



REPORT

For Members and Friends

Fall 2001

<http://www.libertynet.org/pcounmed>

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A Message from the President

By Gale McGloin

Greetings to all PCM members! I hope that this newsletter finds you well despite the traumatic events of September 11, 2001. I know that I echo the sentiments of many of our national conflict resolution organizations in expressing sympathy to the victims, their families and loved ones, as well as appreciation to the heroic rescue workers for their immediate response to the terrorist attacks. I encourage the Bush administration to exercise caution in its response to the terrorism. As mediation and conflict resolution practitioners in a multicultural world, we know how important it is to listen to the different points of view of others and look carefully at our own needs and interests before responding. I fully expect that those responsible will be held accountable for their actions. At the same time, I do not want to see the nation focused on acts of revenge and reprisals particularly if it results in violence against many of our friends and neighbors who are Arabs and Muslims. This is an opportunity for us to speak out in favor of dialogue whenever possible.

That said, I want to take this opportunity to offer a special welcome to all the new PCM members who have joined us as a result of our conference in May at Neumann College. I encourage you as well as our "veteran" members to feel free to contact me over the next year with your ideas for PCM. We are very excited about the strategic plan that we are developing and hope to share the finished product with you in the next issue of the newsletter. More important than the finished document however, was the opportunity to meet with many of you through the regional meetings that we held in the spring. Your input was critical and we plan to provide more opportunities over the next year for members to be actively involved in PCM.

For those of you who were unable to attend the spring conference, we have included a brief synopsis of the workshops in this issue of the newsletter. We owe a great deal of thanks to our workshop facilitators who did an excellent job and especially to our two speakers, Joe Folger and Ben Farrie, who provided interesting perspectives on both the theory and practical application of the transformative mediation model.

I would be lax in not publicly thanking those Board members who served PCM over the last few years and who have stepped down to take a breather and give others an opportunity for state-wide involvement with a growing organization. Many thanks to Winnie Backlund, Steve Roy, and Joan Lentzner. Welcome also to our new Board members, Bob Ackerman, AnnDrea Benson, Kimberly Day Lewis, Barbara Foxman, and Laura Hurnyak, and onward to another stimulating and challenging year!

PCM's Fourteenth Annual Conference Another Success

The fourteenth annual conference of the Pennsylvania Council of Mediators was held on April 20 and 21, 2001, at Neumann College, Aston, PA. The theme of the conference was CRITICAL ISSUES IN MEDIATION. Following the annual meeting and dinner, the conference opened on Friday evening with an address by Joseph Folger, Ph.D., Professor of Communications at Temple University and co-author of *The Promise of Mediation*. A lively discussion followed the address.

Saturday morning began with an address to the Conference

participants by Ben Farrie, Manager of EEO Dispute Resolution for the United States Postal Service in Philadelphia.

Ben's address was followed by seven workshops. Gale McGloin and Marty Thomas-Brumme presented the luncheon program. They shared the work the Board had completed on strategic planning.

A review of the Conference evaluations overwhelmingly demonstrates the high level of satisfaction by participants. Some of the following comments were

included in the evaluations. *Something you will always remember about the conference.* The people I met; Joe Folger's talk followed by Ben Farrie's talk on the results of the REDRESS program; Joe Folger's challenges to mediator mind sets; Friday evening presentation by Joe Folger and the great discussion afterward; the wealth of knowledge and experience of presenters and participants; the networking and the wonderful information and connections.

Conflict Resolution & Mediation in the African American Community

(A summary of Jerome Jackson's PCM Conference Workshop)

In a thought provoking workshop, Jerome Jackson challenged mediation practitioners to examine themselves and their conflict resolution models before attempting to provide services to the African American community. According to Jackson, the biggest problem with most services provided in the African American community is the European-American cultural bias of the practitioners. Instead of coming into a community and seeing what the community thinks it needs, many conflict resolution practitioners bring their models, developed largely to work with white populations, and assume that those models will work everywhere.

Jackson noted that it is critical for mediation practitioners to admit at the onset that race, culture and ethnicity are factors to be considered in trainings and in providing services. If mediation practitioners want to work in the African American community, they need to educate themselves about African American history, literature (myths and values) and cultural norms. They must also be careful about the language that they use. For example, the youth who shot their classmates at Columbine High School were never referred to as "gang members" in the media but would that have been true if they had been African American?

