

## Creating a New **ADDRESS** for ADR Program Improvement

This year, MACRO will launch a revolutionary new tool designed to help courts understand and improve their ADR programs. No other court program in the nation has a system quite like this.

The Alternative Dispute Resolution Evaluation Support System (ADDRESS) is a Web-based data collection and reporting tool that will enable program managers to collect, aggregate, sort, and analyze feedback from ADR participants. They can then combine this feedback with case docket information to help understand and improve the interplay between litigation and ADR processes. MACRO's ADR Evaluations Director Nick White says that he is excited to work on this innovative project. He explains, "It will give us a clear understanding of the use of ADR in the courts, and the collected data will be a tremendous resource for future research."

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By Julie R. Linkins, Esq., MACRO  
Court ADR Resources Director



Charting the growth and  
success of ADR in Maryland

## New Program for State Employees **SHARED NEUTRALS Workplace Mediation**

Are you a Maryland government employee? Do you hate coming to work because you don't get along with a co-worker or a supervisor? Do you and one of your employees have a hard time understanding each other? If so, you may be interested in an exciting new mediation program.

This program is an interagency mediation program for workplace disputes in state government. It provides free mediation by using a pool of trained and experienced collateral duty mediators who provide mediation services to agencies other than their own, in exchange for similar services from other agencies to their agency.

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By Freda L. Stevens, Shared  
Neutrals Coordinator, DBM





## Rachel's Notes

Rachel Wohl, Executive Director

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The great children's advocate, Marion Wright Edelman, said, "We are not going to deal with the violence in our communities, our homes, and our nation until we learn to deal with the basic ethic of how we resolve our disputes and to place an emphasis on peace in the way we relate to one another." Sounds so simple. . . .

Well, conflict resolvers in Maryland are continually working on the first part, "how we resolve our disputes." Our state is fertile territory for expanding and strengthening existing ADR programs, and as you'll see in this edition of the **MACROScope**, new ADR programs continue to be born here.

There's an article inside by Bob Rhudy, a long-time champion of legal services programs, a member of Chief Judge Bell's 1998-2000 ADR Commission, and the current director of the new mediation program in the Court of Special Appeals. The article describes our state's first appellate mediation program which was initiated by Chief Judge Peter Krauser of the Court of Special Appeals. In Bob's able hands and those of assistant director Mala Malhotra-Ortiz, there is great potential for the program to flourish.

Ramona Buck, the outstanding editor of the **MACROScope** and MACRO's public policy director, has been working with a committed group of mediator representatives from state agencies on, among other things, a collaborative effort that has created a "Shared Neutrals" program for executive branch agencies. Freda Stevens, who is doing a terrific job coordinating the new program, has written an article about it in this edition. The program is operating under the auspices of Secretary Eloise Foster of the State Department of Budget and Management, who is also a Public Policy Dispute Resolution Fellow of MACRO AND CDRUM.

I also encourage you to read the interesting articles within: They include articles about Maryland's first national community mediation conference; MACRO's ADDRESS program which is a web-based ADR program improvement system being piloted in three Circuit Courts and the District Court; the MPME update; Dave Simison's mediation story; and the guest editorial on collaborative meeting technology by Pat Esslinger and Ellen Kandell.

Please take out your calendars now and be sure to write-in the many stimulating upcoming events we are going to have in Maryland. This promises to be a very fruitful year for the ADR community. We are blessed with many highly skilled practitioners in our community, and MACRO extends congratulations to all of those named in the "Awards and Achievements" report. Please continue to send Ramona awards and achievements for the next edition of **MACROScope**.

And now, let's consider Marion Wright Edelman's advice, "to place an emphasis on peace in the way we relate to one another." Our life-long work—on many paths—to grow our own inner-peace holds the key to how we relate to one another as conflict resolvers and as human beings. Please read the rap poem "Know Thyself" in the article about an anti-gang drama performed at the Jessup Correctional Institution. Ramona and I went to see the play, "The Birth of Peace," performed at JCI. WombWorks produced and designed this powerful drama with a mix of its own drama and dance troop members and JCI inmates. The poem that's included in this issue was written and performed during the event by Warren "REN" Hynson, an inmate at JCI. We were very moved by the level of creativity, joy and self-awareness evident in many inmates. Funny, the places we can find inspiration to keep doing our own inner work and to keep increasing our awareness of how we relate to one another.



## Prison Drama Presented at Jessup Correctional Institution

by Ramona Buck, Public Policy Director, MACRO

A unique performance was presented inside the walls of the Jessup Correctional Institution in Jessup, Maryland on November 14, 2009. WombWorks Productions and inmates from JCI collaborated to produce “The Birth of Peace.” The program described the performance as “a kaleidoscopic urban musical weaving together stories of love, hate, murder and deception. It critically and humanely examines modern day gang violence and incarceration while juxtaposing historical slavery within the modern day industrial complex.”

Using music, song, dance and drama, performers poignantly shared some of their own experiences as well as some from the larger society. About 20 inmates and 20 WombWorks performers participated. The project was supported by the Atlantic Regional Office of the American Friends Service Committee and staff member Dominque Stevenson, with the help of a MACRO grant. The major goals of the production—to discourage gang violence and promote self awareness—were met very powerfully.

