



PENNSYLVANIA
COUNCIL OF MEDIATORS

Report For Members and Friends

Winter 2007

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**ADR Advisory Committee
Appointed**

On December 12, 2006, the Joint State Government Commission announced the make up of the Advisory Committee on Alternative Dispute Resolution. The group will assist the Commission's legislative Task Force on Alternative Dispute Resolution. The study of the state of alternative dispute resolution in Pennsylvania was authorized by Senate Resolution 160 enacted in 2005.

The Advisory Committee consists of 52 people from across the state with a wide range of experience in mediation, arbitration and other forms of dispute resolution. Their areas of expertise include community, business, labor, family, health, victim-offender, and employment disputes. They work in community centers, private practice, law firms, health care settings, academic institutions, courts and government agencies.

The Committee will be chaired by Ann L. Begler, Esq., of the Begler Group in Pittsburgh, and the Vice Chair is Winnie Backlund, Director of Mediation and Training at the Montgomery County Mediation Center. Both are members of PCM.

Other PCM members are also participating on the Advisory Committee: Robert Ackerman, Karolyn Vreeland Blume, Ed Blumstein, David Breen, Cheryl Cutrona, Grace D'Alo, Valerie Faden, Barbara Foxman, Deborah Gaber, Greyfred Gray, Jerome Jackson, William Jacobsen, Cynthia Lehman, James Lynch, Barbara Lyons, Gale McGloin, Herbert Nurick, James Rosenstein, Phoebe Sheftel, and Jon Singer.

The Advisory Committee holds its first meeting on February 1, 2007. Its work is likely to take a number of months. The goal is to identify best practices in ADR and develop a plan to encourage the public's understanding and use of ADR services. Check the PCM web site for updates on the Advisory Committee's work.

Welcome to New PCM Members

Dr. Sharon L. Barley
Washington Boro, PA

Divorce Done Right, Inc.
Jonathan Ostroff
Plymouth Meeting, PA

Michael Edelstein , M.A.
Monroeville, PA

Nancy B. Everett
Lewisburg, PA

Joseph Folger
Collingswood, NJ

Laurie Lisman
Wilkes-Barre, PA

Anne Morris
Wilkes-Barre, PA

Rosalyn Pierce
RP Vocational Rehabilitation, LLC
Philadelphia, PA

John W. Ross
Pittsburgh, PA

Karen J. Sondheimer
Dillsburg, PA

Two Rivers Mediation
Max Rivers
Philadelphia, PA

Okima Williams-Amaya
Philadelphia, PA

Roberta Wisotzkey
York, PA

Stanley Winikoff
Winikoff Associates
Pittsburgh, PA

PCM Conference: The Spirit of Collaboration

Save the Date: April 13–14

Location: Harrisburg—Wyndham Gardens Hotel

Co-Sponsored by ACR-Greater Delaware Valley Chapter, Pennsylvania Bar Association-Alternative Dispute Resolution Committee, and Mediation Council of Western PA.

Hosts: Neighborhood Dispute Settlement, Harrisburg, PA

Pre-Conference (April 13): *Mediators as Negotiation Coach*, presented by Jenny Beer of JB Intercultural Consulting

As a mediator, one of your roles is as a “negotiation coach.” The workshop will cover the negotiation fundamentals you can use to guide disputing parties to be better prepared and more effective at the mediation table.

Topics will include

- preparing parties before a session
- encouraging inquiry rather than accusation and persuasion
- testing boundaries of agreement
- tangible and intangible elements
- managing information exchange
- trade-offs and packages
- designing process around relative importance of relationship/practical outcomes

Conference.

Friday Night (April 13): The MVP (Most Valuable Peacemaker) Award will be presented to seven key people who helped get Act 160 passed in the legislature: Bob Ackerman, Ann Begler, Grace D’Alo, David Harwi, Gale McGloin, Jim Rosenstein and Mark Welge (dec.).

Presentation by David Hostetter, Executive Director, Joint State Government Commission

Saturday (April 14): Workshop sessions

Watch for the conference brochure in mid-February.

Corrections

When the 2006-2007 PCM Directory was printed, Constance Brunt was inadvertently omitted from the list of practitioners in the South Central area of the state. Constance is based in Harrisburg and practices in the areas of Elder Issues and Family/Divorce/Custody.

In the last newsletter, we welcomed as a new member The Mediation Group located in Bloomsburg, PA. They have changed their name to The Mediation Team at Bloomsburg University of Pennsylvania.

