PENNSYLVANIA COUNCIL OF MEDIATORS

THE PENNSYLVANIA COUNCIL OF MEDIATORS

REPORT

For Members and Friends Fall 2002

http://www.pamediation.org

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A Message from the President

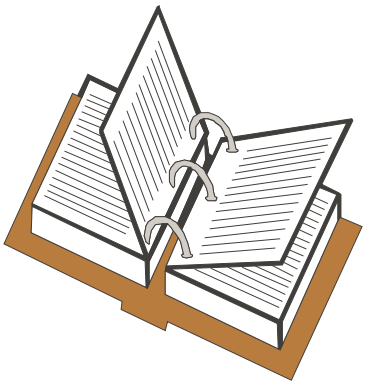
by Gale McGloin, Director, Pittsburgh Mediation Center

I am happy to report that, so far, 2002 has been a busy year for PCM! We have been implementing our strategic plan with a particular focus on building partnerships with other like-minded organizations around the state. PCM initiated a partnership with the PA Bar Association's ADR Committee in November 2001. In June and September of this year, we jointly sponsored two focus groups. Participants were asked to share their thoughts on the subject of institutionalizing mediation in Pennsylvania (see *PCM and PA Bar Partnering: Focus Group Report*, page 2). We plan to post the full report on our web page as soon as we have completed sifting through the rich and varied responses. We have also coordinated our regular Board meetings with the PA Victim Offender Mediation Network. It is our hope to continue to meet back-to-back with them at least twice a year.

As you can see, PCM is working hard to make Pennsylvania a more "mediation-friendly" state. In order to meet this challenge, we must increase our membership. To this end, we will be providing some new member benefits in 2003. 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, Membership Chair, at phoebe@pasheftel.com.

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

SAVE THE DATES
May 9–10, 2003



PCM Spring Conference

Planning for the PCM 2003 Conference is underway. The conference will be held in Harrisburg on May 9–10, 2003. Save the dates!

The Neighborhood Dispute Settlement Center will be hosting the event, thanks to Director Deb Ritchey and their volunteer mediators.

Conference Workshops—Call For Proposals

Do you have an exciting new mediation project that you'd like to showcase or a conflict resolution skill you'd be willing to share? Please submit a proposal for a conference workshop. Send an outline of your workshop proposal, along with your name and contact information, to Barbara Foxman at 8205 Seminole Avenue, Philadelphia, PA 19118, fax to 610-277-5126, or email her at bef423@mindspring.com. The deadline for proposals is January 1, 2003.

PCM and PA Bar Partnering: Focus Group Report

by Gale McGloin

What Do Those Mediators Want?

"That's not exactly what we asked, but it is what we heard," according to Gale McGloin, President of the PCM Board of Directors. PCM and the PA Bar Association's ADR Committee got an earful from mediators across the state at two focus groups held in June and September of 2002. These focus groups resulted from a partnership formed in the fall of 2001 by the two organizations to address the issue of how to make Pennsylvania a more mediation-friendly state.

The thirty mediators who attended these two focus groups responded consistently to the first question: Within the context of your experience, what would it mean to institutionalize mediation in PA? Both groups felt that it would require a cultural shift in Pennsylvania for mediation to become a household word. This has begun in the surrounding states, most recently in Maryland, so it is not an impossible task. However, participants also cautioned about undue restrictions that could come with institutionalization. While some restrictions are inevitable (e.g., to ensure quality service), there was concern that mediation in PA have broad ownership and that any restrictions, such as credentialing, be developed from the ground up, not handed down from the top.

Other issues surfaced such as the role of lawyers v. non-lawyers, need for participant acceptance of mediation as a viable option, and the nature of mediation's link to the court system. Participants felt we need to see how other states have institutionalized and learn from their mistakes. The complete report from the focus groups will be available in the near future on the PCM website: www.pamediation.org.

Facilitated Conferences in the Child Protection System

by Cheryl Cutrona, Executive Director, Good Shepherd Mediation Program

In FY 2001-2002, Good Shepherd Mediation Program facilitated 2,652 conferences at the Philadelphia Family Court Dependency Unit, served 22,632 conference participants and provided recommendations to the judges charged with ruling on dependency issues in these situations as a result of 93% of these conferences. If you want to find out how this happened, read on.

