watermen were so moved by the process that they drafted a "Covenant with God" pledging to live as stewards of the water and to take new steps to protect the Bay. Much to the amazement of local folk, the watermen—who rarely leave the island and have barely changed their commercial practices in the last 300 years—now make trips to the mainland to discuss this experience and its importance to them.

Community Mediation

What is it?

Mediation helps people reach agreements, rebuild relationships, and find permanent solutions to their disputes. Mediation is a process that lets people speak for themselves and make their own decisions. Community mediation provides a non-profit framework for assuring access to mediation services at the community level with control and responsibility for dispute resolution maintained in the community. **Community mediation**

strives to:

- (1) train community members—who reflect the community’s diversity with regard to age, race, gender, ethnicity, income and education—to serve as volunteer mediators
- (2) provide mediation services at no cost or on a sliding scale
- (3) hold mediation sessions in the communities where the disputes occur
- (4) schedule mediation sessions at a time and place convenient to the participants
- (5) encourage early use of mediation to prevent violence or to reduce the need for court intervention, as well as provide mediation at any stage in a dispute
- (6) mediate community-based disputes that come from referral sources including self-referrals, police, courts, community organizations, civic groups, religious institutions, government agencies and others
- (7) educate community members about conflict resolution and mediation
- (8) maintain high quality mediators by providing intensive skills-based training, apprenticeships, continuing education and ongoing evaluation of volunteer mediators
- (9) work with the community in governing community mediation programs in a manner that is based on collaborative problem solving among staff, volunteers and community members

Community mediation is effective at resolving a wide variety of community-based disputes.

The Commission's Community Issues Committee worked in three distinct subcommittees to conduct in-depth reviews of ADR as it is used in government and public policy, criminal and juvenile justice, and community mediation. The Committee conducted survey research and reviewed literature on state and national efforts, and produced detailed reports on ADR in each of these three areas.

After identifying nine community mediation centers in Maryland, the Community Mediation Subcommittee surveyed each one—as well as several others outside the state—to develop a description of community mediation and to assess the needs of community mediation centers. The Committee reported that most community mediation centers in Maryland are still relatively new, they appear to be in varying stages of development, and they are still exploring avenues to establish and maintain adequate funding for their work. The Committee also found that most centers hold their mediators to high standards by providing in-depth skills training, co-mediation experience and in-service training.

Reports developed and collected by the Commission and each of its working committees are included in a separate Appendix. To receive a copy, please call the Commission's office at (410) 321-2398.

Baseline Research

During the Commission's regional public forums, participants expressed strong support for community mediation services, sharing personal perspectives on the benefits of active programs and discussing the types of disputes that could be resolved in each region if community

mediation services were available. Specifically, forum participants indicated that community mediation services could help advance restorative justice initiatives, assist in community based "HotSpots" projects, and address race, religion and ethnic conflicts, all as part of an overall effort to mediate community-based disputes. Forum participants also said that community mediation would make ADR accessible to a diverse group of people and that community mediation programs could partner with school-based conflict resolution programs.

Community Mediation Association

A statewide association for all community mediation programs should be established to develop criteria for new and existing centers that receive state funding, as well as to assist the state in its efforts to advance community mediation services in each jurisdiction. The association should be created by community mediators using state start-up funds and should be established as a non-profit organization. The Commission believes that such an association would play a pivotal role in coordinating state resource/funding priorities, developing criteria for state funding, identifying outside funding sources, preparing grant applications for community mediation programs, increasing resources for new and existing community

The Commission believes that the court should take a leading role in supporting community mediation services, largely because of their potential to prevent conflicts from reaching a level at which court intervention is necessary.



mediation centers, advocating for community mediation, providing technical assistance to new programs, and advising the Commission and the superceding State Dispute Resolution Office on other issues of concern to community mediation. The association should also work collaboratively with the Commission and the Maryland Council on Dispute Resolution to help build mutually beneficial relationships among community mediators and private sector ADR service providers statewide.

The Commission is also interested in recognizing outstanding work in community mediation and, in addition to other promotional efforts, will work with the Community Me-

A community is like a ship, everyone ought to be prepared to take the helm.

—Henrik Ibsen

diation Association to provide “Ozzie Bermant” awards to deserving community mediation practitioners.

Funding

The Commission’s survey of community mediation programs found that insufficient funding is their major concern. The Commission proposes using state, local and private funding sources to support the provision of community mediation services across the state.

One option the Commission is considering is drafting enabling legislation to secure state funding, such as the New York statute that enables the court system to provide partial funding for New York’s 62 community-based conflict resolution centers. The Commission would work with the Community Mediation Association to develop proposed eligibility performance and accountability standards to ensure that services are provided in a manner that is cost effective and that is consistent with the “Community Mediation—What is it?” description in this section. State funds would be distributed

through, and monitored by an entity that could be held accountable by the Maryland General Assembly, such as the ADR Commission, the planned State Dispute Resolution Office and/or some other agency that could work closely with the above-mentioned Community Mediation Association and other interested groups. State funds would be used to augment existing funding and would not be the programs’ sole source of funds.

The Commission believes that the court should take a leading role in supporting community mediation services, largely because of their potential to prevent conflicts from reaching a level at which court intervention is necessary. The Commission also sees community mediation as a vital resource for the courts in cases that involve community-based disputes that concern ongoing relationships, such as criminal charges brought by citizens against their friends or neighbors. These cases often lead to repeated lawsuits because the adversarial process and win-lose verdicts rarely serve to address underlying issues and meet everyone’s needs. Community mediation services can bring parties together to reach mutually acceptable resolutions, which are more likely to prevent recurring disputes and subsequent court interventions.

Evaluate An Existing Community Mediation Center

The Commission plans to work with a university research unit to conduct an independent evaluation of a community mediation center. The evaluation will use appropriate and consistent measures to identify any potential improvements, document the programs’ benefits, if any, and, if and when appropriate, be used to encourage the creation of new programs and justify increased funding for current and future programs. The evaluation will be methodologically sound and have quantitative and qualitative components, including case studies. The Commission

anticipates working closely with the proposed community mediation association to ensure that the evaluation reflects the program's goals and objectives.

Develop New Programs

The Commission will work with community groups and the community mediation association to develop new centers in counties that do not yet have community mediation services and that want help to start grassroots programs with built-in evaluation components. As community mediation gains statewide momentum, the Commission envisions an increased number of courts, community groups, government agencies, private ADR practitioners and other organizations establishing partnerships with community mediation programs. The Commission also believes that community mediation programs and private sector ADR service providers are well-positioned to help one

another succeed, by collectively raising public awareness of ADR and its benefits, as well as by referring cases and other work to one another.

Results: As community mediation thrives in Maryland, we expect to see improvements in the handling of community-based disputes. The Commission anticipates that community mediation service providers will strengthen their relationships with courts and other criminal justice programs to mediate a greater number of minor criminal and juvenile cases, and other kinds of local community-based disputes. As active advocates for ADR, these programs recruit, train and empower community members, enabling them to address community-based disputes and to help transform the way in which our communities respond to conflict situations.



Mediation is

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*in minor
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District Court



The Commission is very interested in seeing ADR advance in Maryland's District Court. Mediation, in particular, is especially beneficial for restoring damaged relationships and addressing the underlying issues in many minor criminal and civil disputes that are filed in the District Court.