Conflict Resolution Day Celebrated Statewide

Several mediation centers have adopted the celebration of Conflict Resolution Day (the third Thursday in October) as a way to promote awareness of resources for dealing with all manner of disputes.

This year the Good Shepherd Mediation Program set up an information center on the plaza of City Hall. They distributed a consumer's guide to mediation, which was eagerly snatched up by people passing by. State Rep Dwight Evans, pictured here with Executive Director Cheryl Cutrona, was among the visitors.



In Dauphin County, Neighborhood Dispute Settlement went to the Strawberry Square Mall to distribute information and let people know about resources in the Harrisburg area. They were instrumental in getting Mayor Stephen Reed of Harrisburg to provide a proclamation recognizing Oct. 19 as Conflict Resolution Day. The Dauphin County Commissioners issued a proclamation in support of the work of the Association for Conflict Resolution and community efforts to "bring about a more cohesive, peaceful society" and the Dauphin County Bar Association sponsored a free program on "Practical Dispute Resolution" at the Hilton Harrisburg Hotel

Governor Rendell also issued a proclamation declaring October 19 to be Conflict Resolution Day across the Commonwealth.

In 2007, Conflict Resolution Day falls on Oct. 18. Check out the ACR web site for ideas on how you or your organization can highlight the day in your area. <http://www.acrnet.org/crday/ideas.htm>

Winnie Backlund Honored

Montgomery County Mediation Center recently celebrated its 20th Anniversary and honored Winnie Backlund, Director of Mediation and Training. PA Senator Stuart Greenleaf and Representative Kate Harper joined in presenting Winnie with a citation, honoring her for 20 years of service to the center.

Winnie is a practicing mediator, trainer and consultant who has mediated over one thousand cases since beginning as a volunteer for MCMC and often serves as a spokesperson for advancing the field of mediation at the local, statewide, and national levels. In addition to her work for MCMC, Ms. Backlund is also a private mediator with the newly formed mediation group "Divorce Done Right."



Winnie Backlund, Sen. Stuart Greenleaf, Rep. Kate Harper (Mont.)

Pittsburgh Mediation Center In The News

What more could a lawyer, studying for a divinity degree, learn about helping people by taking a mediation training? The answer seems to have been "plenty," judging by a recent article in *Today's Attorney*, a publication of The Allegheny County Bar Association. A litigator for over 23 years, Jeff Tindall thought he already knew what he needed with his pastoral training to bring conflict resolution to church settings. Then he took mediation training offered by the Pittsburgh Mediation Center and he discovered what he didn't know about how to resolve differences, as opposed to settling cases.

The first eye-opener was hearing that the goal of mediation is to help "the parties create their own solutions and make decisions about how to talk to each other and maybe even help to create the process." As a lawyer used to playing an active role in negotiations that kept the parties at arms-length and certainly not engaging each other directly, he immediately began to wonder about the function of the mediator. Learning about the variety of mediation models—evaluative, transactional and transformative—he came to appreciate the specific strategies and skills that differentiate a mediator from other professionals like lawyers and clergy.

This personal experience illustrates one of the challenges to the field of mediation: helping the public understand the unique skills and training that distinguish mediators from other professionals who might play a role in resolving various disputes.

Defining Mediation Along a Continuum of Strategies

(Based on The Maryland Program for Mediator Excellence: Mediation Styles in Maryland, a handout distributed at a session at the ACR Conference, Philadelphia, Oct. 26, 2006. Quotations cited are from this document.)

Clarifying issues is usually a critical step in mediation. Hearing people explain their understanding of events and motives often reveals to the mediator how much people believe they are talking about the same thing, but are actually coming at it with very different definitions of key words. Switch the setting to a group of mediators together to talk about mediation and sometimes you might find yourself wondering if they are discussing the same thing. They each appear to have a different definition of mediator in mind. One talks about how they offer suggestions to get parties unstuck. Another mentally recoils at what they feel is a mis-understanding of a basic premise of mediation—mediator neutrality. Is one person “wrong” and the other “right”? Or are they each describing points on a valid continuum of mediation strategies? At a session during this year’s ACR conference, staff from Maryland MACRO, the state dispute resolution office under the Judiciary, presented the results of a statewide survey of strategies mediators report that they used to develop a quality assistance system called the *Maryland Program for Mediator Excellence*.

The study showed mediators operating on a continuum of strategies, starting from a core of common strategies.

Common Core Strategies Shared by Most Mediators

- Give a process overview at the beginning of the mediation; but allow the process to change as needed.