For mediation centers and practitioners interested in working with the African American community, Jackson had the following recommendations: (1) make sure that the staff and volunteer mediators are diverse racially and culturally and trained to be sensitive to issues of diversity, (2) examine the training curriculum content and structure to make sure it is culturally appropriate for the community being served, and (3) in training mediators, introduce the idea of flexible, disputant-generated ground rules, use culturally diverse role-plays and provide at least four hours of cultural diversity training.

Critical Issues in Mediation

(A summary of the PCM Conference opening address by Joseph Folger, Ph.D.)

“No matter how cynical you become, it is never enough to keep up.”
—Lily Tomlin

In addressing the theme of “Critical Issues In Mediation” one risks being seen as a cynic when the critical issues are pointed out.

There are two critical issues that have been a continuing concern for Folger from his initial interest in conflict resolution until now. He considers them to be at the heart of many of the sub-issues currently in the field. The first issue is one of awareness. Does mediation really offer an alternative dispute resolution process? Mediation has always been billed as the centerpiece of the ADR movement. As the practice of mediation has evolved, is it significantly different from other forms of dispute resolution? The second issue is what are the challenges/obstacles that we have to overcome to preserve mediation as an alternative process of dispute resolution?

Does mediation offer an alternative process? Until fifteen years ago, traditional research on mediation was almost exclusively on outcomes—settlement rates. As mediation became an interest to social scientists, there was a shift in research to look at what mediators do. Research, be it quantitative or qualitative, has consistently demonstrated that two-thirds of all mediation practice is directive. That means that one-third is not.

The Institute for the Study of Conflict Transformation recently completed a benchmark study of seven court affiliated mediation

programs. The qualitative research was extensive and included interviews with judges, court administrators, community members, clients who use mediation and mediators—both volunteer and paid staff. Programs included in the study focused on family, civil and community mediation. The focus of the research was on the goals of the program and the best practices for achieving the goals. Participating programs were chosen by the statewide program director.

The research demonstrates that there are three categories of court-affiliated programs.

Assimilative program: These programs have taken mediation and completely assimilated it into the court process. Some of the markers are clear. The practice is imbued with the authority of the court. The location of the program is in the court. The judge, in the courtroom, directs mediators and the mediator leaves with the parties and their attorneys to conduct the mediation in hearing rooms.

A second marker of the court programs is the mapping of legal language. Mediation is being conducted in “hearing rooms”. There are “dockets” of mediation cases. Parties in the mediation are referred to as plaintiffs and defendants. Agreements are standardized. Computers in the rooms enable the mediators to pull up boilerplate agreement forms that specify the range of things that can be put into an agreement.

A third marker is the enormous emphasis on case processing. It is

the emphasis. Success is measured by the number of cases handled and the closure rate. Mediators are evaluated both by themselves and others based on the number of cases handled successfully and in the amount of time in which they are completed. These programs have stopped using post mediation evaluations. They see no need based on settlement, so there is no input from the clients.

Autonomous group: These programs try to separate their identity from the courts and are in a different location. They rely on funding sources in addition to the court. They are often established in the community with a community advisory board. There is flexibility in mediation design. The emphasis is on conflict interaction and the people participating in mediation. There is no boilerplate language for agreements.

Synergistic approach: This program has very powerful leadership and a balance is maintained between the judges, administrators and the community. There is a partnership with other agencies—social service agencies that are court-affiliated so the mediation center is not isolated. Process is a focus, parties have mediator choice and case screening is flexible. The center director walks a tight line to receive court funding, but remain independent.

The results of the research and other experiences demonstrate the consequences are far reaching for mediation as a process of dispute

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Critical Issues in Mediation (CONTINUED FROM PREVIOUS PAGE)

resolution. One consequence is: mediation can easily be replaced with processes that do what judges want—swift resolution. We have to demonstrate that mediation is different from other alternatives. If we want mediation to be mediation, we have to demonstrate that it is different and has its own place.

A second consequence is: we get caught up in our own contradictions. The whole issue of whether mediation is the unauthorized practice of law is something we bring on ourselves by not remaining far enough from the line of being directive and assuming there is something else of value we do.

The third consequence is: we don't build markets for mediation. There is no broad base of funding. The merger of SPIDR and AFM is an example. We are not marketing the right thing. It's not about letting people know, it's about letting people know that we have something different. The most important consequence of not offering an alternative is that we don't have the impact we want to have. We don't have the potential for upstream effects of the processes. People walk away from these processes and say "It's not different." If people don't see a difference, they won't value it.

We have to go to the level of practice: what do people actually do in the room. We have to see it vividly and understand it to be able to see connections. What is our vision of what an alternative is. We have to have a clear vision. The transformative model is not the only alternative model and all mediators should ask themselves, "Am I offering an alternative in what I do?"