The Honorable Martha F. Rasin, Chief Judge of the Maryland District Court and a member of the ADR Commission, formed the Commission's District Court Subcommittee to develop and implement plans to advance the appropriate use of ADR in the Maryland District Court. Based on this group's work, the Commission will begin its focus on ADR in the District Court by assisting with evaluation and implementation of the Court's misdemeanor criminal mediation pilot programs. The ADR Commission supports the District Court's goals for its ADR efforts, which will seek to:

- offer people choices and better ways to solve problems
- offer prompt resolutions
- offer people an opportunity to participate in the outcome of their disputes
- create a dispute resolution structure, but not a new "legal structure"
- improve peoples' satisfaction through win/win solutions

- help communities and families improve relationships
- help courts serve the public
- improve the use of judicial resources
- offer lasting solutions for people's problems

Thus, the **Commission plans** to work with District Court judges, court personnel, ADR practitioners and other interested groups to:

- Evaluate already-established District Court ADR programs
- Assist pilot projects with built-in evaluation components
- Promote use of ADR in appropriate cases resulting from recent "peace order" legislation
- Promote educating judges, court personnel, attorneys and litigants about the benefits and use of ADR in other appropriate District Court cases
- Create a network of judges and court personnel who manage district court ADR programs
- Co-host a conference on court-related ADR

Program Evaluations

Chief Judge Rasin surveyed Maryland's District Court to assess the extent to which each was already using ADR. The result of this review indicated that the District Court currently offers a number of innovative ADR services in some jurisdictions. These include a Baltimore City civil case mediation program operated in partnership with the University of Maryland School of Law's clinical program and the Community Mediation Program, a number of partnerships that provide for crimi-

The Courts Administration Committee examined a variety of court-based ADR programs in Maryland and elsewhere. The Committee also surveyed judges and court personnel to assess the state of ADR at the Court of Special Appeals, in county circuit court, in the District Court and at the Office of Administrative Hearings, and prepared reports on ADR in each area.

Chief Judge Rasin produced a report on ADR in the District Courts which found that ADR exists largely in the courts with the most crowded dockets, and is used in criminal cases more frequently than in civil cases. The University of Maryland Law School Clinic, most community mediation programs, and volunteers throughout the state mediate District Court criminal and civil cases at no charge to the parties. Some State's Attorneys Offices also have formal mediation programs primarily for criminal cases that stem from ongoing interpersonal disputes. Most District Courts also hold pretrial conferences to assess settlement options in complex civil cases, and many are poised to expand their use of mediation.

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Baseline Research

nal and civil case referrals to community mediation centers and private practitioners, a well-established criminal mediation program operated by the Anne Arundel County State's Attorney's Office, and a volunteer mediator program in Montgomery County.

While each of these programs appears successful, there have been little or no formal attempts to document their results and evaluate their effectiveness. Thus, the Commission plans to work with a university research unit to conduct independent evaluations of at least two of the above mentioned District Court programs. The evaluations will use appropriate and consistent measures to identify any potential improvements, document the programs' benefits, if any, and, if and when appropriate, be used to encourage the creation of new programs and justify increased funding for current and future programs. The evaluations will be methodologically sound and have quantitative and qualitative components, including case studies.

Pilot Projects

To meet these objectives and to help curb violence in our communities, the District Court will focus one of its pilot projects on criminal cases that involve inter-personal disputes, which can often

be effectively and permanently resolved in mediation. The District Court is working on a pilot criminal mediation project in Montgomery County and will identify another pilot program to work with the Commission.

The District Court also plans to begin revising case processing forms and modifying court processes to encourage the use of ADR statewide. Eventually, the Commission envisions the District Court convening stakeholder groups in every jurisdiction to establish local ADR planning teams of judges, court personnel, prosecutors, public defenders, police officers, and, where available, community mediators and private practitioners to develop new ADR programs and to effectuate referrals to mediation early in the case review process.

During the Commission's public forums, it was apparent that each region has unique needs and priorities. For example, participants in Western Maryland expressed interest in making ADR work in civil cases before attempting to use it in the criminal arena. The Commission recognizes the importance of making sure that programs respond to local needs and concerns. As a result, the Commission strongly supports using consensus building processes and public participation in efforts to establish new programs at the local level.

Because District Court litigants are often of limited means, the Commission believes that ADR services should be provided to them at little or no cost. Thus, the Commission believes that efforts to increase the use of mediation in the District Court will open opportunities for community mediators and other volunteer mediators, as well as law school and college student mediators under supervision and others who are seeking practical experience.

Peace Orders

During the 1999 Maryland General Assembly session, legislation was enacted to enable individuals in certain situations or disputes to apply for a “peace order” as a form of civil relief intended to keep another person away. If granted by the District Court after a hearing, a peace order may include specific restrictions or prohibitions on future contact between the parties involved.

The District Court anticipates receiving a high volume of peace order cases, many of which could be suitable for ADR. With the likelihood being that most peace order cases will result from interpersonal disputes and damaged relationships, many people who participated in the Commission’s regional public forums recommended building a mediation component into the peace order process, using early case screening and mediation referrals when appropriate. The Commission supports this approach and will work with the District Court as it gears up for implementing the new legislation.

ADR Education

As noted in this document’s “Targeted ADR Education” section, providing quality court-related ADR services requires educating judges, court personnel, attorneys and litigants about ADR. Each needs to understand what ADR is, when it is appropriate, what services the court offers, what the benefits are, and their own roles in the process. Accordingly, the ADR Commission plans to assist the Dis-

trict Court in its efforts to educate people as needed to advance the use of ADR in the District Court.

The Commission is also interested in recognizing outstanding work in the District Court and, in addition to other promotional efforts, will incorporate its work into the planned “Ozzie Bermant” awards program outlined in the public awareness section of this document.

District Court ADR Network and Court-Related ADR Conference

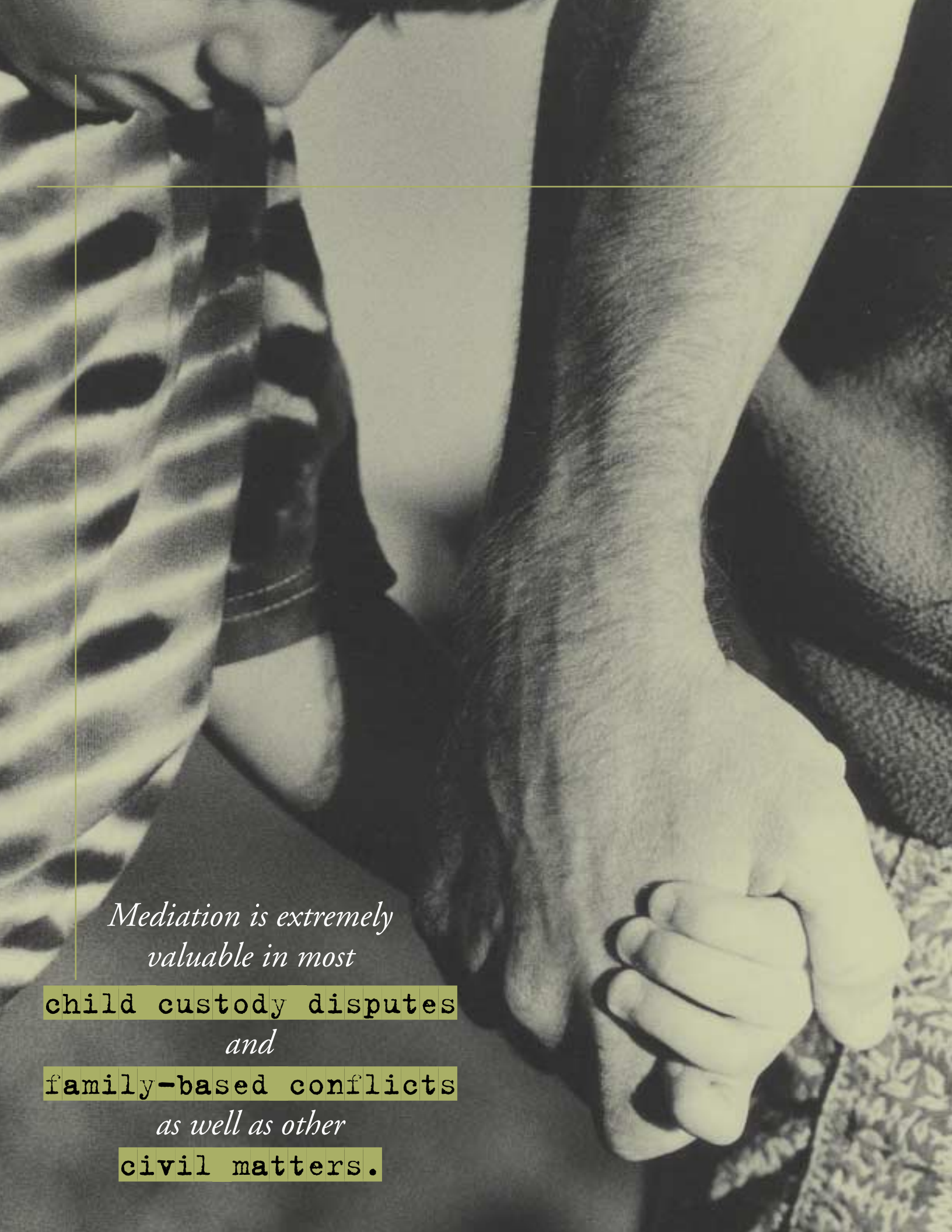
The ADR Commission plans to encourage the formation of a network of judges, court



commissioners, and other court personnel who are already involved in ADR programs at the District Court level. This network will provide a forum for sharing information and resources to strengthen existing programs,

and offer technical support to new District Court programs. The network will be asked to assist the ADR commission and the circuit court network in designing and sponsoring a conference on court-related ADR.

