



PENNSYLVANIA
COUNCIL OF MEDIATORS

Report For Members and Friends

Winter/Spring 2005

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PCM 2005 MVP Award

This year's PCM Annual Conference will kick off on the evening of May 20th with the third annual Most Valuable Peacemaker Award (MVP). This year's recipient

is Michelle E. Armster, Director of Mennonite Central Committee's Mennonite Conciliation Service in Akron, PA. A creative soul who weaves song and drama through all dimensions of her life, Michelle is being honored for her extensive



Michelle Armster, 2005 MVP Award Recipient

peacemaking work in resourcing, consulting and training churches, agencies and communities. Over the years she has developed wide experience in meditation, facilitation, conciliation, restorative justice, arbitration, victim/offender mediation, anti-racism and alternatives to violence. She is particularly skilled at incorporating a cultural awareness into all her work. Chair of the Lancaster Mediation Center Board, she also serves there as a volunteer mediator. Currently enrolled in Lancaster Theological Seminary's Masters of Divinity program, Michelle is completing Eastern Mennonite University's Graduate Certification program in Conflict Transformation.

Message from the President

by Gale McGloin

The year 2005 is shaping up to be another exciting year for PCM! The PCM Board had a mini-retreat in January to assess its statewide initiative with the assistance of a seasoned Harrisburg lobbyist. We shared our concerns about the slow pace of our progress and the various roadblocks and were assured that these problems are inevitable when you are trying to make change. We came out of the meeting with a renewed commitment to pursue a more mediation friendly environment in Pennsylvania.

As part of our commitment, we have invited Mark Collins, Assistant Coordinator for the New York State Unified Court System's Office of ADR Programs, to speak at the plenary session at the upcoming PCM Conference. The conference will be held May 20-21, 2005, in Akron, PA, at the Mennonite Central Committee facilities. Mark will share his experience assisting in the oversight of 26 mediation centers that handle over 40,000 cases a year across the state. He is also involved in the expansion of alternative dispute resolution services throughout New York State. As Mark explained to me on the phone, it's a lot more than the "parking and barking" disputes we joke about in Pennsylvania and evidence of the sea change that is possible with concerted effort.

Speaking of the Conference, our Planning Committee is hard at work putting together the Conference program. This year's theme—cultivating mediation skills—grew out of a member survey done after last year's

conference. What we heard over and over again was, "Give us more skills workshops!" We did better than that and gave you all skills workshops. I encourage you to register early and cajole your mediator friends, who aren't PCM members, to come along and check us out. I think you will be very pleased with the program.

It is critical to remember that members who donate their time as volunteers organize all of the efforts undertaken by PCM. In order to move forward as an organization and address this statewide challenge, we must grow our membership. Keep an eye out when your membership renewal arrives in the mail and please renew promptly! If you know of

any other mediators or fellow travelers in PA who might be interested in mediation, email their contact information to Phoebe Sheftel at pasheftel@comcast.net. She would be happy to send them a copy of our membership brochure and, when they join, a newly updated membership directory.

We are very excited about the opportunities and challenges that lie ahead for PCM and eager to involve our membership in our efforts. If you would like to find out about upcoming projects or participate in current ones, please email me at gmcgloin@pittsburgh-mediation.org. I look forward to hearing from you.

New Board Member Welcomed

Kimberly Lavin, Director of the Lancaster Mediation Center (LMC), was welcomed to fill a vacant slot at the PCM Board's January meeting. Kim assumed the Director's position at LMC when Grace Byler retired. She received her degree in Conflict Resolution from Temple University and has extensive experience in mediation, as well as training adults and children. Kim looks forward to bringing her enthusiasm and skills to the PCA Board, as already evident in LMC's role as host of PCM's annual conference in May.

Membership Information

If you are interested in joining other mediators statewide and becoming a member of PCM, check out www.pamediation.org where you'll find a membership application and other information.