- State “the goal is to discuss the issues and to see if the participants can come to an agreement.”
- Mention the possibility of caucus.
- Encourage brainstorming to develop options and use questions to determine underlying values or interests.
- Respond in some way to long shouting matches, rather than ignore them.
- If an agreement seems unfair, use questions to reveal the parties’ overall impression of the agreement.

High Strategy Mediators

Mediators in this cluster tend to be more structured in their approach and actively manage the process to keep the participants in mediation and to reach agreement. They determine the order of issues to discuss and many suggest new issues for the parties to consider. Either in response to a request for advice or on her own, “the mediator would be likely to provide information and ideas in order to help participants find a resolution.” If a session time is drawing to a close without an apparent agreement, the mediation would tend to note the time remaining and use this as a prompt to get the parties to come up with solution options.

Medium-High Strategy Mediators

Mediators in this cluster “put most emphasis on participants’ reaching an agreement.” The mediator tightly controls the process from the use of ground rules to deciding on the need for a caucus and guiding the parties

away from what the mediator believes to be unrelated topics. By actively interpreting or explaining parties’ statements or behaviors, the mediator may point out a possible reason for the conflict. If the parties appear stuck, the mediator might offer several suggestions, without pushing or advocating for any one approach. If the agreement contains a clause which the mediator believes might be illegal, he may question the origin of the proposal, but would be unlikely to point out its illegality. Medium-High Strategy mediators are less likely than High Strategy Mediators to try persuasive tactics to keep people in mediation.

Moderate-Low Strategy Mediators

These mediators emphasize the opportunity for meaningful discussion rather than the goal of reaching an agreement. They tend to ask questions to help the participants understand the events or reasons behind each other’s actions in the past. Mediators in this cluster avoid any role in generating suggestions for a resolution, but use caucuses more purposefully than Low Strategy Mediators.

Low Strategy Mediators

Low Strategy mediators “put most emphasis on participants’ controlling the process,” with reaching agreement a distant secondary goal. As a result, they are unlikely to use ground rules. Although they try to focus the parties on one topic at a time, they allow them to discuss seemingly unrelated issues. They avoid any suggestions and refrain from trying to explain one person’s behavior to the other.

Mark A. Welge Dedicated Proponent of Mediation

On January 9, the conflict resolution field lost one of its leaders and all-around nice guys when Mark Welge succumbed to liver cancer. Listing Mark's accomplishments, which were many and important, doesn't adequately capture his personal qualities that made him so effective as a lawyer (for 27 years), subsequently as a mediator or arbitrator of over 1,000 commercial and personal injury disputes, and always as a leader who led by example. Mark was also an effective teacher, trainer and mentor of prospective neutrals and of lawyers representing clients in mediation and arbitration.

It quickly became obvious to anyone who came into contact with Mark that he cared deeply about others and one couldn't help but become his friend. As expressed by one of Mark's colleagues, Ann Begler, at his funeral, "His ability to welcome, to open, to be transparent, to be kind, to receive whatever the other person had to offer, his genuine ability to just connect and be engaged – those things took him immediately into my heart and, I know, into the hearts of many of you."

Mark's leadership responsibilities in the conflict resolution field during the last few years included serving as:

- Co-chair of the Philadelphia Bar Association's Alternative Dispute Resolution Committee
- Co-chair of the Pennsylvania Bar Association's Alternative Dispute Resolution Committee

- Member of the founding Board of Directors and second President of the Greater Delaware Valley Chapter of the Association for Conflict Resolution (ACR)
- Tri-Chair of the Planning Committee for ACR's 2006 Annual Conference
- Fellow of the International Academy of Mediators
- A leader in the effort to promote conflict resolution in Pennsylvania that culminated in the Pennsylvania General Assembly's establishing an Advisory Committee on Alternative Dispute Resolution, to which he was appointed.