One of the inmates, Warren “REN” Hynson, wrote and performed a rap, called “Know Thyself.” It is reproduced, with permission, below:

### Know Thyself

by REN (Warren Hynson, inmate at JCI)



An Angelic Being whispered to me,  
“Know thyself,” when I was sleeping;  
I woke up feeling it was a dream,  
But it was all too real to me.  
I stared at my ceiling; thinking about  
What my subconscious was revealing;  
I was reeling off thoughts after thoughts.  
I thought I knew it all,  
But then I thought,  
I only knew what I’d been taught.  
Though I’ve sought the truth,  
I was lost in a labyrinth;  
Falsity was implanted in me  
Since my youth;  
Though twisted even more  
to look like the God’s honest truth.  
This wasn’t all in my head—  
Because the Angelic Being  
Was still there levitating by my bed;  
She was illuminating.  
I started gravitating towards her.  
She gently kissed me  
And whispered, “Know thyself.”  
I asked her, “Who am I?”  
To my surprise,  
Tears fell from her eyes.  
She then disappeared,  
So I walked over to my mirror—

And “I” was standing right here.  
She then reappeared,  
And I said, “I am REN!  
The slick walking  
And slick talking man  
From the Philippine Islands!!  
I am standin’ strong  
And I’m holding my own.  
I’m a scarred soldier  
With a chip on my shoulder.  
I’m a hundred percent  
Cold blooded to some,  
And to others, I’m warm,  
Gentle and fun—I’m a . . . .”  
The Angelic Being  
Placed her index finger on my lips,  
Kissed me again, and said,  
“Know thyself.”  
I said, “I know myself.”  
She said, “Know thyself.”  
I asked, “Do you ever  
Say anything else?”  
She said, “Dig deeper and see  
What you don’t see in the mirror.”  
So, I lay in my bed  
And closed my eyes  
to clear my mind.  
It took some time,

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## New APPELLATE Mediation Program Begins

By Robert J. Rhudy, Director of Mediation,  
Maryland Court of Special Appeals

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On December 3 and 4, 2009, the Maryland Court of Special Appeals provided two days of training to 21 judges who are intending to participate in the Court's new civil appellate mediation program. The program, which has been funded as a pilot project by the Maryland Mediation and Conflict Resolution Office (MACRO), began operation in March 2010 following adoption of its creating order and guidelines by Maryland's Court of Special Appeals and Court of Appeals.

Maryland Court of Special Appeals Chief Judge Peter B. Krauser submitted a grant proposal to MACRO in Spring 2009 and initiated the appellate mediation program. The program is intended to reduce the cost and time of appeals, improve outcomes for Maryland litigants, and prevent multiple appeals in the same case. Chief Judge Krauser hired me as Director of Mediation in October 2009.

Court of Special Appeals Judge Arrie W. Davis gave the opening welcome to the judges attending the training. Seventeen retired Circuit Court judges, two retired judges from the Court of Appeals, and two active judges from the Court of Special Appeals attended the training.

The lead trainer for the "Appellate Mediation: Special Skills and Techniques Workshop" was Nancy Neal Yeend, an appellate mediator for the California Court of Appeals. Yeend is an experienced trainer and author of "State Appellate ADR: National Survey and Use Analysis with Implementation Guidelines" (2nd Ed., 2002). Others assisting with the training included MACRO staff members Rachel Wohl, Julie Linkins, Ramona Buck, and Nick White; District Court of Maryland's Director of Mediation Jonathan Rosenthal; Court of Special Appeals Assistant Director

of Mediation Mala Malhotra-Ortiz; as well as me. [See photo next page.]

Appellate cases selected for mediation during the pilot program are expected to ordinarily be mediated by a judge who has received appellate mediation training, and the director of mediation or his designee will be a co-mediator in most cases. All civil cases filed with the Court of Special Appeals are eligible for mediation with the exception of juvenile causes, guardianships terminating parental rights, and appeals by prisoners seeking relief relating to confinement or conditions of confinement.



Judge Krauser

Appellate parties can request mediation, and cases can be ordered to mediation by the Court under the authority of the existing prehearing conference program. In most cases, mediations will be conducted before transcripts are ordered or briefs are filed. If agreement is reached, mediation can result in substantial cost and time savings for the parties, as well as helping to conserve court resources. The program will also seek in some instances to resolve the case on appeal and potential related cases and conflicts involving the same parties, and to resolve issues between the parties that could not be resolved by court decision.

Appellate mediation is working effectively in numerous other states around the country. We are seeking to learn from their experiences, as well as from mediation in other courts and elsewhere around our state to develop a successful Maryland appellate mediation program.

For more information about the Maryland appellate mediation program, contact Robert Rhudy, director of mediation, Maryland Court of Special Appeals, 361 Rowe Blvd., Annapolis, Md., 21401, bob.rhudy@mdcourts.gov, 410-260-3716.



## State Workers' Workplace Mediation, from 1

The mediators in this program represent the diversity of state employees in terms of race, ethnicity, gender, age, socio-economic status and educational background. Mediating is an additional duty to their regular work.



Freda L. Stevens

This concept is based on the successful Federal Interagency Program on Shared Neutrals. Under the auspices of T. Eloise Foster, secretary of the Maryland Department of Budget and Management, and with the help of a MACRO grant, this program began as a small pilot in February 2009. It entered its second phase in February 2010.

The planning committee for this project has been meeting since 2007 and is composed of members from a variety of state agencies, and employee exclusive representatives, as well as representatives from MACRO. The committee started with a survey of programs in other states to find out "lessons learned" and to set up the foundation for a shared neutrals program in Maryland. The committee continues to meet monthly to design forms, protocols and processes, and to oversee the program in general.

If you are interested in using or finding out more about the program, contact Freda L. Stevens, coordinator, Shared Neutrals Mediation Program, 410-767-4953, [fstevens@dbm.state.md.us](mailto:fstevens@dbm.state.md.us).



In back: Trainer Nancy Yeend.  
In front: Jonathan Rosenthal, Julie Linkins, Mala Malhotra-Ortiz, Bob Rhudy, Rachel Wohl, Nick White, and Ramona Buck at the Appellate Mediation Training.