Results: These efforts will expand the use of ADR in the District Court in a manner that will improve the quality of services it provides. They will also lay the groundwork for future civil and criminal District Court ADR programs across the state. The District Court pilot programs are expected to reduce conflicts that would otherwise result in repeated District Court cases, and to contribute to efforts to build more civil and peaceful communities in Maryland.



*Mediation is extremely
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and**

**family-based conflicts
as well as other**

civil matters.

Circuit Courts

Prior to the effective date of the new circuit court ADR Rules, the Commission surveyed Maryland's circuit courts, reviewed the 1998 Maryland Court Services Survey, and followed up with judges, court administrators and other court officials to get an accurate picture of Maryland circuit court ADR programs. In summary (details will be provided in a separate Appendix to the Commission's final Action Plan), the Commission found that, as of Fall 1998, in Maryland's circuit courts: (1) larger jurisdictions used ADR more frequently than smaller jurisdictions; (2) almost every jurisdiction had formal court-ordered child custody and visitation mediation programs, although procedures varied considerably from one jurisdiction to the next; (3) Baltimore City and Montgomery County had formal, well-established, attorney-facilitated settlement programs for civil cases; (4) a handful of other jurisdictions had civil mediation programs, all of which were relatively new; (5) Prince George's County had a court-ordered non-binding arbitration program; (6) most other jurisdictions had judges, retired judges and/or attorneys conducting settlement conferences and/or occasional arbitration sessions in selected civil cases; (7) although most programs had certain data on hand, no independent evaluations had been conducted

for any circuit court ADR program; and (8) many jurisdictions reported growing interest in expanding the use of ADR in their circuit courts.

The use of ADR has been growing rapidly around the country and, although at a slower pace, it is growing within the Maryland circuit courts. Although there have been no independent evaluations, the Commission has collected anecdotal reports that existing circuit court programs save time and money for litigants, decrease court delays, and increase litigants' satisfaction. Thus, the ADR **Commission recommends** the following actions to encourage expanding and creating new ADR programs in Maryland's circuit courts:

- Expand the use of mediation in appropriate family-related cases
- Evaluate at least two existing circuit court ADR programs
- Adapt Ohio's successful "circuit rider" model to create civil mediation pilot projects in three jurisdictions
- Assist in implementation of a civil ADR program in the Circuit Court for Baltimore City
- Work with the Maryland Judicial Commission on pro bono, the Maryland Legal Services Corporation and the Maryland State Bar Association to establish a pilot ADR project to incorporate ADR into pro bono legal services
- Launch targeted education initiatives for judges and court personnel
- Create a network of judges and court-personnel who manage court-based ADR programs
- Co-host a conference on court-related ADR

Circuit court ADR programs save time and money for litigants, decrease court delays, and increase litigants' satisfaction.

The Courts Administration Committee examined a variety of court-based ADR programs in Maryland and elsewhere. The Committee also surveyed judges and court personnel to assess the state of ADR at the Court of Special Appeals, in county circuit court, in the District Court and at the Office of Administrative Hearings, and prepared reports on ADR in each area.

Virtually all circuit court jurisdictions have court-ordered child custody and visitation mediation, but procedures vary considerably from one jurisdiction to the next. A survey of the circuit courts indicated that Allegany, Anne Arundel, Baltimore, Frederick, Kent, Montgomery and Prince George's Counties all have court-ordered civil mediation programs. Prince George's also has a court-ordered non-binding arbitration program, and most jurisdictions report that judges, retired judges and/or attorneys conduct settlement conferences and/or arbitration in selected civil cases. The Committee encourages efforts to move up early settlement conferences to increase the effectiveness and the benefits of this valuable ADR tool.

Reports developed and collected by the Commission and each of its working committees are included in a separate Appendix. To receive a copy, please call the Commission's office at (410) 321-2398.

Baseline Research

Family Mediation

Circuit Court Rule 9-205 requires judges to order mediation in child custody and visitation cases, except under certain circumstances. Significant limitations to this, however, have included a shortage of mediators in some jurisdictions and, until recently, a lack of administrative support in some courts. As a result, under Chief Judge Bell's leadership, each jurisdiction has hired (or is hiring) a Family Services Coordinator to help build local capabilities for such cases to be referred to mediation, to improve case management, and to take other steps that will increase the use of mediation.

Based on information gathered from well-established family mediation programs in Maryland and feedback received during regional public forums, the Commission believes that mediation is extremely valuable in most child custody and visitation disputes as well as in many other family-based conflicts. Because of often deep-seated emotions and the importance of developing future working relationships, there is a broad and growing sentiment that the courts should refrain from issuing custody and visitation orders until reasonable attempts at facilitated consensus-based decision making have been exhausted. Further, the Commission believes that the court should support parties' ability to make "good faith" efforts during mediation, which may require educating partici-

pants and their attorneys about the benefits of mediation. In the interest of reaching timely child custody and visitation agreements that meet everyone's needs, attorneys should be encouraged not to raise unnecessary objections to mediated agreements.

Maryland Rule 9-205, which addresses child custody and visitation mediation, is currently being interpreted in two ways: (1) that *pro se* (unrepresented by counsel) parties may not be ordered into mediation and (2) that *pro se* parties may be ordered into mediation. The Commission has been informed that experiences in child custody and visitation mediation programs across the state indicate that mediation works well for *pro se* parties, even when one party to the mediation is represented and the other is not. For example, approximately 40 percent of the

Harmony may be difficult to obtain in our adversarial system and our heterogeneous society. . . . We as lawyers must embrace our role as peacemakers as vigorously as our roles as advocates.

—Roberta Cooper Ramo
President, American Bar Association,
December 1995

cases handled by the well-established Prince George's County child custody and visitation mediation program involve *pro se* parties. Thus, the Commission is proposing an amendment to Rule 9-205 to make it clear that judges may refer *pro se* parties to mediation. (Please see the "ADR Practitioners and Trainers" section of this report for further information.)

The Commission will also offer assistance to the Family Divisions in the larger jurisdictions and to Family Services Coordinators and others who are interested in expanding the use of mediation and other settlement processes in custody and visi-

tation disputes, as well as in other appropriate family related disputes. The Commission will also participate in efforts to promote dialogue on ADR among family services coordinators, so they can learn from one another, get information on successful mediation programs, determine their individual training needs, and begin building relationships with ADR practitioners and other family service providers.

Mediation can also be a powerful tool to resolve issues in divorces and in other appropriate family cases, without incurring the heightened emotional damage that often results from using the adversarial process. To help expand this field in a responsible manner, the Commission is proposing an additional 20 hours of divorce mediation training for practitioners. (Please see the “ADR Practitioners and Trainers” section of this report for further information.)