If you haven't visited the site recently, you'll be pleasantly surprised by the new look and wealth of information. Remember that PCM members can be listed on the web site for \$15 in addition to the regular membership fee. (To get more information on a listing, contact Phoebe Sheftel at pasheftel@comcast.net.)

Conflict Usually Means Having to Say You're Sorry

by Phoebe Sheftel

It may work in a Hollywood fantasy to believe that "love means never having to say you're sorry," but in the reality world that mediators confront we have all experienced the catalytic effect of an apology in the midst of conflict. And we are not talking about just the effect on the disputants' emotions, but real bottom-line effects on the outcome of the mediation and the monetary parts of agreements.

Some evidence already exists to show that even in the highly contested world of medical malpractice litigation, a simple apology can signal the difference between a drawn out, bitter contest that leaves both parties feeling unsatisfied and a resolution that addresses the parties' interests, often with lower financial damages. When staff at the Veterans Administration Hospital in Lexington, KY, decided to adopt a pre-emptive policy of acknowledging medical errors and apologizing to patients and their families, many people thought they would get barraged with lawsuits. What they found instead was the amounts they paid out in settlements put them in the bottom quartile of comparable VA hospitals. (Rachel Zimmerman, "Doctors' New Tool to Fight Lawsuits: Saying 'I'm Sorry,'" *Wall Street Journal*, May 18, 2004, pages A1 and A14.) To protect doctors from having an apology used against them in a later lawsuit, at least two states—

Colorado and Oregon—"have passed laws specifically saying an apology can't be used against a doctor in court."

But not just any mumbled "I'm sorry" will convey your intended message and be heard in the way you want it to be understood. While medical students and residents at some medical schools are now mandated to take "courses in communicating errors and apologies," most parties to a mediation will have to rely on their own best instincts to fashion an effective apology. Mediators need to consider what role they have in supporting such an important communications tool.

Mediators can both help a person frame an apology that conveys what the speaker intends and ensure that the receiver is aware of the opportunity to receive the message. Usually an apology bursts forth spontaneously, but there also might be opportunities in separate meetings to engage in a "what if" discussion or help the party think through the message he wants to convey. When an apology is offered, the mediator needs to observe the response without inserting any sort of "did you hear that" remarks or forcing the recipient's response. If the apology misses the mark, the mediator might help the parties review and clarify the verbal exchange. Information compiled by the US Postal Service's EEOC mediation program shows

agreement from both complainants and supervisors that complainants receive an apology about 30 percent of the time. But there is apparently some miscommunication when complainants apologize. Whereas complainants report that they apologize 23 percent of the time, supervisors report hearing those apologies in only 16 percent of the cases. (L. Bingham, "Employment Dispute Resolution: The Case for Mediation," *Conflict Resolution Quarterly*, Vol. 22, Nos. 1-2, 2004, p. 158.)

The keys to a good apology are authenticity, acceptance of responsibility and recognition of the hurt suffered by the other person. While an apology can go a long way to healing the conflict between two people, there may still need some tangible compensation or actions to fully resolve the issues.

If you are interested in delving into this topic, plan to join a workshop on the "Value of Apology in Mediation and Restorative Justice Processes" at the PCM conference in May. Cheryl Cutrona, Esq., Director of the Good Shepherd Mediation Program, will look at some of the pros and cons behind apologies and what role the mediator should play in creating an opportunity for apologies.

A Note On Mixing Transformative and Facilitative Practice

by Joseph Folger, Professor, Adult and Organizational Development, Temple University, Philadelphia

(This article is a response to a discussion that appeared in the last newsletter about mixing elements from both transformative and other mediation models during a single mediation.)

Over the years, I have consulted with a wide range of teams and work groups that wanted to adopt a consensus decision-making process. I frequently help the members of such groups examine their underlying assumptions to gauge whether they are able to make the kind of commitment needed to work within a consensus process. Many groups find it difficult or impossible to commit to the assumptions of a true consensus decision-making process. What I frequently hear is something along the following lines: "We definitely want to start by following a consensus process, but if we get stuck and can't reach consensus, we will rely on majority vote."