Hash it out in half the time—

## The Case for Collaborative Meeting Technology

By Pat Esslinger and Ellen Kandell

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Let's look at a couple of nightmare scenarios to see if they sound familiar. The planning commission is meeting to consider turning an abandoned warehouse into a high rise condominium with retail on the ground floor. The mayor and the local chamber of commerce support it; it's consistent with smart growth principles and the master plan for the municipality. Some long-time community residents in this mixed use area, which borders a rail line, don't want any more development in their neighborhood. Small business owners support some development but fear reduction in the value of their land or business, and fear restrictions on the future use of their property. You, as the chair of the commission, are being pressured because the process has already been very protracted and costly.

In a second situation, you as a public servant need recommendations from your green initiatives task force in order to make decisions about possible applications for numerous green programs which have complex requirements and imminent deadlines. Within the task force, there is a divergence of views on which of these programs are priorities. Citizens are eager for you to take advantage of the state incentive programs such as energy audits for all municipal buildings. The 1960's era building that houses your town offices may be eligible for some of the loan programs for green building initiatives and you'd love to have a new modern office, but are afraid to express these views in this economic climate. And only one city employee is staffing the task force, so the decision making process is slow—too slow.

In such common complex municipal government matters, if issues don't get resolved amicably, disappointed stakeholders could file a legal challenge or otherwise delay a resolution, which could devastate your budget.

### Applying collaborative meeting technology to common situations

In these instances, you could turn to facilitation, a type of alternative dispute resolution (ADR) in which a neutral third party designs and manages a decision-making process. But such processes often take a lot of time. The kinds of decisions these two scenarios involve frequently take place in public meetings, and sometimes people are hesitant to speak out—especially if they are in a public position. A process called collaborative meeting technology may be used to speed up the process and elevate the quality of participation for facilitated processes. Long used in planning and decision-making meetings, this high-tech approach uses a computer for each member of the group. One-at-a-time, sequential, oral comments and facilitators' flip charts are largely replaced by simultaneously typed anonymous comments and electronic "big screen" displays.

### How this process can work

A facilitated process using this technology might include the following steps:

1. Identify all interests to define issues clearly: Participants each type their interests into their individual modems and these are then transferred onto a joint screen. Everyone can see what everybody else has listed and can comment on those ideas, but nobody knows whose item is whose.

2. Brainstorm possibilities and opportunities to explore options: Technology-wise, this step is similar to the first one. The speed gained through simultaneous input and the anonymity encourage creative suggestions. Facilitated oral discussion of the brainstorming results helps to clarify ideas and eliminate redundancy. (This is like using markers and flip charts—except much faster, with a better format and legibility and an editable record.) Either individually or through facilitated group discussion, the possibilities can be sorted to form options.

3. Establish mutually agreed-upon standards to assess the options: Participants propose standards and individually indicate the extent of their agreement with each proposal. The software quickly calculates the group results and presents statistical information. Areas of disagreement are discussed and resolved. Participants then rate each option against each standard and immediately see numerical and graphical results on screen.

4. Achieve consensus: In the assessment of options, degree of consensus on the ratings is calculated and highlighted. Options are sorted by score so that the “best” options top the charts and the parties can clearly see the options around which they can build consensus. Reasons for disagreement among the participants are probed through anonymous input as well as group discussion. Key problems are identified. Revised proposals are suggested and assessed. The cycle can be repeated quickly and efficiently until true consensus is reached.

## Why this approach is successful

- Because input is anonymous, ideas are judged by group members on their own merit rather than being identified with particular parties and their known positions.
- Disagreements and critical remarks focus on content, not personalities.
- Intermingling responses promotes understanding, identifies key interests, and makes the similarity of interests among the parties apparent.
- Simultaneous input by all participants generates a large number of options and solutions that can be considered, while the polling function of the technology makes it quick and easy to reduce those options to the ones most favored by the whole group.
- The process is speeded up, getting to resolution sooner and using less time in meetings.
- The simultaneous input and individual voting empowers participants and gives all of them a greater sense of satisfaction with and ownership of the result.
- By reinforcing the focus of the process on issues rather than on parties, collaborative meeting technology has a positive effect on the ongoing relationships of the parties.



Can you afford to let decision making processes go unmanaged? For smaller groups and issues you may

only need a skilled neutral facilitator for a couple of meetings; however, for complex issues with multiple interests, collaborative meeting technology will produce better results in less time.

## Responding to possible objections to this technology

Some may raise concerns about the use of this technology. One objection might be that in tight economic times, organizations may be hard-pressed to come up with funding for the use of this technology. However, in the complex multi-party disputes where use of this technology is appropriate, the gained efficiencies enable stakeholders to consider options faster so that in the long run, it can actually save money.

Another observation might be that the process becomes about the technology instead of the issues. But, the converse is actually true. In the hands of a facilitator especially skilled in the use of this technology, it enables a very productive dialogue.

Some might be concerned that computers somehow influence the process. Actually, however, the use of computers may help the people to influence the process more effectively. The ease and anonymity of polling actually may promote identification of dissenting opinions that, if not dealt with, could later undermine effective outcomes.

Lastly, another criticism might be that this technology requires too much advance planning time. But, in complex disputes, rigorous preparation by the facilitator is critical and time consuming whether or not the technology is used.

For these reasons, we strongly support the use of collaborative technology and recommend that you consider its potential for your next complex case.

Ellen Kandell, Esq. is president of Alternative Resolutions ([alternativeresolutions.net](http://alternativeresolutions.net)) and is a facilitator, arbitrator and certified mediator.

Pat Esslinger ([patesslinger.com](http://patesslinger.com)) is a facilitator who specializes in using collaborative meeting technology with government groups.



**Marvin Johnson** received the New York State Dispute Resolution Association (NYSRA) 2009 Andrew Thomas PeaceBuilder Award. He also earned the first-ever award from the International Institute for Conflict Prevention and Resolution for his "Outstanding Contribution to Diversity in ADR."