Program Evaluations

The Commission plans to work with a university research unit to conduct independent evaluations of at least two circuit court ADR programs. The evaluations will use appropriate and consistent measures to identify any potential improvements, document the programs’ benefits, if any, and, if and when appropriate, be used to encourage the creation of new programs and justify increased funding for current and future programs. The evaluations will be methodologically sound and have quantitative and qualitative components, including case studies. Candidates for evaluation include:

- circuit court civil ADR program in Montgomery County; and
- child custody and visitation mediation programs in Baltimore and Prince George’s Counties.

Pilot Programs

The ADR Commission intends to adapt a successful Ohio court ADR initiative, dubbed the “circuit rider pilot project.” Under this initiative, the Ohio court system hired a part-time staff person to work with all interested stakeholders in three jurisdictions for the purpose of developing pilot ADR programs. A consensus building process was used to develop ADR program models that would meet the local needs of each court. The “pilot” programs have now been operating for 12 years and have led to the creation of many other court programs. Due to the benefits these programs provide, the Ohio court system recently allocated five million dollars to establish ADR coordinator positions in every courthouse in the state within the next two years.

Consistent with the Ohio approach, the Commission will recruit a part-time staff person to work with local judges and other stakeholders in three counties (at least one rural) that do not have civil ADR programs, in an effort to develop and implement civil ADR pilot projects. By working collaboratively with local judges, court personnel, Bar Associations, ADR practitioners and community programs, and with guidance from the ADR Commission, the pilot project facilitator or “circuit rider” will help create three programs that meet local needs, draw on area resources, produce measurable results, test different ADR models and techniques, and have built-in evaluation components.

ADR will thrive in Maryland’s courts when there is a widespread understanding of what ADR is, when its use is appropriate, what services the courts offer and what benefits ADR creates.

In developing pilot projects in jurisdictions that have not yet developed any formal ADR programs, and based on very positive feedback received during regional public forums, the Commission anticipates that the “circuit rider” pilot program will create opportunities to assess the benefits of approaches not yet examined in Maryland. These may include making ADR mandatory for particular cases, building a cadre of trained and skilled mediators in rural areas, determining what kinds of cases are best handled through ADR processes, establishing procedures for enforcing mediated agreements, and examining ADR as a case management tool.

The Commission will also work with Baltimore City judges and an existing *ad hoc* ADR committee on a civil mediation program planned for the Circuit Court for Baltimore City. The Commission will work with this group to build

in an evaluation component to help the court monitor and adjust the program as needed to optimize its success. Again, the Commission will use collaborative processes to assist this program in a manner that serves the interests of all stakeholders.

Finally, the Commission plans to participate in a pilot program with the Maryland Judicial Commission on Pro Bono, which was recently established by Chief Judge Bell. The mission of that Commission is to promote and encourage pro bono legal work for those unable to afford legal assistance and to increase access to the civil justice system for low to moderate income individuals in Maryland. The Pro Bono Commission’s initial

focus is on the judiciary’s role in enhancing the extent and efficiency of the bar’s pro bono efforts and those factors that affect the bar’s ability to provide effective pro bono legal services. The ADR commission is interested in working with the Pro Bono Commission, the Maryland Legal Services Corporation and the Maryland State Bar Association on a project that will increase pro bono mediation services for legal services recipients.

ADR Education

Providing quality court-related ADR services requires educating judges, masters,

clerks, court personnel, family services coordinators, attorneys and litigants. As in other states, ADR will thrive in Maryland’s courts when there is a widespread understanding of what ADR is, when its use is appropri-

ate, what services the courts offer, what benefits ADR creates, what the court’s expanded goals for ADR are beyond simple docket control, and what roles various groups have in the process. Accordingly, the ADR Commission plans to assist the circuit courts in their ADR educational efforts.

The Commission is also interested in recognizing outstanding work in circuit court ADR and, in addition to other promotional efforts, will incorporate circuit court initiatives into the planned “Ozzie Bermant” awards program outlined in the public awareness section of this document.

Circuit Courts ADR Network and Court-Related ADR Conference

The ADR Commission plans to encourage the formation of a network of judges,



Differentiated Case Management Coordinators, Family Services Coordinators and other court ADR program coordinators who are already involved in ADR programs at the circuit court level. This network will provide a forum for sharing information and resources to strengthen existing programs, and offer technical support to new circuit court programs. The network will be asked to assist the ADR Commission and the District Court groups in designing and sponsoring a conference on court-related ADR.

Results: These efforts will expand the use of ADR in the circuit courts

in a manner that will improve the quality of services they provide. The evaluation projects and pilot programs will be designed to help other circuit courts replicate similar ADR programs and adapt them to serve local needs. The Commission believes that increasing the use of civil and family ADR services in the circuit courts will promote more cooperative business, legal and family practices, produce higher levels of public appreciation of the courts and improve the courts' operating efficiency. This will contribute to efforts to build more civil and peaceful communities in Maryland.

Office of Administrative Hearings



The Office of Administrative Hearings (OAH) is an independent agency within the executive branch that is responsible for adjudication and resolution of disputes in which a state agency is a party, unless an exemption is provided by state law. In calendar year 1997, OAH's docket included approximately 42,000 cases, of which approximately 27,000 resulted in hearings. The remaining cases were mediated, settled, or otherwise resolved prior to an adjudicatory hearing.

OAH provides alternatives to adjudicatory hearings, at no cost to the parties, in certain cases. OAH operates a formal mediation program for special education cases and has formal settlement conference programs for Home Improvement Commission disputes and Boat Excise Tax appeals. To help advance OAH's ADR efforts, the Commission plans to:

- Assist in evaluating an established ADR program
- Assist and promote an OAH pilot program to expand mediation services

Evaluation

Consistent with the evaluations planned for circuit and District Court programs, the Commission plans to work with a university research unit to conduct an independent evaluation of one of OAH's ADR programs. The evaluation will use appropriate and consistent measures to identify any potential improvements, document

the program's benefits, if any, and, if and when appropriate, be used to encourage the creation of new programs and justify increased funding for current and future programs. The evaluation will be methodologically

sound and have quantitative and qualitative components, including case studies.

The Commission is also interested in recognizing outstanding work dispute resolution at OAH and, in addition to other promotional efforts, will incorporate its

OAH operates a formal mediation program for special education cases and has formal settlement conference programs.

The Courts Administration Committee examined a variety of court-based ADR programs in Maryland and elsewhere. The Committee also surveyed judges and court personnel to assess the state of ADR at the Court of Special Appeals, in county circuit court, in the District Court and at the Office of Administrative Hearings, and prepared reports on ADR in each area.

The Committee reported that Administrative Law Judges and other OAH staff provide mediation services and/or conduct settlement conferences—at no cost to parties—as alternatives to holding a full hearing. Formal programs are also in place to mediate special education cases and to handle both Home Improvement Commission disputes and Boat Excise Tax appeals in settlement conferences. OAH’s ADR providers are assigned particular cases on the basis of subject matter expertise. Their ADR programs are operating successfully and OAH is poised to expand its use of ADR.

Reports developed and collected by the Commission and each of its working committees are included in a separate Appendix. To receive a copy, please call the Commission’s office at (410) 321-2398.

**Baseline
Research**

work into the planned “Ozzie Berman” awards program outlined in the public awareness section of this document.

Pilot Project

The ADR Commission will work with OAH to expand its menu of ADR services to a new class of cases. Possible pilot projects under consideration include developing mediation programs for Child Support Enforcement Administration cases and/or Patients’ Bill of Rights cases. Consistent with other Commission efforts, OAH’s pilot projects will be developed using collaborative processes, bringing in stakeholders including administrative law judges, local Bar Association members, ADR practitioners, community programs, court personnel and other individuals as appropriate. All pilots will have built-in evaluation components.

Results: Expanding OAH’s ADR programs is expected to save time and money for OAH and for those involved in OAH cases, while increasing the parties’ overall satisfaction with the process and the outcomes of their cases. Because OAH resolves disputes that involve government agencies, efforts to increase OAH’s use of ADR will help more state agency managers realize ADR’s benefits, will improve relationships among state agencies and their constituencies, and will contribute to ongoing efforts aimed at advancing ADR in the executive branch.

