



REPORT

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PCM's 15th Annual Conference

In late April over 70 people involved in various areas of conflict resolution gathered in State College for two days of workshops, skill building and networking. Long-time PCM members and some brand new to the organization came together to consider the future of mediation in Pennsylvania. The stage was set by keynote speaker Linda Baron, Executive Director of the National Association for Community Mediation, and carried through the workshops that ranged over topics from different mediation program areas (school, victim-offender, family) to different techniques for the mediator's toolbox (dealing with biases and issues of capacity, having difficult conversations, writing agreements, and even incorporating magic into training).

The Friday evening program started off by getting everyone actively involved. Gale McGloin and Marty Thomas-Brumme led a fast-paced role-playing exercise based on difficult mediation scenarios suggested by the participants. Mediation trainers, who are usually on the directing side of role play exercises, found themselves being cajoled into diving into the fish bowl experience—and actually enjoying it. At the reception sponsored by attorney/mediator Rosadele Kaufman, Marty entertained everyone with his magician's skills.

A group of student mediators from State College and Pittsburgh added a welcome spirit of enthusiasm to the conference. Coming away from the conference, people noted their appreciation for the chance to share ideas and hear different views. Even the food (an occasional target for complaints at past conferences) drew plaudits.

For a summary of the keynote address and conference workshops, see pages 2–4.



Building Support for Mediation in the Community

Linda Baron described the mixture of opportunities and challenges facing the nearly 400 community mediation centers in 46 states that are members of the National Association for Community Mediation (NAFCM), an organization founded in 1993. She noted that a lot of interesting information on the topic appears in a study of community mediation in ten states, *Community Mediation Trends and Needs*, prepared by The Institute for Environmental Negotiation (University of Virginia) in 2001 (<http://www.mediate.com/articles/pdf/nvms.doc>). Community mediation programs are characterized as non-profit organizations that rely on trained volunteers and have board members reflective of the community's diversity. These organizations do a lot more than mediate interpersonal disputes. They promote systemic change by educating the public about the values and practices of mediation. They can enter at any stage in the conflict, emphasizing direct access to services, regardless of ability to pay, which doesn't mean that their services are free.

Several trends and issues are emerging in the area of community mediation.

- Centers are increasingly moving to tackle complex, community-wide disputes.

- Mediators are reflecting on the universal appropriateness of the North American mediation model, largely a construct of the mostly middle-class, white population of mediators.
- Quality assurance and mediator credentialing are important issues in educating users on how to choose a mediator and evaluate the services.
- The mediation community needs to recognize its long-standing reliance on the Hewlett Foundation for funding and reach out to new sources of support.

NAFCM has responded to these challenges in a number of ways. They have provided small grants to new and established centers to develop trainings and state-wide collaboratives, as well as doing their own trainings on building community mediation programs. They are considering a voluntary accreditation process for centers and a universal model of case management data systems to help collect the information to support research on the effectiveness of community mediation. In the area of program support, NAFCM is developing a public relations and marketing campaign targeting national organizations like the League of Cities and municipal managers' groups.

They expect to issue a report on a study of existing program funding mechanisms used in various states.

Linda and several conference participants offered examples of innovative approaches to support mediation in the community:

- Plug into strong organizations in the community (churches, civic organizations, etc.).
- Spark interest in a sometimes-reluctant legal system by providing mediation training for judges' spouses.
- Put a plaque saying, "We are a peaceable place," in the window of locations where you do mediations.
- Use Search for Common Ground principles to host a TV talk show that brings together people on contentious issues.
- Offer training for kids at summer camps. Get them to translate their experience into artwork and display it in a prominent place in the community.
- Help a school turn detention into a productive experience by using the time to work with the kids on conflict management and problem solving.

The Science of Creating an Agreement

Based on a workshop presented by Marty Thomas-Brumme, Director of The Rose Center, and Laura P. Hurnyak, an attorney mediator.

Mediators often play an important role in helping the participants delve into and understand how each party's needs and interests have precipitated the conflict that brought them to the point of mediation. The transformation that occurs when they each are able to appreciate the significance of the other's thwarted needs is frequently what frees people to imagine options that will lead to a mutually appreciated resolution.

It is important to carry this clarity into the written agreement. Mediators need to watch for the tendency to take it for granted that everyone who is signing the agreement knows the assumptions behind the written points. Agreements are written to document future actions and expectations not only for the benefit of the parties themselves, but frequently also for others who may have some role in either converting the mediated agreement into a legal document or enforcing the agreement that the parties developed.

A mediation that produces resolution can record this in several different ways. An understanding indicates a meeting of the minds, even if it is only to recognize that they

disagree about an issue. An understanding is a prerequisite for producing any agreement, but does not necessarily lead to an agreement. An agreement documents a mutual and common intent of the parties to alter their rights and obligations. An agreement that is legally enforceable by its terms is called a contract.