Johnson was also recently appointed as a member of the Federal Service Impasses Panel—Federal Labor Relations Authority. Johnson, a nationally recognized mediator and arbitrator of public and private disputes, is the head of the Center for Alternative Dispute Resolution in Greenbelt, which he founded.

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**Mary Jacksteit** was appointed as chair of the Federal Service Impasses Panel—Federal Labor Relations Authority. Jacksteit has more than 20 years of experience in mediation, facilitation and negotiation, working for non-profit organizations, government agencies and community organizations. She previously served on the Federal Service Impasses Panel for seven years during the Clinton Administration. She also has worked extensively at the Search for Common Ground,

a conflict resolution organization and for the Public Conversations Project in Watertown, Mass.

**Louise Phipps Senft** and Associates/Baltimore Mediation was recognized as a Top 100 Minority Business Enterprise in the mid-Atlantic region for 2009. The award honors outstanding minorities in entrepreneurship, client satisfaction, professional and community contributions. The firm offers mediation, facilitation for collaborative decision-making for families, businesses and those in litigation, and negotiation and conflict resolution training, all from the transformative framework.

**Chief Judge Robert M. Bell** of the Maryland Court of Appeals was given an "Outstanding Resolution Leadership Award" on Conflict Resolution Day in October 2009 by the Maryland Department of Natural Resources Office of Fair Practices and Workplace Mediation Program. Judge Bell was recognized for his vision and substantive support of ADR and mediation programs throughout the state. Judge Bell initiated the Maryland ADR Commission

between 1998 and 2000, which resulted in the creation of the Maryland Mediation and Conflict Resolution Office (MACRO).

The Community Conferencing Center in Baltimore was honored recently with a Best of Baltimore" award for the "Best Non-Profit Organization." Headed and founded by **Lauren Abramson**, the Community Conferencing Center facilitates meetings, called community conferences, that bring together those affected by crime and conflict—victims, perpetrators, and any other affected parties—and it helps them talk openly about how the various parties were hurt. The work of the Community Conferencing Center has been recognized nationally and internationally for its use of conflict management strategies in a variety of settings, including criminal justice, education, community development and business.

**Linda Deming**, executive director of the Anne Arundel Conflict Resolution Center (AACRC), received the Peacemaker Award recently from the local chapter of the organization Peace Action at the Martin Luther King, Jr., Dinner in Anne Arundel County recently. The award was given for the work of the center to promote peaceful resolution of conflict in Anne Arundel County. Deming is an experienced mediator and trainer and has been the head of the AACRC for 8 years. The AACRC also received a \$500 Award for Non-Profit Awareness recently from the Chesapeake Family magazine. The award was given because the center received the most indicators from members of the community, indicating that the center has done a good job in acquainting the community about the Center and its mission.

**Lou Gieszl**, deputy executive director of MACRO, has been elected to a one-year term as president of the Association for Conflict Resolution (ACR) beginning in September, 2010. ACR is the premier organization for all dispute resolution practitioners. Gieszl has been on the ACR Board of Directors since 2006. Originally hired by Rachel Wohl in 1998 as

## Public Perceptions of ADR in Maryland Courts

In 2007, the Maryland Judiciary hired a research consultant, Ed Lazarus of Lazarus Strategic Services, to conduct a comprehensive research study on the public perceptions of the Judiciary. In 2008, he concluded his research and provided the Judiciary with a final report. In May, 2009, he appeared before the Public Trust and Confidence Committee to discuss his research findings and recommendations for improvements.

The report included one recommendation with regard to ADR processes operated by or referred by courts. It is as follows: Do a better job of informing ADR participants of what to expect, where to go, when to be there, and what administrative and procedural hurdles and deadlines they would face.

According to survey results, overall, ADR participants express satisfaction with ADR and its outcomes. However, they do express dissatisfaction if their lawyers do too much of the talking. Part of the benefit of ADR is the catharsis of “getting it off your chest.”

When the lawyers do the talking, the clients never have the chance to express themselves. Thus, they miss the opportunity to have the voice they are looking for. This creates a professional tension for their lawyers, who may struggle to balance their duty as an advocate with their clients’ desire to voice their feelings and tell their stories.

ADR participants who represented themselves reported that they need better direction for the process leading up to the ADR session itself. They do not report problems or dissatisfaction with the actual arbitration or mediation process. However, they do report that they were in need of greater assistance about what to file, where to go, what deadlines exist, and what to expect. The court could take a larger role in providing this information to ADR participants.

“MACRO hopes to work with courts across the state to develop customizable brochures or online material that will help participants and members of the bar prepare for their ADR sessions,” said Julie Linkins, MACRO’s court ADR resources director. Court personnel who are interested in working on this project are encouraged to contact Julie by phone, 410-260-3540, or e-mail, [julie.linkins@mdcourts.gov](mailto:julie.linkins@mdcourts.gov).



assistant director of the Maryland ADR Commission, Gieszl has been with MACRO since its inception.

**Chief Judge Ben C. Clyburn** of the District Court of Maryland accepted, on behalf of the District Court ADR Office, the 2009 Commitment to Conflict Resolution Award, from Community Mediation Maryland (CMM) at CMM’s 2009 Gala on June 6th in Annapolis. CMM presents the award each year to celebrate outstanding efforts in conflict resolution in Maryland. The award, presented annually by Community Mediation Maryland, recognized the work

of the District Court’s Alternative Dispute Resolution (ADR) Office, headed by Jonathan S. Rosenthal, executive director. In addition, the District Court ADR Office received a Peacemaker Award from the Conflict Resolution Center of Montgomery County for development and expansion of ADR in the Montgomery County District Courts.