The ADR Commission will work with OAH to help expand its menu of ADR services

State and Local Government

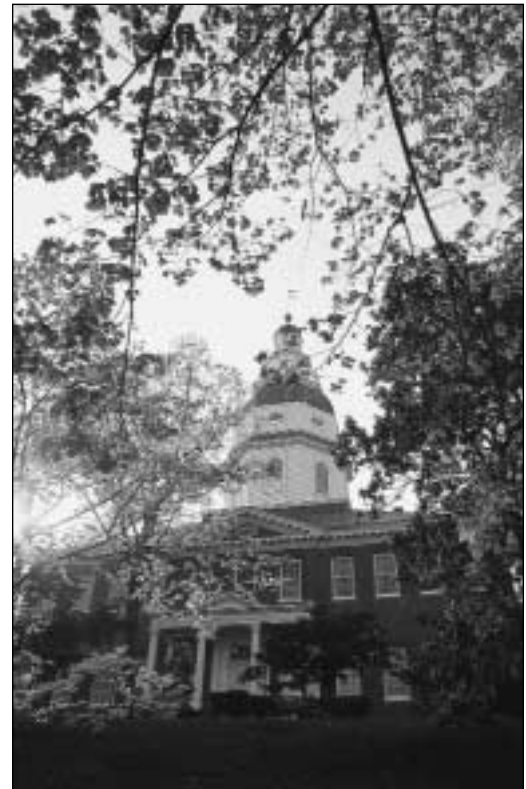


undamental roles of government include providing for the efficient and equitable distribution of public goods, enforcing laws and regulations to safeguard our quality of

life, and protecting and preserving public safety. Meeting these obligations requires difficult decision-making processes and trade-offs among diverse interests, often resulting in burdensome and prolonged disputes. Conflict resolution in the government and public policy arena promotes the use of consensus building and collaborative processes “upstream” as policy is developed and “downstream” as it is implemented. Mediation, negotiated rule making, consensus building, partnering and similar processes are increasingly used to prevent and resolve public policy disputes.

The ADR Commission was pleased to learn that many of Maryland’s state, county and municipal agencies have developed innovative conflict resolution programs. The Commission conducted an extensive review of ADR in Maryland’s state and local government agencies and found ADR efforts at all levels of Maryland government. ADR is being used to mediate some employment-related disputes, to partner with business and others for state contract implemen-

tation, to develop public policy through multi-party consensus building, to address land-use and environmental conflicts, and to mediate inter-jurisdictional disputes involving multiple agencies or government bodies (detailed findings will be described in the Appendix to the ADR Commission’s final Action Plan Report). The Commission’s research indicates that ADR use is expanding in government and that agency managers who have used ADR effectively are inter-



Conflict resolution in the government and public policy arena promotes the use of consensus building and collaborative processes “upstream” as policy is developed and “downstream” as it is implemented.

ested in advancing its use throughout government.

Despite some promising ADR initiatives, the Commission believes that considerably more can be done. The Commission's research indicates that few agencies have an ongoing emphasis on ADR, that most people surveyed were unfamiliar with ADR, and that there is no systemic effort in place to encourage continued ADR advancements in government. The

Commission recommends:

- Evaluating existing state and local government ADR programs
- Launching pilot ADR programs within interested state and local government agencies and a full-scale ADR demonstration project with an interested government agency
- Assisting state and local government agencies in their efforts to increase the use of ADR consistent with their needs
- Supporting the expanded use of ADR in the Office of the Attorney General by obtaining funding for training, staff and other resources the Attorney General determines are appropriate for the task
- Launching targeted education initiatives for selected agency managers and key personnel in state and local government
- Networking those already working on government ADR programs
- Co-hosting a conference on ADR in government
- Working with the Governor on an Executive Order to encourage ADR in state government

Program Evaluations

The Commission plans to work with a university research unit to conduct independent evaluations of established state and local government ADR programs. The evaluations will use appropriate and consistent measures to identify any potential improvements, document the programs' benefits, if any, and, if and when appropriate, be used to encourage the creation of new programs and justify increased funding for current and future

programs. The evaluations will be methodologically sound and have quantitative and qualitative components, including case studies.

Pilot Programs

The Commission will establish and fund selected pilot ADR programs within interested state and local government agencies. Pilot programs will be developed through collaborative processes that bring in all appropriate stakeholders. All pilots will have built-in evaluation components.

The Commission is especially interested in working on pilot programs that involve interactions between government and business, and pilots that involve inter-jurisdictional disputes.

The Commission is working with the University of Maryland Law School Clinic and the Maryland Legal Services Corporation on a possible pilot program with the state office on aging. The pilot will establish an alternative to guardianship litigation in cases where consent to medical treatment is

needed for incompetent patients who do not have surrogate decision makers. The pilot consists of creating a three-member arbitration panel made up of volunteer health care providers, attorneys and patient advocates. This effort would be patterned after a successful New York program that has increased access to medical treatment for nursing and group home residents while decreasing the number of cases in litigation.

The Commission is especially interested in working on pilot programs that involve interactions between government and business, and pilots that involve inter-jurisdictional disputes.

The Commission's Community Issues Committee worked in three distinct subcommittees to conduct in-depth reviews of ADR as it is used in government and public policy, criminal and juvenile justice, and community mediation. The Committee conducted survey research and reviewed literature on state and national efforts to produce detailed reports on ADR in each of these three areas.

With assistance from the University of Maryland's Institute for Governmental Service, the Government Subcommittee interviewed state, county and municipal government officials on their use of ADR. The Committee found many success stories and considerable interest within the public sector, but only a few well-established programs. Based on this research, the Committee determined that conditions within Maryland government circles appear conducive to expanding ADR programs and raising awareness of ADR's applications in the public policy arena.

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Baseline Research

Additionally, the Commission plans to work on a full-scale ADR demonstration project with a government agency that interacts with businesses and other interest groups where complex disputes frequently occur. The Commission envisions using an ADR "systems design" approach, which has become popular among major corporations. An ADR systems design analyzes repetitive conflicts in an agency and creates customized conflict prevention and conflict management mechanisms to handle these repeated conflicts in the most productive manner for the agency and its constituencies. Agency management and staff will be trained to use ADR to resolve both internal and external disputes and to use collaborative processes and/or regulatory negotiation programs that involve businesses and other interested groups in public policy development.

Regulatory Negotiation Programs, often referred to as "Reg Neg," give stakeholders a more participatory role in the regulatory development process. Currently, many agencies draft regulations and then send them out for public comment as required by applicable statutes. Once the regulations are promulgated, aggrieved parties may take legal action challenging them and

delaying their implementation. In a Reg Neg framework, representatives of the different stakeholder groups are brought into the process at the very beginning to participate in reviewing options, conducting needed research, and drafting the regulations. Using consensus building techniques to get everyone's best thinking and to find creative ways of meeting the variety of needs around the table, minimizes the likelihood of having lawsuits filed to challenge new regulations.

The planned demonstration project could also involve assessing the potential roles that community mediation programs and private practitioners can play in government ADR efforts. It will include a substantial evaluation component, which we hope will be highlighted to help expand the use of ADR in state and local government agencies.

State and Local Government Projects

The Commission is interested in working with state and local agencies as they strengthen their existing ADR programs and consider developing new conflict management programs. The Commission will also help interested agencies handle multi-party public policy issues by instituting facilitated consensus building processes. The Commission can provide technical assistance, may be able to help identify funding sources, and can help identify how individual projects might relate to ongoing ADR efforts around the state.

During regional public forums, the Commission heard from many people who are interested in seeing state and local government move forward in this area. There was particular support for using ADR to resolve local zoning disputes, conflicts be-

tween parents and local boards of education, agricultural disputes, natural resource issues, regulatory negotiations, regulatory enforcement, inter-jurisdictional disputes and many other local government projects. The Commission will work with the Governor's Office, the Attorney General's Office, the Maryland Association of Counties, the Maryland Municipal League and other appropriate groups to stress ADR's potential in this area and to identify shared priorities. The Commission has made contact with a number of ADR leaders in the federal sector—where ADR has become a high priority in recent years—and can serve as a conduit between federal, state and local ADR proponents.