For a mediated agreement to act as a legally enforceable contract, it should demonstrate five key elements:

- The parties must have the legal capacity to make a contract.
- The subject matter of the agreement must be legal.
- The terms of the contract must be definite and complete.
- There must be consideration exchanged.
- There is evidence of mutual agreement to the terms.

It is helpful to think in these terms even if the agreement will remain only a private document between the parties. Clarity and completeness are crucial in enabling the parties to understand and fulfill the obligations they are assuming by signing the agreement.

Agreements should be organized and unbiased; they should reflect the conflict they resolve. Think in terms of answering the who, what, when, where and how questions as you help the parties write each point in the agreement. The more well written an agreement, the more likely the compliance. Precision and thoroughness is especially true when an agreement is to be enforceable. Although some mediated agreements serve as the resolution of a legal process, relying on enforceability alone to force parties to meet their obligations under the agreement may be detrimental to the relationship in the long run.

Coming at the end of a long and perhaps contentious mediation, it is sometimes tempting to view writing the agreement as a last procedural detail that is only holding you up from getting out the door. But viewed as a key foundation for the new relationship that the parties are starting to build, it deserves all the participants' thoughtful attention.

Bullying Prevention

Based on a workshop given by Marian Lorence, Assistant Manager, Bullying Prevention Services at Family Child Resources.

Bullying happens on a daily basis throughout the United States. It often goes unchecked while the victim gets re-victimized to the point where he/she suffers psychological damage.

Both girls and boys bully; males tend to use direct methods such as physical or verbal aggression, while females are more likely to use indirect strategies like spreading rumors or threatening

to reveal personal information. It is important to educate and change the behavior of the kids who support the bully. This support ranges from verbal to silent assent, to walking away when it happens. All children who witness the bullying need to learn to take a proactive stance and help the victim. Developing anti-bullying activism takes full institutional education and support.

Bullying should not be mediated, especially not by students. The best way to help a victim is to create an anti-bullying climate in the school. Only after the bully's behavior has been addressed should mediation even be considered.

With almost two hundred thousand children absent from school each day as a result of being bullied, there is much work to be done.

Having a Difficult Conversation

Based on a workshop presented by Brenda Wolfer, Director of Mediation Training, Center for Resolutions.

When we are faced with an angry person or when acting as a third-party intervener, it is important to get to interests. If one addresses only the initial complaint or demand, no lasting resolution is possible.

Three key questions help a mediator get at a person's interests:

- "Can you give me an example?"

- "How does that affect you?"
- "What would you like to see happen differently?"

With this information, a mediator can then *reframe* the complaint to a statement that reflects both the problem that needs resolution and the party's interests. Reframing is more radical in intent than Summarizing and Paraphrasing; it presents the demand/

complaint as a statement that is positive, non-inflammatory, specific, and depersonalized.

A reframed statement offers the complainant an opportunity to hear what s/he was saying in a very different way. What was seemingly out of control now becomes manageable. This technique is more easily used by an impartial third party, rather than the person who is the recipient of another's anger.

PCM and the PA Bar: Starting a Conversation

A group of 18 members of PCM and various ADR committees in state and local Bar organizations came together on June 14 to initiate a conversation on the question of the institutionalization of alternative dispute resolution (ADR) in Pennsylvania. For some people who go back at least ten years, this seemed like déjà vu all over again. Wasn't there a concerted effort by PCM in the early 1990s to look at establishing what was then referred to as a "state office?" Didn't PCM sponsor a conference in Harrisburg to chew on the issue of credentialing for mediators? So how, you might wonder, is this effort going to produce anything more satisfying than the results of that last go-round? The short answer is that we don't know. But a maturation of the field, a renewed interest and determination in both organizations, and the potential of a different political climate after next year's elections give us cautious optimism that this effort will yield more concrete results.

Well over half the states have some form of institutionalized support for ADR. These spring from different enabling actions and appear in a variety of formats. The Florida Growth Management Conflict Resolution Consortium was created by the state legislature in 1987 and is attached to the state university system. The Massachusetts Office of Dispute Resolution functions under the executive branch to improve the effectiveness of public agencies and courts. The judiciary took the lead in creating the Maryland ADR Commission in 1999. The Ohio Commission on Dispute Resolution and Conflict Management was the first to be jointly sponsored by all three branches of state government. With other programs in New Jersey and New York, Pennsylvania stands out as an island of missed opportunity in this trend toward integrating dispute resolution tools into all aspects of society.

A second focus group of PCM and Bar members will be held later in the summer. Look for continuing reports on where this adventure leads us.