If you know of awards or achievements to include in [MACROScope](#), please contact us at [ramona.buck@mdcourts.gov](mailto:ramona.buck@mdcourts.gov).

# A Mediation Story

By David Simison, attorney and mediator

## District Court mediation

I recently enjoyed renewing my long-term relationship with District Court mediation. Last week my old friend in the black robe announced to the assembled litigants in the courtroom waiting for their trials that the court had the benefit of a mediator this day. After calling the parties forward in *Smith v. Jones*, he sent them off with me declaring, “He’s great, he settles them all.” He perhaps recalls that day years ago when in fact I settled four cases one afternoon.

District Court mediation is similar to other court mediations—often valued by the courts because of the settlements and settlement rates. They know that if mediation doesn’t settle the case, we can always give the litigants what they came for: a judicial decision.

Mediations that come out of the legal system are beset by this settlement aura. Too often, judges view mediations as some attorneys mistakenly do—as negotiated settlements. They are used to settlement conferences that mostly involve the parties in different rooms with the facilitator shuttling between them. Shuttle diplomacy typically results in conversations around the numbers and the nuances of the settlement terms—payment arrangements, interest rates and the like. In the atmosphere of a settlement conference, anything that seems to stand in the way of getting to settlement may seem inappropriate, time-wasting and distracting. And particularly when

emotions arise in settlement discussions, one can wonder who is more uncomfortable, the attorney or the client. Yet, as this story will show, working through the tangled emotions of conflict is the very essence of true mediation.

## *Smith v. Jones*

On this “day of trial,” I learned that the conflict was between a homeowner, Mr. Smith, and a landscape contractor, Mr. Jones. Contractor Jones had underbid the job significantly and Homeowner Smith had at first offered to pay more money as he had orally increased the scope of work each day. When the money was not forthcoming from Homeowner Smith, however, Jones lost faith and walked off the half-finished job, leaving the yard in a state of chaos. After numerous unreturned phone calls to Jones, Homeowner Smith retained another contractor who had to spend a fair amount of time undoing and redoing the first contractor’s work. Homeowner Smith was furious and had Contractor Jones prosecuted for not being licensed. The criminal court ordered Jones to return all monies paid by Smith with monthly payments extending over a year.

In our subsequent District Court case, Smith was additionally seeking all of the money he had to pay the new contractor in order to undo Jones’ “shoddy” work. We learned how frustrated Homeowner Smith had become when his calls weren’t returned and likewise, we heard how Jones had underbid the job in sympathy for the homeowner’s financial circumstances. He said he felt he was being

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courtesy of David Simison

snookered as the scope of work increased without additional payment. At one point, Jones became so angry that he was shouting at Smith. His attorney patted his arm, telling him to calm down. Smith was demanding a significant sum of money and Jones was determined not to pay another dime.

## Caucusing

As a rule, I avoid private caucus in mediation, having learned over the years that often the most meaningful information comes forward in private caucus unheard by the ears that really need to hear it. So, I prefer to keep people together so that those meaningful communications can be heard by the other party. However, in District Court mediations, at times, I will resort to private caucus when we have fully explored the facts and the underlying emotions and seemingly have reached impasse.

I had the sense that settlement might occur were Contractor Jones able to offer a full cash payment in place of the monthly payments set up by the criminal court, but I didn't want to ask that in front of Smith, so I suggested we go into private caucus. As Contractor Jones and his attorney went to the hallway where I was to join them, I lingered in the room for a moment with Smith who made a point of telling me, "You know, he has never apologized for what he did . . ." My mediator ears pricked up—I had just heard a possible helpful component: apology. We all know or are learning the power of apology in mediation so when I joined Contractor Jones and his attorney in the hallway, I broached the subject of apology, noting what Smith had told me. Jones was furious. He said he'd apologize if that's all it would take to settle this, but it was actually Smith who owed him the apology, and no, he was not interested in paying a lump sum to the homeowner (so much for my idea about that).

As it was, Contractor Jones offered a very small sum of money that I sensed Smith would reject; the amount being so small, it could feel like a slap in

the face. I was dragging my feet, and I explained I was happy to relay the message and proposed amount, but expressed my concern that it might make things worse. Contractor Jones conferred with his attorney and more than doubled his offer; though it was still far, far less than what Smith was seeking. Yet, to my surprise, when it was taken to Smith, he immediately accepted the amount. This illustrates the fact that sometimes after people have had a chance to really express their views and feelings, they become more ready to resolve the matter.

## Resolution

When the parties came back together they seemed genuinely relieved to have this matter settled. Both declared they had nothing against the other. Before I could even ask if a handshake was in order, the parties had reached across the table to shake hands, and they ended up embracing each other with apologies, expressions of abiding friendship, and genuine disclaimers of any ill will. The agreement was put on the record in open court and the parties left the courtroom, again shaking hands and concluding with a departing embrace. The contractor's attorney found the process amazing and asked how she could get cases sent to mediation in the future, while the judge declared in open court, "I told you; he always settles them."

## The value of mediation

We want the legal system to know and understand the promise and magic of true mediation, and what it is and can do. It really is not about "settlements." It is really about the parties sitting down and truly hearing each other, and feeling heard. Out of that new understanding, true resolution can arise.

[Dave Simison](#) co-chairs the Certification Committee for MCDR and is Treasurer of the ADR Section of the Maryland State Bar Association. He has mediated cases in Maryland for more than 10 years.

## Maryland's First *National* Community Mediation Conference Proves to be a Mediator's Delight

By Felicia Watkins, ADR  
Resources Coordinator, MACRO

"Getting the opportunity to think about big issues related to mediation."

"The variety of sessions."

"Meeting other mediators."

"Great food."

"The lunchtime theater was great."

These were just a few of the comments made by those who attended Maryland's first community mediation conference held Saturday, June 20, 2009, in Greenbelt.