The Commission is also interested in recognizing outstanding work in public sector dispute resolution and, in addition to other promotional efforts, will incorporate the work of government agencies into the planned “Ozzie Bermant” awards program outlined in the Public Awareness section of this document.

Attorney General's Office

The Commission commends the Attorney General's Office for its successful health care advocacy and consumer protection ADR programs. The Commission believes that Assistant Attorneys General (AAGs) are key players needed to advance the use of ADR in state government. AAGs represent government agencies in disputes and also serve as legal advisors in a multitude of contexts. To advise their government clients about ADR in regulatory and transactional activities as well as in disputes,

AAGs will need to understand the different ADR processes and their benefits, including consensus building and negotiated rule making. They need to know whether and when to advise using ADR, and they must understand the constructive roles they can play in the different ADR processes. Like their federal counterparts, AAGs can lead the way for innovative government uses of ADR.

The Attorney General supports the expanded use of ADR in state government.

The Commission will work with the Office of the Attorney General in the development of a comprehensive ADR program in that office. The Commission will also seek funding for the Attorney General's Office to provide an ADR training program for AAGs, to help develop case screening policies, and to hire personnel necessary to establish and implement a wide range of innovative ADR initiatives.

Targeted Educational Initiatives

The Commission recommends training appropriate staff in state and local agencies. Ideally, conflict management training should be provided for human resources managers, regulatory personnel, and staff who have regular contact with citizens and community groups, as well as agency managers and department heads, if possible. Additionally, during the Commission's regional public forums, some participants suggested that agencies that have an interest in contracting with ADR practitioners might consider providing training for procurement officers and budget personnel.

Utilizing Alternative Dispute Resolution within Maryland's judiciary and state agencies will enable cases to be solved earlier with less cost and, more important, without the animosity that litigation so often produces.

—Governor Parris N. Glendening

Government ADR Network and Government ADR Conference

The ADR Commission plans to create a network of those already actively involved

in government ADR programs.

This network will share information and resources to help strengthen existing programs, and offer technical support to new ADR programs in government. The net-

work will also work with the ADR Commission to promote government uses of ADR and to design a conference on state and local government ADR.

Governor's Executive Order

To help highlight and encourage government ADR, the Commission will work with the Governor on an Executive Order commending current government

ADR efforts, outlining the benefits of using ADR to resolve disputes and to improve public policy initiatives, supporting the ADR Commission's work, and encouraging state agencies to take advantage of ADR resources offered by the ADR Commission.

Results: These initiatives are designed to help highlight current state and local government ADR efforts, create new state and local government pilot programs and expand the use of ADR throughout government. The Commission expects that increased government ADR efforts will improve relationships between the government and the business community, improve agencies' relationships with one another and with other groups, and expand citizen participation in government. Advancing the use of ADR in government will also save the government time and money, and promote creative win/win solutions to many of the complicated matters that government must address.

The Commission believes that Assistant Attorneys General (AAGs) are key players needed to advance the use of ADR in state government.



Maryland's commitment to
restorative justice

has resulted in
an increased number of
community-based
programs

Criminal and Juvenile Justice



Maryland's current crime control and prevention strategy is centered on principles of balanced restorative justice, which emphasize holding offenders accountable for their actions, improving public safety, and bringing victims, communities and offenders together to determine appropriate restitution and reparations. Restorative justice also emphasizes efforts to reintegrate offenders into the community, balancing the needs of communities, victims and offenders in the process.

Many of the state's restorative justice initiatives are funded and/or coordinated by the Governor's Office of Crime Control and Prevention, an office which also supports the Commission's efforts to move Maryland forward in the use of ADR. The Commission will work with this office on projects of mutual interest which may include incorporating mediation into the HotSpot Communities Initiative, community conferencing projects, after-school programs, and other restorative juvenile and criminal justice efforts.

State's Attorneys are central to the operations of Maryland's criminal and juvenile justice systems and several State's Attorneys recognize ADR's benefits, especially in misdemeanor criminal cases that involve ongoing inter-personal disputes. As elected officials, they have the discretion

to make decisions about how individual criminal cases should be handled and, as such, are uniquely positioned for early screening of criminal cases and decision making about which cases should be referred to mediation or other ADR processes.

The State's Attorneys in Anne Arundel, Carroll and Montgomery Counties, have established criminal mediation programs. Typically, these and other criminal and juvenile justice programs identify disputes appropriate for mediation, some of which have resulted in multiple or recurring charges and involve ongoing relationships. These cases are referred to mediation sessions only if the victim and the alleged offender agree to participate. As "gatekeepers" for the criminal court, State's Attorneys can also play a pivotal role in getting parties to the mediation table. Based on the State's Attorney's best judgment, cases that are resolved in using ADR may be closed or placed on a stet docket so that they can be reopened if an alleged offender fails to comply with the mediated agreement. Potential ways of handling a pending case may be subject to discussion during mediation.

Like some State's Attorneys, the state Department of Juvenile Justice (DJJ) has been using "alternative" programs for many years. DJJ's "intake" process serves to divert more than half of Maryland's juvenile cases into informal programs rather than relying exclusively on juvenile court interventions. In recent years,

Several State's Attorneys recognize ADR's benefits, especially in misdemeanor criminal cases that involve ongoing inter-personal disputes.

The Commission's Community Issues Committee worked in three distinct subcommittees to conduct in-depth reviews of ADR as it is used in government and public policy, criminal and juvenile justice, and community mediation. The Committee conducted survey research and reviewed literature on state and national efforts to produce detailed reports on ADR in each of these three areas.

In its review of ADR in the criminal and juvenile justice arenas, the Criminal Justice Subcommittee examined public and private programs that mediate criminal misdemeanor cases, juvenile and criminal court diversion programs, institutional Alternatives to Violence programs, as well as state and county funded restorative justice programs that include anti-truancy initiatives, teen courts, community conferences and neighborhood youth panels. The Subcommittee also determined that Maryland's juvenile justice system's entire "intake" system reflects ADR processes, since many cases are resolved informally without juvenile court involvement. The Subcommittee found anecdotal information about the success of criminal and juvenile justice ADR programs, particularly those that involve early case screening and a concerted effort to identify cases where ongoing relationships need to be addressed in order to prevent continued conflict.

Reports developed and collected by the Commission and each of its working committees are included in a separate Appendix. To receive a copy, please call the Commission's office at (410) 321-2398.

Baseline Research

Maryland's commitment to restorative justice has resulted in an increased number of community-based programs, including neighborhood youth panels, teen courts, drug courts, victim service programs, anti-truancy initiatives, and school-based juvenile justice programs. While many such programs have created new forums for addressing crime and delinquency, some are highly adversarial and do not reflect the consensus-based decision-making model that is inherent in most ADR processes.

The ADR Commission supports the state's commitment to balanced restorative justice as well as prosecutorial efforts

to use ADR in appropriate cases. As such, the Commission will work with agencies in the criminal and juvenile justice systems to determine the extent to which mediation and other consensual ADR initiatives can be integrated into the state's continuum of restorative justice programs. The Commission believes that its efforts to enhance the use of mediation in criminal and juvenile justice systems should be integrated into other statewide crime control and prevention initiatives wherever possible.

The Commission anticipates that its recommendations to advance ADR in state government will have positive effects on the Department of Public Safety and Correctional Services, the Department of Juvenile Justice, the Maryland State Police and other crime control and prevention agencies. Recommended actions to increase the use of ADR in Maryland's circuit and District Courts should further contribute to increased use of ADR in appropriate criminal and juvenile justice cases, as should the network, the planned educational conference and the criminal and juvenile justice system training as detailed below.