When I hear such a comment, I feel the need to explain that adopting this type of practice is a definite choice the group could make—a choice that may work well for them in a number of ways. But it also means that the group will not be following consensus and reaping the unique benefits of the process. Consensus means that it is precisely the points at which consensus is difficult to reach that the group asserts its true commitment to a process which tries to reach decisions that everyone can live with. The possibility of turning to a vote negates the commitment to building united judgment. It is in the "crunch times"—the times people strongly disagree and

solutions are difficult to find—that makes a commitment to consensus so powerful. It is the commitment to not vote that makes consensus unique—it is what distinguishes it from traditional adversarial decision-making processes.

Attempting to mix models of mediation practice that stem from very different ideological commitments is, in a fundamental sense, like trying to switch between consensus and voting in a decision-making process. It can be done, and it may be done for "good" reasons, but it inevitably negates the commitments of one form of practice.

If a mediator is committed to the transformative framework, he or she remains committed to proactively following the parties throughout the process—allowing parties to say what they want to say and to make the decisions they want to make at their own pace. This is because a transformative mediator's interest is in supporting the parties in their efforts to transform their conflict interaction. This is the focus and objective of the mediator's practice commitments. This approach to practice often takes enormous patience and skill in working with the treacheries of people's conflict interaction. It requires persistently supporting people as they work through frustration and the struggle with whether and how they will address difficult, emotional issues.

In most difficult mediation sessions, there are always points at which the mediator might think "It would really help this conflict be more productive, if one of the parties would only say or do 'X'." But if a mediator intervenes in a way that "gets" a party to say or do something that the parties are reluctant or unwilling to do, the mediator turns the parties' conflict interaction in the way he or she wants it to go. Even if the mediator accomplishes this through a series of open-ended questions or a subtle topic shift (then returns to following the parties and supporting empowerment and recognition from that point on), the direction and focus of the conflict has been defined by the mediator. The mediator had an idea of what should happen and then influenced the interaction to help make it occur. The focus on parties' interaction has been supplanted by a mediator's agenda for solution or outcome.

Practice decisions that lead or influence parties at critical junctures contribute positively to facilitative, problem-solving interventions in that they often contain the parties' conflict interaction and turn the parties toward a desirable place or outcome. But these practices negate the commitment to transformative practice. Just as it is impossible to be truly committed to consensus but rely on voting at key decision-making points, it is

impossible to be committed to not leading the parties but then be directive and leading when the going gets tough, or when the mediator thinks he or she knows what should happen to get things where they need to go. There is a

logical disconnect here because the approaches to practice are, at base, ideologically incompatible.

It may be worth noting that what is similar about consensus decision-making and

transformative practice is that in each, the commitment is to the quality of the interaction among the people involved. Outcomes flow from, and are the product of, this commitment to the quality of human interaction.

Trainings and Events

Family Mediators' Study Group Meetings

4:30 to 8:00 pm

Thursdays, February 24, May 12, September 22, December 1, 2005

Sponsored by the Montgomery County Mediation Center

Cost: \$50 (includes dinner)

Location: Montgomery County Mediation Center, Norristown, PA

Contact: Sheryl Richman at 610-277-8909 or email mcmcpeace@aol.com.

Basic Mediation Training

March 4–6

Sponsored by the Lancaster Mediation Center

For more information: 717-293-7231

Divorce & Custody Mediation Training: A Transformative Approach

March 9–13, 8:30 AM to 5:30 PM daily (40 hours of content)

Sponsored by the Montgomery County Mediation Center

This intensive five-day workshop focuses on the perspective and skills needed to begin working successfully as a family mediator. The workshop format will combine lecture, group discussion, and guided practice in role-play situations. Location: Fellowship Farms, Pottstown, PA

Cost: \$1,125

Credits: 35 substantive & 2 ethics CLE credits – add \$100; 37 PA Social Work credits – add \$10

Contact: Sheryl Richman at 610-277-8909 or email mcmcpeace@aol.com.