In 1998, Good Shepherd Mediation Program was invited to sit on the Philadelphia Family Court Improvement Project Coordinating Committee, which has been meeting monthly to continually assess, monitor, and improve access to quality mental health and drug and alcohol assessments, referrals and other support services for families involved in the Dependency Court child welfare system. The committee consists of representatives from the Family Court of Philadelphia, the Behavioral Health System, the Philadelphia Department of Human Services (DHS), the Philadelphia City Solicitor's Office, Community Legal Services, the Support Center for Child Advocates, the Defenders Association Child Advocate Unit, Good Shepherd Mediation Program and others involved in the child protection system.

Some of the court improvements recommended by the Court Improvement Committee and institutionalized by Family Court include: pre-appointment of counsel, front-loading intensive services as soon as the family becomes involved in the system, time-specific scheduling, on-site drug and alcohol assessments and screening, early and active judicial oversight, and pre-hearing conferences facilitated by trained, experienced mediators.

Family Court's focus is to determine what, if any, services are needed for families that have been charged with child abuse, neglect or abandonment. When a child abuse report is made, DHS investigates and if the charges are "founded," the family enters the child protection system. The City Solicitor's office files a dependency petition with the court, requesting a hearing to determine if the child(ren) should be placed outside the home and/or if support services are needed to ensure that the parents are providing a safe, nurturing and permanent environment for their children.

Prior to the adjudicatory hearing scheduled as the result of each new petition, those involved attend a Pre-Hearing Conference facilitated by a Good Shepherd mediator. Two mediators are on duty at Family Court every day. The facilitated conference is an intervention focused on engaging the family in planning for the child. It is family-focused, strengths-oriented and community-based. The process allows the parents, extended family members, the children (where appropriate), the attorneys, the social service providers, and others to come together, collectively discuss options and make recommendations so the judge can take the parties' wishes into consideration in making the court order.

The process encourages all involved to develop early, appropriate, comprehensive options that serve to protect the safety and best interests of the children while preserving the dignity and involvement of family members. The mediator-facilitators ensure sensitivity, encourage accountability, facilitate constructive communication by discouraging acrimony and allowing each participant to have a voice. The goal is to reduce the family's sense of alienation from the professionals, the child protection system and the court by providing a process that helps stakeholders work as a team, focus on the future, ensure the safety of the children, and provide permanency for the child at the earliest possible time.

Every morning each mediator facilitates an average of three to five conferences, depending on the number of children in the family (those conferences are scheduled for longer periods of time). The discussion focuses on (1) support services that will enable the family to stay together or be reunified as soon as possible; (2) visitation schedules if the children have been removed from the home; and (3) where placement of the children is necessary, identifying possible resources within the extended

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Facilitated Conferences in the Child Protection System (cont.)

family before resorting to placements outside the family. The facilitator encourages everyone in the family system to collaborate in the collection and exchange of information and identifying resources needed to ensure the best interests of the children are served.

The afternoons are saved for mediating issues that arise after the families have been involved in the system for a while. The judges refer parties to attend facilitated conferences to resolve issues such as: communication issues between natural parents and foster parents, scheduled visitations that are not occurring, and conflicts between providers and family members.

The Good Shepherd mediators have received high marks in the National Center for Juvenile Justice (NCJJ) evaluation. In its formal assessment, NCJJ reports, "The pre-hearing conference was generally viewed by model court participants as the tangible center-piece of the pilot effort—the innovation that front-loads the process. …[C]ourt participants suggested that by bringing people to the table, the conference helped to open communication and defuse hostilities. …Some participants suggested the conference empowers parents and provided examples where parents had been accompanied by a support network of family, friends, and/or service providers at the pre-hearing conference." (Pennsylvania Court Improvement Project: First Year Assessment of the Philadelphia Model Dependency Court Final Report, July 7, 2000, by Hunter Hurst, Jr. and Gregory J. Halemba, NCJJ)

Pre-Hearing Conference in Philadelphia

	FY 2000-2001	FY 2001-2002
Pre-hearing conferences	2081	2,652
Participants served	15,741	22,632
Recommendations reached	94%	93%

Facilitating pre-hearing conferences is an example of how trained mediators can use their mediation and communication skills to serve the community. Additional training in the child protection system and its laws is necessary for mediators who choose to work in Dependency Court. Offering mediation skills to Family Court has provided the Good Shepherd Mediation Program an opportunity to expand its services to the Philadelphia community, increase visibility and further its mission of reconciliation, social justice and peacemaking.

For more information about this project, contact Cheryl Cutrona at ccmed8r@aol.com, and check out Good Shepherd's new website at www.phillymediators.org.