We have to examine our training models. Training is an obstacle to presenting alternative models. People took the theory of conflict resolution which was the most popular. It came from Harvard Law School. It was a theory about conflict, based on a negotiation model. The model then became the centerpiece for what a mediator should do. There is no theory of mediation. There are theories of conflict, and mediators act according to those principles of what they think productive conflict is. That's how the mediation field got started.

The aphorism, "The mediators own the process, the parties own the content" is not necessarily true. Process and content are inherently linked. When we influence process we influence content.

If you look at some of the core principles of that model, they are what put the roots of derivativeness into practice. It is not just the judges saying we want to settle cases. It is the way we train ourselves and think about practice.

If you take the simple classic fact of the phases—the phase model of mediation, which is in almost every negotiation text, it has its roots in derivativeness. Only the mediator has the map of the steps. So, the mediator is leading the parties through the steps. It creates the expectation that we have to carry it, as opposed to letting the parties make the map based on their interaction. The roots are in our very basic training.

The aphorism, "The mediators own the process, the parties own the content" is not necessarily true. Process and content are inherently linked. When we influence process we influence content. The obligation is on us as mediators to recognize that and say "How do I want to influence process because I know it is going to have an impact on what the parties do in this room. How can I influence process in a way which hands back control to the parties, if I want mediation to really be about empowerment."

At the core of the fights over credentialing is that people want to believe that when you do mediation it is all one thing. It isn't. A recent study funded by Hewlett blew up. Every time the information from the research was put out, people said "that's not what we do." It attempted to amalgamate all the different forms of practice into one.

The roots of directiveness are in policy, as evidenced by the Maryland certification procedure which includes a check list for mediator evaluation that includes items like "controlled emotions appropriately."

There are three obstacles to sustaining the practice of mediation as an alternative:

1. our vision of the practice
2. perception of training
3. policy.

In order for mediation to exist as an alternative and thrive we need to be good rhetoricians and argue for its value. Say yes, it is different, yes we want space for it and yes we want to be considered for business. We have to demonstrate that it is an alternative.

United States Postal Service Experience With Transformative Mediation

(A summary of Ben Farrie’s presentation to the 14th Annual PCM Conference)

Transformative mediation works for the United States Postal Service (USPS). It has had an upstream effect and supports employees building strong relationships. The USPS had serious EEO issues, which resulted in a Federal Court case in Florida in 1994. The court suggested that the organization consider mediation as a process for dealing with the complaints. From that court case the Resolve Employment Disputes Reach Equitable Solutions Swiftly (REDRESS) Program was established.

REDRESS works for the USPS because it:

- resolves disputes quickly (cases can go to mediation within 14 days)
- improves communication
- avoids cost of litigation
- preserves relationships
- gives parties control.

Data collected from participant evaluations clearly indicates the success of the program in the Philadelphia area and high participant satisfaction. Overall satisfaction rates with the mediation process by employees, employee representatives and management are at 90%

Satisfaction with the mediator, measuring respect, impartiality, fairness, skill and performance is close to 100%

Satisfaction with the outcome of the mediation is 85%. The areas measured include satisfaction, speed, expectation before mediation, control over outcome and long-term effect.

The success of the program has resulted in mediation being the preferred method of dispute resolution for work place disputes. The Philadelphia area had an 88% participation rate and an 83.4% closure rate. Closure rate is measured by the complaint being resolved, the complaint being withdrawn, or the absence of a formal complaint being filed.



Contributing to the Newsletter

The Pennsylvania Council of Mediators publishes its Report to members. 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.

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Developing A Successful Mediation Program for Senior Citizens

By Michele Mathes and Kathryn Mariani

As appreciation for mediation as a valuable means of dispute resolution continues to grow, so does the use of mediation in new contexts. Labor disputes, divorce, child custody, victim/offender and community disputes are now well recognized areas of mediation practice. Mediation of disputes involving senior citizens is currently developing as another area of focus in the field.

One community mediation center that has devoted considerable effort over the past few years to developing a senior practice and to increasing community awareness of mediation as a resource for dispute resolution is the Montgomery County Mediation Center (MCMC) in Norristown, PA. In 1998, MCMC's Mediation Services for Seniors program was selected as one of four projects nationwide to receive grant funding from the American Bar Association Commission on Legal Problems of the Elderly to promote the integration of alternative dispute resolution into the fields of aging and disabilities.