Representing Your Client in Mediation

April 1, 9:00 AM to 4:30 PM

Sponsored by Good Shepherd Mediation Program

Designed for attorneys who represent clients in mediation and other collaborative problem-solving processes. Cost: \$200 (includes 5 substantive and 1 ethics CLE credits)

For more information: 215-843-5413

Conflict Coaching: Helping Disputants Prepare to Address Conflict Constructively

April 6 & 13, 6:00 to 9:00 PM

Sponsored by Good Shepherd Mediation Program

Conflict resolution coaching is a conflict assessment process and planning process involving a neutral coach and a person experiencing conflict. Conflict coaches can help disputants prepare mentally and emotionally to approach the other person involved in the conflict and develop a plan for how to address the situation constructively. It can also be used when the responding party declines to mediate or when a person in a conflict is unsure who to approach the other disputant.

Cost: \$150

Credits: 6 substantive CLE credits – add \$50.

For more information: 215-843-5413

Basic Mediation

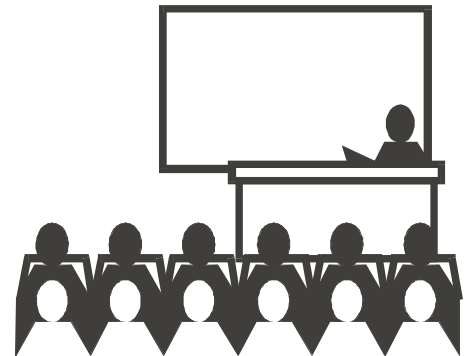
April 6–8, 8:30 AM to 5:30 PM

Sponsored by Center for Resolutions Introductory training designed for anyone interested in conflict resolution skills.

Location: Italian Social Club, 430 Hannum Street, West Chester

Cost: \$375 before March 8; \$450 thereafter

Credits: 21 substantive & 1 ethics CLE credits – add \$75; PA Social Work credits – add \$15; Act 48 credits – add \$15.



Mediating Disability-Related Disputes

April 21–22, 9:00 AM to 5:00 PM

Sponsored by Good Shepherd Mediation Program

Interactive training for experienced mediators dealing with disability disputes under the Americans with Disabilities Act (ADA) regarding employment and public accommodation. Follows the recommended curriculum from the "ADA Mediation Guidelines" and will result in a certificate of completion.

Cost: \$300

Credits: 13 substantive & 1 ethics CLE credits – add \$50.

For more information: 215-843-5413

Basic Mediation Training

June 13–15, 8:30 AM to 5:30 PM daily

Location: Montgomery County; specific location TBA

PA C.L.E. credits and PA Social Work C.E.C.s available.

Sponsored by the Montgomery County Mediation Center

Contact: Sheryl Richman at 610-277-8909 or email mcmcpeace@aol.com.

Documenting Our Past, Envisioning Our Future

by Phoebe Sheftel

Even a baby quickly creates a history—witness the bulging photos albums that document every important, and maybe not so important, development. Sharing those photos and recounting amusing anecdotes helps the parents and grandparents convince willing listeners that this is one special baby. But as the years go on, colleges want a little more objective proof that this purported prodigy is really worth admitting to their institution. In much the same way, early “parents” of dispute resolution relied on anecdotes and scattered studies to sell mediation to policy makers. For a long time it was received wisdom that mediation not only saved time and money, but also yielded resolutions that were more satisfying because they were created by the parties, not imposed by an outsider. Now that mediation has established itself as a credible and viable option for dealing with conflict, it is time to develop some more comprehensive measures of effectiveness and use this information to refine the mediation models and services.