The conference, "The Joy of Mediation: Cooking It Up and Serving Your Community," was 'dished up' by a partnership of the Center for Alternative Dispute Resolution (CADR), Community Mediation Maryland (CMM), MACRO, and the National Association for Community Mediation (NAFCM).

"This was an incredible gathering of people who are committed to the community mediation movement," said Lorig Charkoudian, executive director of CMM. "Participants had a chance to look back on the history of the movement, take stock of where we are now, and explore creative ways to move forward."

More than 150 people attended the conference and chose from 20 workshops with topics ranging from the mechanics of operating

a multi-service center, foreclosure mediation programs, the role of stereotyping and personal biases in mediation, and how to keep "community" in community mediation.

One conference highlight was a lunchtime presentation of the Theatre of the Oppressed. This theatrical approach was founded by Brazilian activist Augusto Boal in the 1960s and became a venue for grass-roots activism. Community issues and challenges were presented in a dramatized short scene format. Audience members were called upon (as "spect-actors") to comment on the problems presented, suggest a different solution, and then go onstage to act out their proposed approach. The dramas, prepared by those who attended a pre-conference workshop, showcased two different scenarios: a prison mediation pilot program and the other illustrated challenges of the co-mediation model. Community mediator Michael Newheart, a workshop participant said, "It was a tremendous opportunity to engage bodily with issues that challenge us as mediators and change agents."

"The conference was a demonstration of collaboration among the sponsoring organizations and a tribute to the organizations and the individuals—community centers and community mediators—addressing the various disputes on the front lines of our community," said Marvin Johnson, founder and director of CADR.

"This was a great opportunity for collective learning," said Rachel Wohl, executive director of MACRO. "It is wonderful to see Maryland's stellar community mediation centers share their expertise to help improve the quality of centers in other states. We look forward to collaborating in the future with the Center for ADR and Community Mediation Maryland."

Participants were asked to provide a mediator recipe for the conference. On the next page is a recipe by Carolyn J. Rodis of Rodis & Henick, L.L.C., Mediation Services.

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Cheryl Jamison, Monica Koski, Thomas Gould prepare the registration table.



Attendees have fun with icebreaker exercise.



Meeting and greeting.



Learning about foreclosure mediation.



Recognizing community volunteers.

photos courtesy of Carole Brown

## OPPORTUNITIES AND CHALLENGES IN SENIOR MEDIATION: A RECIPE FOR SUCCESS

### Ingredients:

One or more well-seasoned participants  
Lots of thyme  
Sage in abundance

Well-aged cheese

Several tbsp. of experience

One or more cups of patience

Best served with fine wine, well-aged

Senior, or elder, mediation provides opportunities to serve the rapidly growing older population in a sensitive way. Because these matters may be complicated—potentially involving legal issues, impairments and vulnerability, geographical distance of the parties, a conflict-averse older population—specialized training and advance preparation are necessary.

This dish is not for the novice cook. In-person intake and the inclusion of support people, advocates, and other aging service professionals are advisable in advance of combining the ingredients.

Elder mediations are best simmered slowly in short sessions, allowing the contents to rest in between. They should be prepared over several days so the entrenched family dynamics do not bubble over, or the seasoned participants become over-cooked. A sense of humor is helpful in the well-appointed kitchen. You cannot have too much thyme or sage in this dish.

## MPME Members: Have You Had **YOUR** Training?

By Cheryl Jamison, MACRO's Mediator  
Quality Assistance Director

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The Maryland Program for Mediator Excellence (MPME) was designed to help mediators improve and enhance their mediation practice. One of the hallmarks of the program is the commitment that members make to continuing skills improvement. Specifically, when mediators join the MPME, they agree to complete four continuing skills improvement activities and to complete two hours of ethics training annually.

Members, have you had your training? Before you answer that question, let me provide some basic information.

### What is a continuing skills improvement activity?

When designing the program, the members of the Mediator Excellence Council (MEC), the governing council for the program, recognized there are many ways mediators can improve their mediation skills. Attending a workshop on effective agreement writing or one on feedback or taking part in a mediation skills mentoring program are all ways of improving one's mediation skills. The same is true of attending a mediation conference, going through a performance

based assessment or being a part of a case discussion group. The point is, there are a variety of ways that mediators can improve the quality of their mediation practices and for that reason, there is no hard and fast definition.

Another thing to remember is that the activity can take place anywhere, and not just in Maryland, nor does it have to be sponsored by the MPME. You, as the mediator, decide what training you need. Now, of course, if you submit something that clearly has nothing to do with mediation skills development, it will not count.

### Are there any restrictions?

Well, it has to be about mediation ethics. It can be an ethics case discussion group or an ethics class or workshop. It could be a session at a conference dealing with ethics. You do not have to complete it in a two-hour block; your total for the year needs to add up to at least two hours.

### How do I report and keep track of my training?

The MPME website was designed to assist you in keeping track of all your continuing improvement activities. Here is how it works:

1. Go to [MPMEonline.org](http://MPMEonline.org)
2. Login using your login and password. You must use your login and password.
3. At the top of the screen, click "My Membership"
4. On the left side of the screen click "My Continuing Skills and Ethics Activities"
5. Click "Add New Activities" at the bottom of the screen.





6. Complete the form. The title could be “MD Mediators Convention.” Then you would indicate Task Group. This does not mean that an MPME Task Group had anything to do with the event; this is just how the system categorizes events. For this event, it would be “Continuing Education and Training.” Click the event type. Next is the description. Here is an example of a description for this event: “One day bi-annual conference held at the Maritime Institute, Linthicum Heights, MD. 6 hours of CME earned.” You can add anything that will help you remember the event. Add the start date (the calendar is sensitive and slow, so only click it once and wait for it to populate the field) and Click “Submit”.
7. A word about the date. I know you are wondering what to do with events that are more than one day. Right now you can only add the start day so you might want to indicate the number of days in your description. And in the tradition of software developers around the world, we will further address this issue in version 2.0.