In the words of Ann Begler, "Mark's graciousness and generosity were inspirational. He never promoted Mark, only... mediation... You know, to really be a good mediator our task is to help people who are in pain, or are lost, who are confused, to expand their own capacities to hold more than one view, to stretch to allow space for multiple realities to exist. It's not possible to support our clients to do this if we can't do it for ourselves. Mark's capacity to do this—to honestly walk the walk—was remarkable.... Mark was a peacemaker. It was the walk he walked. It was clear in all of our interactions, in all the ways he did his work.... Mark would be the last person to understand how profound his presence was and always will be. His ego was so incredibly understated. I am a better, clearer, more whole person because of



Mark. Because of Mark many of us are better people. Because of Mark and the way he lived, we will continue to be reminded that as human beings it is our nature to carry the light of the divine, to—if we can stay out of our own way—reach for what is good. With Mark's influence integrated within us, and his ongoing presence alive for us, we will each continue to have the strength and conviction to more often live the words that were Mark [in Hebrew]—*Anie Shalom—I am for peace.*"

The Greater Delaware Valley Chapter of ACR, to which Mark was so devoted and in which he found many of his collegial friends, wants to memorialize Mark's many unselfish contributions to the conflict resolutions field. Initially, this will take the form of a fund to help Mark's daughter, Caitlin, complete her college education (she is currently a sophomore). Contributions to the Mark A. Welge Memorial Fund should be made payable to ACR-GDV, identified as being for this purpose, and mailed to Phoebe Sheftel, Treasurer, 414 Barclay Road, Rosemont, PA 19010. The Chapter is also exploring how appropriately to perpetuate the values that Mark personified, and will be publicizing its plan in the near future.

First National Symposium on Ethical Standards for Elder Mediation

The *First National Symposium on Ethical Issues for Elder Mediation* will be held April 19-20, 2007, at Temple University's James E. Beasley School of Law. The Symposium will feature Harry R. Moody, Nancy Neveloff Dubler and Robert Baruch Bush, who will be joined by distinguished panelists from the fields of mediation, elder law, gerontology, bioethics, and geriatric healthcare in an effort to examine the ethical issues that arise during mediation involving older adults.

Elder mediation is a rapidly growing specialty of mediation practice and reflects the confluence of two trends: an increasing elder population and the growing appreciation of the value of mediation. With the development of elder mediation practice has emerged a set of issues particular to the aging population. The *First National Symposium on Ethical Standards for Elder Mediation* will bring together mediators and interested stakeholders from many disciplines within the aging services network to exchange ideas, share experience and work to define best practices and ethical standards. Products of the Symposium will include recommendations for standards of practice, the identification of topics for further examination and published articles in a scholarly journal.

The Symposium is part of a larger national effort to offer high quality mediation services to older adults, their families and service

providers. Many programs use older adult peer mediators to conduct intake, co-mediate and serve on advisory committees.

Although older adults may become involved in the same sorts of disputes as do adults of any age, there are conflicts which, by their nature, are experienced particularly in the lives of the elderly. These include: disagreements among family members over the appropriate caregiver and level of care for a parent in his or her own home; decisions around nursing home placement; financial and estate planning matters; the need for the appointment of a guardian and the selection of the guardian; and health care and end-of-life decision-making. Even in cases where the subject of a dispute is not specifically age-related, age may play a significant role in how well the older adult's voice is heard in the conflict.

The *First National Symposium on Ethical Issues for Elder Mediation* is an effort to address the special practice issues that arise

when working with the older population. What makes elder mediation different from other areas of practice is that it is often multi-party, multi-generational and multi-issue. When a physical or cognitive impairment impedes an older adult's participation in the process, mediators are working to find ways to accommodate the older person in order to use the process safely and effectively. It is imperative to examine how to prevent a vulnerable adult from becoming more vulnerable during the mediation process.

Planners of the Symposium include Montgomery County Mediation Center (MCMC), the Elderly Law Project of the Temple University James E. Beasley School of Law, and the Institute for the Study of Conflict Transformation, Inc.

For registration information, please contact Kathryn Mariani at (610) 277-8909 or eldermediation@verizon.net.

Pennsylvania SeniorLAW Center Helpline

If you encounter parties to a dispute who might benefit from legal information, direct them to the PA SeniorLAW Center, which offers a toll-free helpline telephone service that provides free and confidential legal information, advice and referrals to seniors in Pennsylvania. Anyone age 60 or older, regardless of income, can call 1-877-727-7529 (1-877-PA SR LAW) with a legal question, concern or problem.