The latest edition of *Conflict Resolution Quarterly* (Vol. 22, No. 1-2, 2004), a publication of the Association for Conflict Resolution, lays the groundwork for just such a task. It presents a comprehensive assessment of past accomplishments and suggests some future directions in seven areas of dispute resolution: family, civil cases in court-connected programs, community,

employment, environmental, education and victim-offender. The review was funded by the William and Flora Hewlett Foundation, which is turning its funding support toward new areas after almost twenty years as a friend and builder of the dispute resolution field. [Note: In view of this newsletter’s rather informal nature, citations to this publication give only the page number, omitting the full citation to the author and title of the individual paper.]

Most PCM members probably don’t have the resources to embark on a large research project, but many centers and small-scale practitioners engage in some type of self-assessment as a tool to understand and improve services. The review articles suggest a number of factors deserving of research scrutiny that also present opportunities for individuals and centers to incorporate into their assessment thinking.

Measure of Success—Old Standards

The standard measures of effectiveness have been applied to the outcome (settlement rate), the process (participant satisfaction) and costs (both time and financial). With the development of new models of mediation (e.g., transformative), some people now question whether the presence of a written or oral agreement at the conclusion of the mediation session is actually a true indicator that the parties’ desired result was

achieved. Questioning parties on their level of satisfaction at only one point can also skew how they respond (a positive feeling immediately at the conclusion of a session can easily be reversed if the other party hurls a few choice words at the person in the parking lot or fails to follow through on promised actions). Cost savings as a selling point is now usually acknowledged to have lost validity. Measuring costs needs to acknowledge the true character of the factors subject to analysis. Claiming reduced financial costs because a mediation is conducted by volunteer mediators at a non-profit center as compared to attorneys collecting a standard professional fee for litigation might not represent a useful claim. Certainly participants in mediated regulatory negotiations recognize that while the process might save the agency money, it is often quite an expensive process for participants who represent a small non-profit operating on a shoestring. While it has been well documented that mediations can be conducted within a much shorter time frame than litigation, an unsuccessful mediation that then requires litigation only adds to the time costs. So alleging time savings up front is based on a guess about the outcome.

These measures tend to focus on the immediately tangible results of the process, with emphasis on the mediation session itself. This made sense when the early goals were targeted at a specific point of

conflict and aimed to repair the resulting breakdown. Increasingly mediators have come to view the process as extending from even before the parties present themselves to long after the mediation session is over. It is also possible that the process can affect other people who did not directly participate in the mediation. Expectations have grown from a hoped for impact on a specific situation to a desire to effect a broader transformation of social norms in communications and conflicts.

Identifying New Measures

This more expanded set of goals requires new and innovative ways of measuring the effectiveness of the applied processes, skills and tools. The articles in the Conflict Resolution Quarterly suggest some new factors that might answer these questions about what really works and why. But before posing the questions, it might be worthwhile to ask who should decide on the measures of effectiveness? Funders of mediation programs want to know their money is well spent, referral sources want to know they are sending people to the right resources, mediation providers want to know they are doing the best job possible, mediators are interested in improving their skills, academics need information to develop innovative models, users want to know how to make the right choices in navigating the mediation world, and society wants to know how it benefits from the mediation process. So the first question would seem to be – who should have the power to create the measures of effectiveness? For

the questions you ask will certainly shape the story you tell.

Getting to the Table

It is increasingly clear that what happens before the mediation can greatly affect the outcome and perception of the mediation. We should be working toward the day when mediators do not have to start off the session explaining the process. By then it's too late. Educating the public about the goals and benefits of mediation will go a long way toward shaping perceptions of its appropriateness and effectiveness for a particular conflict. When people feel they have the knowledge and power to make that initial decision—is mediation right for this case—they will become partners in advancing the field's effectiveness. National organizations, state offices of mediation, centers and individual providers have a role in this education process, but research shows that “the most powerful influence toward referring cases is word-of-mouth recommendations.” (109)

The field is still young enough and growing at a fast enough rate to heighten the tendency for mediators to want to encourage as many people as possible to try mediation. But careful screening is reported to play a strong role in delivering a successful outcome. Some situations may actually be exacerbated by going through the mediation process when there is a complexity of other issues beyond the focus of the mediation, such as in custody and divorce cases. (42) And it occasionally becomes apparent in environmental disputes that the parties decide they have a benefit in maintaining or even

escalating the conflict to gain the upper hand in the court of public opinion.