You can go back and add any event since 1999 and have a wonderful record of all your events.

## Need to create your account or become a member?

Joining the MPME is quick, easy and complimentary. If you are a card-carrying member of the MPME, and you have not created your account, go to [MPMEonline.org](http://MPMEonline.org) and Click Here to Join MPME. Complete the application including creating your login and password. You do not have to send your training documents. You will receive two e-mails, one thanking you for completing the application and another welcoming you to the program.

If you are not a member, go to [MPMEonline.org](http://MPMEonline.org) and Click Here to Join MPME. Complete the application, including creating your login and password. You will need to provide documentation verifying 40 hours of mediation skills training. Once you complete the application, you will receive an e-mail thanking you for your application. After your training documentation is received, you will receive an e-mail welcoming you to the program. This signals that it is safe to play in the MPME “tree.”

## Mediation and MACRO highlighted in business newsletter

In the January 2010 issue of Business Monthly, a business newsletter for Anne Arundel and Howard counties, Cecilia B. Paizs, a mediator/attorney in Ellicott City, writes about “Mediation: A Better Way to Resolve Conflict.” Among her observations, Paizs notes, “Many court systems, including Maryland’s, regularly refer matters to mediation as part of the litigation process.

The Maryland court system has an agency to serve as a dispute resolution resource for the state—the Mediation and Conflict Resolution Office, better known as MACRO. And parties are seeking out mediation on their own before filing a lawsuit.”

The entire article is online at [bizmonthly.com/1\\_2010\\_focus/f\\_11.shtml](http://bizmonthly.com/1_2010_focus/f_11.shtml).

## Spring and Fall

### Maryland Council for Dispute Resolution Annual Master Classes on Mediation and Conflict Resolution

4- and 8-hour training sessions to be held in Annapolis and other Maryland locations.

For information and registration, Contact the MCDR administrator at [mcdr\\_a@yahoo.com](mailto:mcdr_a@yahoo.com)

## May 10

### "Challenges and Opportunities for Third Party Roles in the Protracted Arab-Israeli Conflict: A Critique of the North American Model, Practice, and Theory"

Part of MACRO's "Evening With" Series (free—no pre-registration)

Alma Abdul-Hadi Jadallah, Ph.D.,  
President and Managing Director of  
Kommon Denominator,  
Fairfax, Va.

University of Baltimore Student  
Center Performing Arts Theater  
(5th floor)  
21 West Mount Royal Ave., Balto.  
Refreshments-6:30 p.m.  
Presentation -7-9 p.m.



# UPCOMING

## June 16

### Pre-Conference Institute on Diversity, Ethics and Quality Practice

Martin's Crosswinds, Greenbelt, 9 to 5  
Information: [felicia.watkins@mdcourts.gov](mailto:felicia.watkins@mdcourts.gov)

## June 17 and 18

### The Center for ADR 2010 Conference: Managing Conflict and Removing Barriers to Collaborative Decision Making

Martin's Crosswinds, Greenbelt  
For information: [natlctr4adr.org/](http://natlctr4adr.org/)

## August 4

### "Emotional Intelligence and Cognitive Intelligence Partners at the Table in Mediation"

Part of MACRO's ADR Practitioners  
Lunchtime Teleconference Series. This  
series showcases local ADR leaders in a  
60-minute lecture on issues relevant to  
ADR professionals. Time is included for  
questions and answers. The location is  
Anywhere, USA—as close as your phone.

Linda Baron, Mediator

Noon-1 p.m. (EST)  
Call 888-453-4221; participant code  
838404 # when prompted

# EVENTS

## September 22

"The End of Mediation: Why the Field Will Fail; Yet Mediators Will Thrive for the Next Twenty Years"

Part of MACRO's "Evening With" Series (free—no pre-registration)  
Peter Adler, Ph.D.  
President, Keystone Center, CO

University of Baltimore Student Center - Performing Arts Theatre (5th floor)  
21 West Mount Royal Ave., Balto.  
Refreshments - 6:30 p.m. Presentation - 7-9 p.m.

## October 21

"Dispute Prevention: Facilitating Large Complex Public Policy Decisions"

Part of MACRO's ADR Practitioners Lunchtime Teleconference Series. This series showcases local ADR leaders in a 60-minute lecture on issues relevant to ADR professionals. Time is included for questions and answers. The location is Anywhere, USA—as close as your phone.

Doug Brookman, Facilitator and Mediator

Noon-1 p.m. (EST)  
Call 888-453-4221; participant code 838404 # when prompted

## November 9

"Conflict Revolution: Mediation and Global Change"

Ken Cloke, J.D., Ph.D.  
Director, Center for Dispute Resolution, Santa Monica, Calif.

University of Baltimore Student Center - Performing Arts Theatre (5th floor)  
21 West Mount Royal Ave., Balto.  
Refreshments - 6:30 p.m.  
Presentation - 7-9 p.m.

## December 10

Maryland Mediators Convention

Maryland Maritime Institute  
Linthicum Heights - 9 to 5  
RFP's for program sessions will be circulated in the spring. Program and registration available in the summer via MACRO's list serve.

For information:  
ramona.buck@mdcourts.gov.