The ADR Climate in Pennsylvania

Ben Pickert, Chair of the ADR Practice Group at Stradley Ronon Stevens & Young in Philadelphia, recently spoke to the Greater Delaware Valley Chapter of ACR about the state of alternative dispute resolution in Pennsylvania. On the upbeat side, he noted that, while many corporations and government agencies have embraced mediation, a skeptical climate persists in Pennsylvania that constrains the whole-hearted endorsement of ADR practices seen in other states like Florida and California. On the positive side is the movement by many companies to take control of legal costs and require lawyers to start with the presumption of ADR as the most efficient and effective way to resolve disputes. Nationally more than 4,000 operating companies, including 400 of the nation's 500 largest firms, have committed to the Corporate Policy Statement on Alternatives to Litigation© promoted by the International Institute for Conflict Prevention & Resolution (http://www.cpradr.org/CMS_disp.asp?page=CPR_PledgeIntro&M=11.1). This pledge says, "In the event of a business dispute between our company and another company which has made or will then make a similar statement, we are prepared to explore with that other party resolution of the dispute through negotiation or ADR techniques before pursuing full-scale litigation." In addition, many companies and agencies have already begun to realize the benefits of incorporating ADR into their systems for handling employee disputes.

So what stands in the way of a more whole-hearted endorsement of ADR? Pickert cited five stumbling blocks:

- The consumer still does not understand ADR—particularly the differences between mediation and arbitration.
- Some law firms remain resistant to ADR because they are looking at it with a bottom-line mentality: the longer the case, the more billable hours. Also, some litigators do not encourage their clients to use ADR because they see agreeing to mediation as tantamount to admitting weakness.
- In corporations that endorse ADR in principle, there may actually be only one person or a small group that champions the idea, while the rest of the culture is indifferent or negative toward the opportunities offered by mediation.
- The small business owner is often hesitant to commit to a process that seems new and less tested than litigation.
- Disputants whose experience of mediation is limited to courts and judges who claim to practice mediation without having taken mediation training and incorporated the principals ADR may get a distorted impression of what ADR has to offer and vow to avoid in the future.

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:

Phoebe Sheftel
414 Barclay Road
Rosemont, PA 19010
610-526-1802 (w/h)
800-645-6419 (f)
pasheftel@comcast.net

or

Brenda Wolfer
2 Settler Road
Glen Mills, PA 19342
610-566-7710 (w)
610-358-3052 (h)
610-566-7674 (f)
grendelbeatty@aol.com

Training Opportunities

Conflict Coaching Workshop

February 16 (9 am–5 pm)

An advanced training for mediators and conflict managers interested in learning how to use conflict resolution skills to “coach” people experiencing conflict when mediation or litigation is not the answer. Conflict coaches can help disputants prepare mentally and emotionally to approach the other person involved in the conflict as well as develop a plan to address the conflict situation constructively. Conflict Coaching can be used when the responding party declines the invitation to mediate or when a person experiencing interpersonal conflict seeks guidance on how to approach the other disputant. This workshop is ideal for mediators, attorneys, social workers, and others in the helping professions.

Sponsored by the Good Shepherd Mediation Program

Location: 5356 Chew Ave., Philadelphia
Cost: \$75 (\$100 with 7 sub PA CLE credits)

For information: 215-843-5413 (Jane Heil)

Conflict Resolution (pre-requisite for Mediation Training)

Feb. 17 & 24 (8:30 am–5 pm)

Sponsored by the Pittsburgh Mediation Center

Location: TBD

Cost: \$175

For information: 412-365-0400

Mediating Disability Related Disputes

March 1–2 (9 am–5 pm)

Sponsored by the Good Shepherd Mediation Program

Location: 5356 Chew Ave., Philadelphia
Cost: \$300 (\$350 with 13 sub/1 ethics PA CLE credits)

For information: 215-843-5413

Mediation Training

Eight Wed. evenings, starting March 7 (6–9 pm)

Sponsored by the Pittsburgh Mediation Center

Location: TBD

Cost: \$300

For information: 412-365-0400

Advanced Transformative Mediation Skills Intensive Training

March 8–9, 2007

Sponsored by the Montgomery County Mediation Center

Location: The Arc of Montgomery County, 3075 Ridge Pike, Eagleville, PA

For information: 610-277-8909 or mcmpeace@verizon.net

Basic Mediation

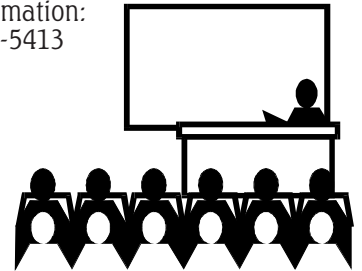
March 21–23 (9 am–5 pm)

July 18–20 (9 am–5 pm)

Sponsored by the Good Shepherd Mediation Program

Location: 5356 Chew Ave., Philadelphia
Cost: \$450 (\$500 with 18.5 sub/1 ethics PA CLE credits)

For information: 215-843-5413



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