People are not only steered toward mediation when providers fail to use a good triage process, but some programs mandate participation either by the complainant or both parties. While coercion increases attendance, volition seems the key to successful outcomes. (115) Since most evidence points to the participants' sense of satisfaction as being tied to less tangible aspects of the mediation process over achieving agreements, it seems to make sense to promote that sense of empowerment at the earliest contact with the system. Interesting, participants in VOM mediations, which often have an extensive preparation period, usually give the preparation stage their highest marks for satisfaction. (285)

Mediators and Models

Whereas community mediators are rated as the most highly trained (117), it seems that neither training nor subject-matter expertise is directly linked to settlement rates. The most important factor appears to be the experience level of the mediator. (69) Furthermore, the type of mediator—whether volunteer layperson, attorney or court staff—does not affect the outcome. (60) Participants in agency-based mediations (e.g., the EPA and US Postal Service) have stated a strong preference for outside mediators. (165 and 208) Mediation organizations and providers need to acknowledge the

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Documenting Our Past, Envisioning Our Future (continued)

differences between the typical mediator profile (white, female and middle class) and their clients, especially in light of minority disputants' statements that the race of the mediator makes a difference. (164)

One surprising result of previous research on civil cases suggests that, contrary to many mediation models, "settlement was more likely if the mediators were more active and disclosed their views about the strengths and weaknesses of the case...or likely court outcome than if they did not." Further, "litigants were more likely to feel the mediation process was fair and did not feel more pressured to settle when the mediators evaluated the case merits than when they did not." Only when the mediator went to the "extent of making particular recommendations," did it produce a negative response from participants. (69) More research on the variety of models—facilitative, transformative, evaluative, etc.—will shed light on their relative benefits and deficiencies.

At the Table

Three particular aspects of the mediation session suggest interesting ways of measuring effectiveness: participation of support persons, length of the session and the inclusion of apologies. (The latter is discussed in *Conflict Usually Means Having to Say You're Sorry*, above on page 3.) The presence of a support person—attorney, union representative, family member or friend—seems to have a positive effect on the outcome. (162) To

enhance the value of their participation all parties need to be in agreement on the support person's role both in the session as well as during the preparation period.

Not much attention has been paid to the effect of the length of the mediation session on either the outcome or the participants' sense of satisfaction. Some programs offer disputants an open-ended option—in other words, as much time as it takes or until someone decides to stop the mediation. Court-based mediation programs, however, tend to impose a very tightly constrained time limit. In some cases the financial or time costs for participating can determine the disputant's view of an appropriate length of time. So what is right? Does an unlimited time encourage people to wander unproductively through a litany of non-specific complaints or does it provide a valuable forum for exploring all the germane issues? Does a constrained time help people focus on the key issues or does it waste time by cutting people off before they have an opportunity to be heard? It would be interesting to compare how effectively people use the mediation session when they know in advance that it will only last certain time or if they believe they have unlimited time.

Outcome

Measuring the effectiveness of the outcome first means defining what the desired outcome should include—a settlement (monetary or otherwise), substantive justice, information to better understand

the situation, a change in the relationship between the parties, and/or benefits to a wider circle of people who have not directly participated in the mediation? Here we pose a couple of fundamental questions about measuring effectiveness: Who should determine the appropriate measures—the direct participants in the conflict, the sponsoring agency/company/organization, the referral source, or the larger society? And when do you know you've got the more accurate answer about participant satisfaction—right after the mediation session or at some later point?