## Creating a New **ADDRESS**, from 1

About 6 years ago, MACRO asked how it could help court program managers succeed. From these discussions, a clear need emerged for a tool to help them evaluate and improve the ADR services provided in their courts. In many instances, stacks of feedback forms completed by participants at the end of mediations and settlement conferences languished in a drawer because court personnel simply had no time to enter the responses into a database or spreadsheet. Everyone agreed that being able to tap into the treasure trove of information stored there would help them, among other things,

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- Identify skillful practitioners who could serve as mentors for newcomers
- Spot areas of concern that would make valuable training topics
- Report on the level of satisfaction felt by ADR participants
- Quantify more accurately any perceived cost or time savings generated by the use of ADR
- Tweak program management to develop the most efficient and effective systems and processes
- Correct misperceptions held by litigants or attorneys about ADR
- Coach ADR practitioners on areas for improvement
- Demonstrate benefits from the use of ADR to the court, legislators, and the public.

All we needed was a system that would automate the collection of the feedback data, connect it with

case docket information, and spit out coherent and useful reports. Of course, it would help if every program used the same feedback forms so we could present statewide data, as well. And along the way it was decided to design a system that will potentially be used by other ADR programs, such as community conflict resolution centers or private practitioners, as well. It seemed like a simple enough quest at the time, but what followed has been an odyssey of collaboration and exploration to find or create the best tools to meet these needs.

### Working together throughout the journey

Many people throughout Maryland have contributed to this project over the years. The first step was to develop a uniform set of questions to gather consistent, valuable information within and across programs. Stakeholders from court, community, and practitioner groups worked collaboratively to develop goals, objectives, and indicators related to ADR programs. Based on those goals, six pages of questions were created, wordsmithed, and refined. From that pool, key questions were selected and fashioned into brief two-page questionnaires for mediation and settlement conference participants and attorneys. As designed, a set of core questions will be answered by ADR participants and attorneys in all types of programs. Other questions can be tailored to meet the needs of a particular program or setting.

At the same time the questionnaire was being developed, MACRO sought technological options for automating the data collection. Mediations often occur in locations where no computer is readily available, so online surveys would not work. Unfortunately, no available off-the-shelf products fully satisfied the technical requirements, so some creative piecing together was called for. The result is a three-part system connecting the court's data warehouse to a data collection tool and a reporting tool customized to meet the needs expressed by courts, program managers, and practitioners across Maryland. MACRO is indebted to the District Court of Maryland and the Circuit Courts for Baltimore City, Baltimore County, and Worcester County, which will serve as test sites for the pilot program.





Baltimore City Circuit Court is one ADDRESS test site.

## The ADDRESS system

ADDRESS connects a data collection tool with a custom reporting tool that pulls information from the Judiciary's case management data warehouse. Here's how it works:

**Step 1:** Participant and attorney feedback surveys, coded with case numbers, are scanned into a database. Program managers can scan surveys from multiple cases at once. The cutting-edge scanning technology is not limited to the bubble sheet-style multiple choice format of old. It can capture images of free-form handwritten answers to open-ended questions. The scanning system can generate basic reports that aggregate the survey answers, so a program manager could quickly see, for example, what percentage of participants strongly agreed that they had the opportunity to say what they wanted to say during mediation.

**Step 2:** The survey data is uploaded to the Web-based reporting tool. This triggers a request to the Judiciary's case management data warehouse for docket information about the cases. The case data is then combined with the survey data collected for those cases, and all of the information is combined with other cases handled by the program.

**Step 3:** Program managers can then ask a wide range of questions and generate reports about what happened. For example, a program manager can find out what types of cases tend to settle before the discovery deadline instead of after it, whether cases that settle earlier have higher or lower satisfaction rates, whether a certain type of case seems to require more ADR sessions than another type, whether a particular mediator excels at contract cases but receives lower ratings on personal injury cases, whether a high percentage of participants seem

confused about how to request mediation, and the like. With this information in hand, managers can adjust something and track the results of the change over time. Did it help? Did it have no effect? Did it cause some other problem? In this way, ADDRESS gives program managers the ability to provide targeted assistance to practitioners and make continuous improvements to programs.

The technological components of ADDRESS will be deployed in two phases. First, the data collection tool (the scanning system) will be serially installed at the four court pilot sites in 2010. Practitioners may notice that the survey forms look different due to the formatting needed to work with the scanners. Program managers will be able to generate basic reports about the survey results right away. Second, the Web-based reporting tool will be connected to the scanning system and the court data warehouse early next year, enabling use of the more sophisticated reporting functions.

## Into the future

When the pilot program is complete and the system is working well, MACRO will make it available to other court programs and potentially over time, to community conflict resolution centers, government ADR programs and private practitioners. In addition, practitioners who belong to the Maryland Program for Mediator Excellence (MPME) will be able to log in and view survey results for their cases, which will help them craft personal improvement plans and track their growth over time.

In the spirit of sharing best practices and useful tools, MACRO will post the computer source code on its Web site for download by ADR programs in other states. The code and accompanying system documentation will enable other users to tailor the system to fit their needs. Someday, perhaps all ADR program managers and practitioners will have access to a version of this robust system to help them make informed decisions about how to hone their craft and improve their services.

## Know Thyself, from 3

But I saw a light shining.  
The light was blinding;  
It was reminding me  
Of who I was;  
Reminding me, as in,  
Reconnecting the true me  
With my mind.  
I was remembering  
I was tapping into  
Subconscious memories,  
I was seeing “me” with different faces,  
“Me” in different places,  
“Me as different races.”  
I didn’t place my finger on it at first,  
But by tracing my past lives,  
I see that this mind and body are not “I.”  
I discovered the light within this body

A treasure so divine,  
A treasure that can’t be defined  
Because definitions place limits,  
And this light is infinite with no limits.  
I see I’m a light here  
To reunite with other lights,  
To illuminate this darkness.  
Now, with my meditation over with,  
I open my eyes in noble silence.  
The Angelic Being was smiling.  
She said, “When I kissed you,  
I gave you a blessing.  
Now that you got the message,  
Pass it on  
And never forget who you truly are . . .  
You’re a “Light in the Dark.”



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