Additionally, the **Commission plans** to work with criminal and juvenile authorities and other interested groups to:

- Evaluate established criminal and juvenile justice ADR programs
- Establish criminal and juvenile justice pilot projects with built-in evaluation components
- Launch targeted education and training initiatives within the criminal and juvenile justice systems
- Educate the public about the benefits of ADR in appropriate criminal and juvenile justice cases

- Create a criminal and juvenile justice ADR network
- Co-host a conference on criminal and juvenile justice ADR
- Promote a “no retaliation” principle to avoid stigmatizing victims and criminal defendants who decline to participate in criminal and juvenile justice mediation

Program Evaluations

The Commission plans to work with a university research unit to conduct an independent evaluation of a juvenile ADR program and the Anne Arundel County State’s Attorney’s Office’s criminal mediation program. The evaluations will use appropriate and consistent measures to identify any potential improvements, document the programs’ benefits, if any, and, if and when appropriate, be used to encourage the creation of new programs and justify increased funding for current and future programs. The evaluations will be methodologically sound and have quantitative and qualitative components, including case studies.

Pilot Programs

The Commission plans to help establish an ADR pilot program with an interested State’s Attorney who is not currently participating in such a program. The Commission also plans to help establish a juvenile mediation program in an interested jurisdiction, focusing particularly on those cases that involve ongoing relationships which could be repaired in mediation. All pilot programs will be developed through collaborative processes and will have built-in evaluation components.

Targeted Education and Training

The Commission will work to deliver ADR awareness training programs for State’s Attorney’s Offices, juvenile justice intake workers and law enforcement personnel to help them recognize cases that

are appropriate for ADR and improve their use of conflict management techniques. These programs will be developed in cooperation with interested State’s Attorneys, DJJ, and appropriate police training units. We will also help coordinate training for HotSpots community prosecutors and other members of the HotSpots law enforcement and victim services teams.

Public Awareness Initiative

A critical component of the ADR Commission’s marketing and public awareness plans will be to highlight the benefits of mediation or other ADR processes in appropriate criminal and juvenile cases. The Commission believes that ADR can bring tremendous benefits to criminal and juvenile justice systems and that mediation, in particular, should be promoted in appropriate cases. The general public understands the concept of “crime and punishment” but has little experience with mediation or other ADR processes in the criminal and juvenile justice arenas and will need to be educated about ADR’s potential to resolve conflicts, some of which could easily erupt into violence. To help build public support for ADR in criminal and juvenile cases, the Commission plans to partner with people involved in the HotSpots Communities Initiative and other ongoing community-based crime control and prevention efforts.

The Commission is also interested in recognizing outstanding work in criminal and juvenile justice ADR and, in addition to other promotional efforts, will incorporate it into the planned “Ozzie Bermant” awards

The Commission plans to partner with people involved in the HotSpots Communities Initiative and other ongoing community-based crime control and prevention efforts.



program outlined in the public awareness section of this document.

Criminal and Juvenile Justice ADR Network and Conference

The ADR Commission plans to bring together a network of people already involved in criminal and juvenile justice ADR. The Commission will work with this network to strengthen existing ADR programs and to provide technical assistance to new programs.

The Commission also plans to work with this network to design an educational conference for State's Attorneys, public defenders, district court judges, juvenile court judges, community mediators and other stakeholders in the criminal and juvenile justice systems. The conference would highlight effective ADR applications in criminal and juvenile justice cases, would be geared toward helping local jurisdictions develop effective criminal ADR programs, and would hopefully lead to an increase in the use of ADR in criminal and juvenile justice contexts.

No Retaliation Principle

As a basic principle, no stigma should be attached to any victim or defendant who

declines to participate in a criminal or juvenile justice mediation session or other ADR process. Criminal defendants, who are presumed innocent, have a right to an unbiased adjudication, and their unwillingness to participate in a voluntary ADR program should never be used to abrogate that right. An individual's decision not to participate should not be reported to the court or raised in any court proceeding.

Results: These planned actions will advance the state's use of ADR and restorative justice in the criminal and juvenile justice systems. They will build new partnerships among criminal and juvenile authorities, ADR proponents, community mediators, and other ADR practitioners. They will also help de-escalate hostilities and prevent violence in our communities, and will contribute to Maryland's ongoing efforts to build a smooth continuum of services and sanctions for juvenile and adult offenders. The Commission believes that incorporating ADR into Maryland's criminal and juvenile justice systems will help transform the way in which we as a society manage crime, especially in difficult, highly emotional settings.

Business Applications



The ADR Commission believes that making Maryland a more ADR friendly state can improve the state's business climate. Research conducted and compiled by the Commission indicates that business and industry increasingly report using ADR in appropriate cases because it saves time and money, and helps preserve relationships with employees, consumers, vendors, subcontractors, competitors and others. The Commission also believes that ADR can be an economic development incentive for the state as a whole if we develop a national reputation as a state where government and business work together productively. Making Maryland a national leader in government and business ADR, should enhance the state's ability to attract new businesses and to retain in-state companies. Furthermore ADR does not risk undercutting revenues or creating public dangers as some economic development incentives do. Moreover, mediation and many forms of arbitration help the proverbial little guy who may find himself in a dispute with a corporation that could clearly outspend him in a legal battle.

Further, the Commission recognizes the business community's interest in making sure that state government stands as a model for businesses by using ADR more often in appropriate disputes with businesses and in some regulatory actions that

affect businesses. Given the broad goal of improving Maryland's economic competitiveness, the Commission recommends encouraging and promoting appropriate uses of ADR in the business community and in government. As such, the Commission will promote voluntary reforms and strategies for Maryland businesses, as well as for state government disputes and public policy deliberations that affect business and industry. Specifically, the **Commission plans** to work with members of the business community, government agencies, and other interested groups to:

- Create a business ADR network
- Establish a Speakers' Bureau
- Promote ADR in targeted industry sectors
- Co-host a conference on business ADR
- Establish a Maryland Corporate ADR Pledge program
- Establish government-business ADR partnerships



The Commission's Business Applications Committee took a systematic approach to gathering information about ADR practices in various business sectors, finding considerable ADR use within Maryland's real estate, construction, insurance, and health care industries. The Committee examined pre-suit mediation programs and ADR Pledge programs, both of which highlight companies that agree to use ADR in appropriate cases prior to taking legal action. With help from research statisticians at the University of Baltimore and GEICO, the Committee also conducted a detailed survey assessing the use of ADR in Maryland's business community.

The Committee's research supported national claims that ADR is on the rise in the business community. Businesses repeatedly report using ADR because it saves time and money, and it enables them to resolve disputes without destroying business relationships. The business community also strongly supports efforts to advance the use of regulatory negotiation and other processes that provide them an opportunity to participate in public policy development. The Committee prepared reports summarizing its research, identifying ways that businesses can use ADR effectively, and documenting its survey results.

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Baseline Research

Business ADR Network and Conference

As is detailed under the "Networks and Educational Conferences" section of this document, the ADR Commission will organize a network of ADR leaders in Maryland's business community to help highlight businesses currently using ADR and promote ADR within the business community. The network could also recruit professionals in the public, private and academic sectors who provide services to businesses, as well as academicians who lead Masters of Business Administration programs at Maryland universities, community college representatives who work with business, and other appropriate interest groups. The network will

help the Commission plan and hold an impressive conference on business uses of ADR. The conference will be co-hosted by groups such as the Maryland Chamber of Commerce and will highlight Maryland corporations that use ADR, bring in national speakers, and work with other organizations and businesses to sponsor the conference.

Promoting ADR—Business Sector Approach

During its fact-finding stage, the Commission took a systematic approach to gathering information about ADR in major business sectors and identified promising—but widely varied—ADR efforts within the utilities, insurance, real estate, health care, and

ADR can be an economic development incentive for the state as a whole if we develop a national reputation as a state where government and business work together productively.

construction industries, as well as in the human resources area. The Commission's research also indicated that small businesses were typically unfamiliar with ADR. Thus, the Commission will continue working to promote and encourage the growth of ADR in these industries and will work with other industry sectors that express interest. The Commission will promote outreach to trade associations, industry groups, and other business-related organizations.