Seniors Empowering Seniors

A fundamental mission of MCMC's program is empowering seniors to help other seniors. Seniors have been involved in all aspects of the program's development and implementation since the program's inception. They assist with intake, serve as co-mediators, provide community education and fund-raising, and serve in an advisory capacity. The volunteers and staff conduct live mediation demonstrations to educate seniors

and their care providers about the service. The group recently produced a video on elder mediation for educational purposes.

Responding to Seniors' Issues

The creation of the Mediation Services for Seniors program has required a recognition and understanding of the particular concerns and needs of elder clients. Disputes involving senior citizens often raise issues not encountered in general mediation practice. "Although seniors 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 decision-making.

Even in cases where the subject of a dispute is not specifically age-related, age may well play a significant role in how well the senior's voice is heard in the conflict. Furthermore, conflicts involving elders often arise within the context of life crises such as illness and/or progressive disability, the death of a spouse, the sale of a treasured home, or simply the sense of loss that may accompany advancing age. Such experiences

often exacerbate a sense of vulnerability that the senior is already feeling.

Transformative Effect of Senior Mediation

Mediation practice at the Montgomery County Mediation Center reflects the Center's decision to practice within the framework of the transformative model of mediation. Staff members have been trained under Joseph Folger, co-author of *The Promise of Mediation* (Jossey-Bass, 1994), and Dorothy Della Noce of the Institute for the Study of Conflict Transformation in New York. The transformative model recognizes that, beyond simply problem-solving, mediation has a rich potential as an opportunity for individual empowerment and mutual recognition.

Transformative process is itself empowering in that it gives the parties control over the guidelines for the conversation, selection and order of topics, and goals of the session. Because elderly persons are often made to feel powerless and invisible in our society, the Center considers the benefits of transformative mediation to be especially meaningful for seniors by providing them with an opportunity to actively participate in the decisions that affect their lives. Seniors, who often have many people structuring their lives, appreciate the fact that the mediator does not drive the process, effectively becoming one more person who directs them in how and what to do. As a result of

their mediation experience, seniors can feel empowered by an enhanced sense of autonomy and self-determination, even as they may have been experiencing their personal independence waning. In addition, transformative mediation contributes to elder clients' increased sense of competency and personal dignity by providing new ways of handling conflict and making decisions.

Transformative process also has potential for strengthening and improving the relationships between a senior and the significant people in his or her life at a time when increasing dependence may be placing stress on those relationships. For seniors, the quality of the relationships they experience at the culmination of their lives and the quality of the relationships that they contemplate leaving behind is often critical to their sense of a life well-lived. Transformative mediation supports movement by the parties from non-productive to productive communication. It encourages their shift from states of defensiveness and self-absorption to greater openness to, and recognition of, the perspective and experience of the other. It is through this process of change, or *transformation*, that the quality of the senior's relationships may be improved.

Guidelines for Mediation Services for Seniors

MCMC has issued the following twelve guidelines to support mediation providers who are interested in developing a mediation program for seniors.

- Involve trained volunteer senior mediators in all aspects of the project development and implementation.

- Form a core committee of trained senior volunteers, experienced mediators, and designated coordinator. Meet regularly.
- Invite coalition members into the decision making process as you define your project's vision and strategy.
- Create opportunities to exchange information with coalition members through both formal and informal dialogue.
- Nurture relationships with core coalition members and expand slowly in order to engender trust and encourage mutual referrals.
- Seek guidance and support from those experienced in the mediation services for seniors.
- Offer live or video demonstrations to seniors and their service providers in order to increase familiarity and comfort with mediation as a problem solving resource.
- Offer a comprehensive set of services to include issue clarification & referral during intake, mediation, workshops & facilitation.
- Know your local resources and have information available during intake and mediation.
- Keep media apprised of your activities.
- Be creative in seeking funding resources.
- Be patient and watch it grow!

Resources

The ABA's Commission on Legal Problems of the Elderly has set up the COLLABORATE listserv for the discussion and dissemination of information on this topic. To reach the American Bar Association Commission on Legal Problems of the Elderly and to become a member of their listserv, contact Erica Wood, Esq. or Naomi Karp, Esq. At ABA Commission on Legal Problems of the Elderly, 740 15th Street, Washington, D.C. 20005-1022, Tel. (202) 662-8690, Fax. (202) 662-8698, e-mail abaelderly@abanet.org. The Montgomery County Mediation Center is also available for program support. Contact the program coordinator, Kathryn Mariani, at (610) 277-8909 or MCMCPEACE@aol.com.