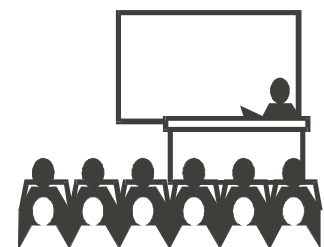
Training Opportunities

Basic Mediation Training: A Transformative Model (30 hours)

August 12–15, 2002
Monday through Thursday
8:30 am–5:30 pm daily
Bryn Mawr, PA
PA CLE Credits: Substantive 29
Hours; Ethics 1 Hour
PA Social Work Licensure
Renewal: 30 Hours
Additional fee for continuing
education credits
\$425 if registered by 7/15/02
\$500 thereafter until the
registration deadline of 8/1/02
Trainer: Winnie Backlund,
M.Ed., N.C.C.
For more information and a
brochure, contact the
Montgomery County Mediation
Center at (610) 277-8909, fax
(610) 277-5126, or
MCMCPEACE@aol.com

The Lancaster Mediation Center offers two Basic Mediation trainings

July 19–21, 2002 and
October 25–27, 2002
These are full 24-hour trainings
and prepare graduates for
neighborhood conflict resolution
mediations.
For details contact the Center at
717-293-7231 or
info@lancmed.org.



Adult Guardianship State-wide Collaboration

By Kathryn Mariani with Michele Mathes

When an adult's capacity to care for his or her personal needs and/or finances has been impaired through trauma, mental illness or the onset of dementia, a family may be thrown into crisis.

Disagreements may occur over the appropriate caregiver and level of care, whether the person can remain in his or her home, financial and estate planning matters, and health care decision-making. A new set of emotionally charged issues may arise, such as whether or not the person should be placed under guardianship, the selection of a guardian and to what extent the individual can still exercise decisions over his or her life.

While mediation cannot determine the capacity of an individual, the process can help families relieve tension and communicate more productively. Mediation may help a person who has lost the capacity to make decisions in one area (e.g., financial matters) to maintain a role in decisions connected with daily living, or even the selection of a guardian. Mediators can perform the time-consuming task of gathering the numerous parties involved and facilitating detailed decision-making.

During 1999, there were 1375 petitions for guardianship in

Pennsylvania for residents ages 60 and older (Executive Summary of Guardianship Services Study for the Department of Aging of PA, 1999). However, despite the stated benefits, the use of mediation in adult guardianship matters remains limited in Pennsylvania.

A state-wide collaboration is taking shape to develop adult guardianship mediation programs in Pennsylvania. Montgomery County Mediation Center (MCMC), Norristown, has partnered with The Center for Social Gerontology (TCSG) to bring their nationally recognized adult guardianship training to Pennsylvania and to spur the development of local adult guardianship programs. The training will be funded in part through a grant by the National Association for Community Mediation (NAFCM).

The objectives of the collaboration are to:

- Provide advanced mediation training in the complex family, legal and ethical issues involved in adult guardianship.
- Promote the use of adult guardianship mediation by forming coalitions among local community mediation

centers, aging professionals and judiciaries.

- Encourage the involvement of trained, elder, volunteer mediators in the work of the collaboration and in all aspects of local program development and implementation.
- Provide a follow-up forum for those who have completed the training to exchange information and support one another in local program development.
- Identify and leverage private, foundation and public funds to help centers sustain the service.

The Adult Guardianship Mediation Training is scheduled for November 6-8, 2002, in Bryn Mawr, a suburb of Philadelphia. PA community mediation centers that commit to full participation in the collaboration will receive a discount on the registration fees. Limited space will also be available to mediators in private practice and those outside of Pennsylvania at the full registration fee. For further information, contact Kathryn Mariani at MCMC, (610) 277-8909 or MCMCPEACE@aol.com.

New/Renewing Members

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Membership Information

If you are interested in joining other mediators statewide and becoming a member of PCM, check out the web site at www.libertynet.org/pcounmed/ 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 phoebe@pasheftel.com.)

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. Send submission to:

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Members Elected to PCM Board

Grace D'Alo (Carlisle) is the former Director of the Special Education Mediation Program and currently teaches at Widener University.

Cheryl Cutrona (Philadelphia) is Director of the Good Shepherd Mediation Program and a recent graduate of Temple University Law School.

The Board officers for the coming year are:

Gale McGloin—President

Barbara Foxman—Vice President

Cindy Lehman—Secretary

Phoebe Sheftel—Treasurer

Center News

The **Lancaster Mediation Center** is hosting Summer Dances in Buchanan Park in Lancaster City. This community-builder and fundraiser revives a tradition from the 50s and 60s when crowds came to dance the evening away. They hope this will be the beginning of that tradition in the 21st century. Dates are July 5 (rain date July 12) and August 16 (rain date August 23), from 7:30 to 10 PM. Put on your dancing duds and contact the Center at 717-293-7231 or info@lanamed.org to find out more about this fun event.

The Lancaster Mediation Center also reports that its computer system fund drive is getting a lot of response, and they hope to have enough raised by the end of summer to replace their current outdated system. As Assistant Director Barbara J. Spiegelberg observed, "When special needs like this are addressed by the community, it makes us feel that people value what we are doing."

On March 21, 2002, **Community Dispute Settlement Programs** located in Delaware County announced that henceforth it would be known as **The Center for Resolutions**. The services offered, phone number and location will remain the same. The Board wanted the organization's name to better reflect the growth and changes that have occurred over the past ten years.