Creative settlements, which often incorporate unique non-monetary elements, may be one indicator of the participants' greater success in controlling the mediation process than they experience in litigation. But the referral source or sponsoring agency/company might be more interested in substantive justice or broader impacts to their organization or society. Substantive justice may provide a more objective measure of a successful outcome than the participants' subjective feelings at an arbitrary moment in time. The preference for such an objective measure may be further supported by the unsettling discovery that minority claimants in civil case mediations who got lower monetary awards than their white counterparts still expressed greater satisfaction with the process. (94) One suspects this might reflect more a case of culturally conditioned, lowered expectations than real benefits from mediation.

Many times the mediation itself may be only one element of a complex process, particularly in environmental cases. Even absent a written settlement, the mediation process can provide a valuable opportunity to gain better understanding, share interests and improve relationships that pay off in the long run. It's also important to recognize that the results of environmental conflict resolution processes can exert difficult to measure impacts on complex ecological systems. (214) Organizations using mediation to resolve employment disputes want to know how the outcome will impact more long-range goals, like employee recruitment, retention and performance, as well as productivity and profits. A tangential, but nevertheless important, downstream effect of dispute resolution processes is showing up in federal and state agencies where the "underlying principles of the field are now being drawn on...to overhaul internal management practices and reform individual programmatic performance measures." (221)

Participant Satisfaction

From the very beginning it seemed obvious that a key measure of effectiveness was the level of participant satisfaction. Many large research projects, like the US Postal Service's database of surveys from over 180,000 EEOC mediations, document a consistently high level of satisfaction. But it is important to hear what the participants are actually saying that satisfied them. They are less likely to refer to any agreement or restitution, and more likely to describe their experience

of fairness, respect, opportunity to be heard and sense of control over the process. Participants in victim-offender mediations consistently state that restitution pales in comparison to "the opportunity to talk directly with the offender about how he or she felt about the crime." (280) Because of the strong emphasis put on preparation, especially in VOM cases involving victims of violent crime, it almost seems as though the real mediation work happens during the prep period and that the face-to-face encounter might be viewed more as implementing the "agreement."

Frequently parties to environmental mediations, such as representatives of nonprofit groups like the Sierra Club, are repeat players in multiple disputes. They report an appreciation for developing negotiation skills and improvements in relations with parties they are likely to face again in future conflicted situations. (250) Interestingly, while the presence of a support person appears to improve the settlement rate, as noted above, it is the

"unrepresented or self-represented disputants [who] reported higher satisfaction with their opportunity to present their side of the dispute and level of participation." (163) And even litigants who end up going to trial still express a strong preference to use mediation in the future. (58) One researcher has, however, expressed a note of caution in relying on participants' expressions of satisfaction, since it has been observed "that disputants who might misuse mediation to harm other parties could find the process quite satisfactory." (199)

While settlement rate and participant satisfaction appear to remain promising indicators of the benefits of mediation, they deserve a more refined and expanded definition. As far as touting the benefits of cost and time savings, it appears that the consensus is they are either too hard to nail down or, in reality, negative indicators. Future research will help the field broaden the range of indicators for the benefits of mediation and techniques that mediators and programs can incorporate to improve their services.

Mediation Certification Survey

The Association for Conflict Resolution and the American Bar Association are jointly conducting a survey to explore the potential feasibility of a proposed new national certification program for mediators. Every one with an interest in this idea is urged to fill out the survey, whether or not you are a member of either of these organizations. The survey is at <http://www.zoomerang.com/survey.zgi?p=WEB2243RLWV8U9>. It is confidential and only takes a few minutes to complete. More information on the ACR Task Force on Mediator Certification can be found at www.acrnet.org/about/taskforces/certification.htm.