Excerpts of this article have been taken from the following sources:

Mariani, Kathryn, "Five Keys to Developing A Successful Mediation Program for Senior Citizens," **The Community Mediator**, National Association for Community Mediation, Winter, 2001, page 6.

Mathes, Michele and Mariani, Kathryn, "Elder Mediation: A Community Mediation Center's Initiative," **ADR Report**, Pike & Fischer, Volume 5, No. 7, pages _____, ©2001, Pike & Fischer, Inc. Contact 1-800-255-8131, ext. 248.

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MARK YOUR CALENDAR



Next PCM Board of Directors Meeting

November 9, 2001

Hosted by Center for Alternatives in
Community Justice
State College, PA

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MEMBERSHIP APPLICATION for New Members

Name/Organization Name: _____

Designated Representative (for Organization Member only)*: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone: _____ Work Phone: _____

Fax Number: _____ E-mail Address: _____

Mediation Employment: _____

Mediation Volunteer Work: _____

County/Countries where you work/volunteer: _____

- Statewide
- Central PA
- Eastern PA
- Western PA

Areas of Mediation Practice (check all that apply):

- | | | |
|--|--|---|
| <input type="checkbox"/> 1. Community/Neighborhood | <input type="checkbox"/> 8. Special Education | <input type="checkbox"/> 15. Employment |
| <input type="checkbox"/> 2. Family/Divorce/Child Custody | <input type="checkbox"/> 9. Victim-Offender/Corrections | <input type="checkbox"/> 16. Religious Institutions |
| <input type="checkbox"/> 3. Landlord/Tenant/Fair Housing | <input type="checkbox"/> 10. AIDS | <input type="checkbox"/> 17. Real Estate |
| <input type="checkbox"/> 4. Groups/Organizations | <input type="checkbox"/> 11. Training Adults | <input type="checkbox"/> 18. Health Care |
| <input type="checkbox"/> 5. Environmental/Land Use/Public Policy | <input type="checkbox"/> 12. Training Schools | <input type="checkbox"/> 19. Securities |
| <input type="checkbox"/> 6. Small Claims | <input type="checkbox"/> 13. Training, Cultural Bias/Awareness | |
| <input type="checkbox"/> 7. Labor/Business/Civil | <input type="checkbox"/> 14. Farm Credit | |

Please provide a 25- to 30-word description of your involvement in the field of mediation

Mediation Category: General/Professional \$50 Student \$30 (enclose copy of student ID)
 Organization \$50 Volunteer \$30

Web Page Listing: \$15 additional ... check it out: <http://www.libertynet.org/pcounmed>

Please indicate your interest in involvement in the work of PCM:

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Steering Committee | <input type="checkbox"/> Newsletter | <input type="checkbox"/> Conference Planning | <input type="checkbox"/> Membership Committee |
| <input type="checkbox"/> Policy Committee | <input type="checkbox"/> Qualifications Committee | <input type="checkbox"/> Organizational Committee | <input type="checkbox"/> Ethics Committee |

I agree to abide by the Ethics and Standards of Conduct of the Pennsylvania Council of Mediators.

Signature _____

*Organization members should designate one person as their representative; this person is entitled to the Member Rate for conference registration.

Completed applications should be mailed to Phoebe Sheftel at 414 Barclay Road, Rosemont, PA 19010.

Mediation: Pennsylvania's Future

THE PENNSYLVANIA COUNCIL OF MEDIATORS ANNOUNCES A REQUEST FOR PRESENTATION PROPOSALS

Deadline: December 31, 2001

The 15th Annual PCM Conference will be held on April 26 & 27, 2002, in State College, PA and hosted by the Center for Alternatives in Community Justice. You are invited to submit a workshop proposal to the Conference Committee for consideration. All workshops will be two hours in length. The conference fee (including Saturday break and lunch costs) is waived for presenters.

Send of fax your proposal to: Richard Conrad, Conference Chairman
50 Hollybrook Drive
Langhorne, PA 19047-5752
Fax: 215-750-9237

Each proposal should include:

1. A brief biological sketch of the presenter(s).
2. A description of the workshop suitable for inclusion in the conference program booklet. Please limit the description to 50 words.
3. An outline of your proposed workshop which includes the goals and objectives of the session and any supporting information that will help the program committee understand your presentation and how it is relevant to the conference theme.

SESSION TITLE: _____

PRESENTER(S): _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

Experience level:

- Suitable for all levels
- Introductory
- Intermediate
- Other

Orientation:

- Program Design
- Theory
- Skills & Techniques

Equipment needed:

- Flip chart/white board
- Overhead projector
- Video player