Additionally, because most information on ADR in the business community focuses

on efforts made by larger corporations, the Commission will make a special thrust to involve small businesses in its efforts. The Commission believes that ADR can be instrumental in the small business community, especially among firms that may not be able to survive the costs of extended litigation. Thus, there will be a concerted effort to reach small businesses and to educate them about ADR and its benefits.



Maryland Corporate ADR Pledge Program

The Commission will work with the Department of Business and Economic Development, the Maryland Chamber of Commerce, the members of the planned business ADR network, and other business groups to create a program where Maryland companies pledge that they will attempt ADR prior to litigation in all appropriate cases. Participating businesses would be listed on the Commission's website and promoted for having good business practices. The Commission anticipates kicking off the program at the Business ADR Conference and using it as part of an ongoing effort to market ADR to the business community. Truly outstanding business ADR efforts could also be recognized under the planned "Ozzie Bermant" ADR Excellence Awards program.

Government-Business Partnerships/Pilots

The Commission anticipates that the business community will also work with state agencies that are interested in developing ongoing ADR programs. Additionally, the Commission's ongoing ef-

orts to advance the appropriate use of ADR statewide will include creating an ADR information clearinghouse for businesses, promoting use of ADR to resolve government-business disputes, emphasizing the importance of having ADR clauses in government contracts, encouraging government agencies to incorporate consensus building into their policy and regulatory development efforts.

The Commission will also work to develop at least one pilot project in cooperation with a government agency that works in close proximity with the business community. Possible pilot projects include developing a regulatory negotiation program at an interested agency, establishing a program at a community college that provides services to business and government, developing a community/economic development initiative using ADR and the Department of Business and Economic Development and/or the Community Development Block Grant Program, or creating an ADR program that could substitute for regulatory enforcement actions in certain cases.

Results: The Commission believes that these planned actions will significantly advance ADR in the business community, will help enhance Maryland's economic competitiveness, and will improve relationships between government and business. These actions will also benefit consumers, contractors, employees, and other groups which may find themselves in disputes with businesses.

Maryland State Dispute Resolution Office



The Commission believes that a statewide dispute resolution office should be created and funded to support and continue the ADR initiatives that the Commission begins, as well as to encourage continued ADR advancements in Maryland's courts, communities, schools, businesses, government agencies, criminal and juvenile justice systems and other organizations. The Commission supports current and planned efforts to hire ADR staff and to build ADR capacity in the Judiciary and in the Executive branch. The planned dispute resolution office would complement such initiatives and would not duplicate efforts.

The Commission conducted a national review of statewide dispute resolution offices, identifying 31 states that have offices

with diverse missions and structures designed to advance ADR both inside and outside the court system. Al-

though the Commission has not determined how such an entity should be structured in Maryland, **specific functions for a state office have been identified.** The Commission plans to minimize staffing and other costs associated with the planned office, to the greatest extent possible, by working with the

ADR networks discussed throughout this document.

To promote ADR education and raise public awareness, a State Dispute Resolution Office should . . .

- continue a professional, statewide public awareness campaign
- continue targeted ADR educational initiatives
- promote conflict resolution education and peer mediation programs with evaluation components in all Maryland schools
- support ADR networks and ADR educational conferences
- build a “theory-practice” linkage within Maryland colleges and universities, perhaps in the form of an academic ADR consortium

To advance ADR in the courts, a State Dispute Resolution Office should . . .

- promote and assist court ADR efforts
- offer support services for local court ADR Coordinators and programs
- help develop new ADR programs in the courts by offering assistance to judges and other local stakeholder groups, such as local Bar Associations, community mediation programs and private practitioners
- assist courts with ADR program evaluations
- produce informational brochures and market court programs and services

The best way to predict the future is to create it.

—Peter Drucker

- encourage state and local government, and other funding sources, to support ADR programs in the courts
- promote ADR in the criminal and juvenile justice systems

To advance ADR in communities, a State Dispute Resolution Office should . . .

- convince state, local and private funding sources to support existing community mediation programs and to create new programs
- develop an ongoing funding support system for community mediation

To advance ADR in government and business, a State Dispute Resolution Office should . . .

- promote, support and advance government/public policy uses of ADR, especially emphasizing the use of collaborative processes in appropriate rule-making initiatives, public policy development and implementation, and other forms of ADR to prevent and resolve appropriate multi-party disputes, intra-agency and inter-agency disputes, disputes with citizens, businesses and other interest groups
- propose creating a revolving fund for unanticipated government and public policy consensus building processes
- help state and local agencies expand and create ADR programs
- serve as an ADR resource center or clearinghouse
- promote ADR training for state and local government employees
- support building ADR capacity within government agencies and within the Attorney General's Office
- work with institutions that have experience with ADR, government, research, and evaluation

- promote dispute prevention, partnering, and public policy dispute resolution
- use federal government ADR policies and programs (including Presidential/Attorney General orders and shared neutrals) as models
- propose policy changes and initiatives that demonstrate ADR's potential and increase interest in this area
- promote business-government collaborative processes
- raise ADR as a possibility in appropriate facility siting disputes, environmental approval processes, and other issues of community concern
- initiate Maryland Corporate ADR Pledge program and coordinate other efforts to encourage increased business use of ADR

To maintain a high quality cadre of ADR practitioners and trainers and to promote professionalism in the ADR field, a State Dispute Resolution Office should . . .

- recommend voluntary minimum or baseline standards for ADR trainers and practitioners
- adopt and promote training and practice guidelines
- approve training programs consistent with the circuit court ADR Rules
- continue efforts to build consensus about quality assurance measures for trainers, training courses and practitioners
- serve as an ADR information clearinghouse and keep a roster of practitioners who self-certify that they follow the Commission's ethical code and practice standards
- improve the credibility of the ADR field
- receive complaints about ADR professionals/practices and explore processes to handle complaints and address concerns

- recognize/encourage the evolving nature of the ADR field
- encourage development of mentoring, co-mediation and apprenticeship opportunities
- recommend a process to review credentials to determine if out-of-state practitioners qualifications meet requirements outlined in the MD Rules
- provide an ongoing review of ADR Rule implementation and legislation, and propose rule amendments and new legislation as needed

Although no decisions have been made about the structure or placement of this office, there is a growing consensus among Commission members that the office should be governed by a multi-disciplinary board with balanced representation from the executive, judicial, and legislative branches of government as well as a representative from the practitioner community, the legal community, community mediation programs, the business community, local government and the field of education.

Maryland ADR Commission

Action Plan at a Glance

	Evaluations	Pilot Projects	Targeted Education	ADR Networks	Educational Conferences	Other Actions
Public Awareness			✓		✓	Conduct multi-media campaign Hold Ozzie Bermant ADR Awards
School Initiatives	✓	✓	✓	✓	✓	Promote ADR in core curricula for future teachers, lawyers and others
Definitions and Dispute Screening			✓			Create variety of ADR brochures to aid self-screening Propose amending ADR rules
ADR Practitioner and Trainer Issues			✓			Create ethical code and practice standards Codify confidentiality Propose amending ADR rules Create guidelines for ADR trainers/training Encourage mentoring, co-mediation and apprenticeships for new practitioners
Community Mediation	✓		✓			Obtain stable funding for community mediation services Create non-profit Community Mediation Association Develop new programs
District Court	✓	✓	✓	✓	✓	Promote ADR in appropriate "peace order" cases, and other civil and criminal cases
Circuit Court	✓	✓	✓	✓	✓	Expand use of ADR in appropriate family-related cases and other cases
OAH	✓	✓				
State and Local Government	✓	✓	✓	✓	✓	Expand government use of ADR Obtain funding for Attorney General's Office ADR training, staff and other ADR resources Work on Governor's Executive Order
Criminal and Juvenile Justice	✓	✓	✓	✓	✓	Educate public about benefits of criminal and juvenile mediation Promote "no retaliation" principal for victim witnesses and criminal defendants who refuse mediation
Business			✓	✓	✓	Create Maryland Corporate Pledge Program Promote Business/Government partnerships

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