Med Mal Mediations: Lessons from a First Year

Beginning in late 2003, with the urging of Governor Rendell, members of Pennsylvania's judiciary began work on innovative ways to tackle the health care crisis. Under the leadership of Chief Justice Ralph Cappy and Justice William Lamb, attorney mediators developed a pilot program to handle medical malpractice cases. A recent article by Carl Oxholm III—"Med Mal Mediations in Philadelphia: Report on Drexel Med's First Year" in *Arbitration & Mediation* (Vol. 10, No. 1), the newsletter of the PBA ADR Committee, traces the initial constraints, experiences and lessons learned. Because this is a first step in what PCM hopes will lead to a more comprehensive statewide effort to promote and support mediation and other forms of dispute resolution, it seems worthwhile to summarize the highlights from this review of the first year of the Med-Mal program.

The Drexel University College of Medicine (Drexel Med) decided to adopt the mediation model created by the Rush-St. Luke's-Presbyterian Medical Center in Chicago. Because Drexel Med operates with a number of independent components, for a case to proceed to mediation there had to be agreement among the hospital owners, the med mal insurers, all service providers named in the lawsuit, the plaintiffs and their counsel, and the Philadelphia Court of Common Pleas. Hovering over the process was a cloud of anxieties about the risk potential of

exposing any information about errors in care that might have occurred. But over-riding these roadblocks were the plaintiffs' often intense desire to overcome the frustrations and anger that had built up after many months of silence from the one source who could give them information about what happened to them or someone they cared about. As the wife of a man who died after a misdiagnosis led to a six-month delay in treatment has said, "I cannot think of any other industry where honesty is optional." (Rachel Zimmerman "Doctors' New Tool to Fight Lawsuits: Apology," *Wall Street Journal*, May 18, 2004, page A14.)

Only attorneys with med mal expertise get trained as the mediators. The attorneys for the parties can submit pre-mediation materials to the mediators, but once they come to the mediation they are prohibited from speaking with each other. Confidentiality is a cornerstone principle of the mediation. The mediation process takes anywhere from a few short phone calls to meetings over a two-week period. Most required several days.

During the first twelve months of the program 23 cases were approved for mediation. Four cases are still awaiting full consent to mediate, four are in a pre-mediation discovery stage, and in three instances mediation was rejected (all three cases resulted in jury verdicts for the defense). The

result so far show a 39% yield rate of cases that went to mediation (or 52%, if you include the cases that agreed to mediation but settled before the scheduled mediation was actually held). If you consider settlement a marker of success, then of the 12 cases that consented to mediation, there was a success rate of 33% directly attributable to mediation, plus a positive result in 58% of the cases that may be directly or indirectly attributable to the effect of an actual or pending mediation (i.e., they settled before or after the requested mediation was held), and an 8% failure rate where the case went to litigation.

If you believe cost savings in settlements are a more accurate gauge of success, the evidence is less precise. The general assessment is that the monetary results were "reasonable," although it is easy to second-guess what litigation might have produced. Time costs preparing for mediation were less than they would have been for a trial. But if an unsuccessful mediation leads to a trial, costs would be higher in the end. However, the benefits that are hardest to quantify may be exactly what the parties are seeking—a chance to get information, offer an apology and extend forgiveness.



PCM 2005 Board Members

Seated: Valerie Faden, Brenda Wolfer, Cindy Lehman, Grace D'Alo

Standing: Cheryl Cutrona, Jill Friedman, Mark Taffera, Phoebe Sheftel, Barbara Foxman, Gale McGloin

Missing: Richard Conrad, Kim Lavin and Bonnie Millmore

New PCM Members

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Contributing to the Newsletter

The Pennsylvania Council of Mediators publishes its Report for Members and Friends. We are able to share information about current issues in mediation across the state of Pennsylvania and the United States. We welcome your input and ideas! Please send training information, program highlights, educational articles, book reviews, or any other information useful to our readers. Submissions will be printed as time and space allow. Send submissions to:

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PCM 18th Annual Conference

Cultivating Mediation Skills

May 20 & 21, 2005

Location: Mennonite Central Committee, Akron, PA

Host: Lancaster Mediation Center

Watch for the brochure coming out next month

Save the Date

VOMA Conference • October 24-28, 2005

Philadelphia Holiday Inn

For information, contact:

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