Delaware County Mediator Featured in *Philadelphia Inquirer*

If you opened the *Philadelphia Inquirer* on August 22nd, you might have seen the smiling face of Brenda Wolfer, Director of Mediation and Training at the Center For Resolutions (CFR, formerly known as Community Dispute Settlement in Delaware County). She was featured as "a mediator dedicated to keeping the peace."

Providing a great overview of the range of opportunities for mediation, the article described Brenda's work as a facilitator for Alternatives to Violence in Gander Hill prison, as a mediator for the PA Office of Victim Advocate, as a member of a Youth Aid Panels, as well as her 'day job'—supervising the mediation and extensive training program of CFR. On top of all this, she manages to find time to teach part-time in the English Department at Widener University.

Brenda summed it up, saying that "mediation can help people who are stuck find a way to move out of that situation."

Using Support Persons in Mediation

by Phoebe Sheftel, Consultant in Environmental and Public Policy Conflict Management

A successful mediation starts with getting the right people to the table. All the parties to a dispute, as well as any others who might be required to take action or assume some responsibilities under an agreement, should participate in the mediation. But is there a role for people who do not fall into either of these categories? If one party brings an attorney advocate, does that skew the power balance? If a friend or family member attends, will their presence complicate or lengthen the mediation? Certainly the inclusion of any support person or representative needs to be accepted in advance by the disputing parties; but once that hurdle has been cleared, is there any way to assess the contribution or detraction of a support person in the mediation?

The equal employment opportunity mediation program of the US Postal Service offers a unique opportunity for collecting data about participants' perceptions of the mediation process and its outcome. A recent article based on this data provides useful insight into the role of support persons at the mediation table ("Exploring the Role of Representation in Employment Mediation at the USPS," *Ohio State Journal on Dispute Resolution*, Vol. 17:2, 2002, pp. 341-378).

In Postal Service mediations, either party (management or union worker) is able to bring a representative to the table. These support persons tend to be lawyers, union stewards, family or friends. Their role is to provide moral support and give the party feedback on the resolution options they are considering. Two out of three complainants (rank-and-file employees) bring a representative, while only one out of three respondents (management) do so. Analysis of the data shows that the presence of a support person can have both positive and negative effects on the disputants' perception of the outcome and fairness of the process, as well as their satisfaction with their level of participation in the mediation.

An attorney/advocate can have a significant effect on a mediation, especially if he/she does not understand or appreciate the possibilities for a client's self-advocacy role in mediation. Studies show that if only one side has an attorney present it is apt to have a negative impact on the mediation process and outcome. An examination of a multi-door courthouse program involving civil cases found that there was a 48% settlement rate when attorneys were present and a 75% settlement rate when there were no attorneys. However, when lawyers truly understand mediation, they help the client explore issues and possible solutions.

Lawyers, union representatives and family or friends as support persons can also benefit the parties through their technical knowledge about the workplace or the subject under dispute, their skills in negotiation, and their understanding of the complainant's real interests. Sometimes there is a cost to their participation, whether the time needed to establish a relationship or the monetary costs for the agent's time.

Data from the US Postal Service mediations show the highest settlement rate resulted when both the union worker and management had representation or only the worker had representation (60-61%). When only management had a representative, the mediation achieved the lowest settlement rate (50%), a reflection, perhaps, of management's belief that a representative was needed because the case was weak. There is some indication that the presence of representatives does tend to lengthen the time of the mediation, up to 15% when both parties have a representative.

As for the parties' satisfaction with the outcome of mediation, worker complainants reported the greatest number of cases completely resolved when they had either union representation or no representative present (30%), followed closely by times when a friend or family member was present (27%); the lowest resolution rate occurred when the complainant had an attorney present (16%). The presence of attorneys was also linked with the greatest number of unresolved cases (50%).

All participants show a 90-93% satisfaction rate with the fairness of the mediation process. Complainants were least satisfied when they were represented by an attorney (76%), compared with other types of representatives (88-91%). By contrast, management respondents were most satisfied when an attorney was present (95%).

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Using Support Persons in Mediation (cont.)

Interestingly, the presence of an attorney had a slightly less negative effect on the worker complainants' satisfaction with their level of participation in the mediation than it did on their satisfaction with the outcome and fairness of the process. When complainants had an attorney representative present they had a 92% satisfaction rate with their own level of participation in the mediation, although the presence of non-attorney representatives produced a slightly higher satisfaction level (95-97%.) Consistently, management respondents showed the highest satisfaction level (97%) with their level of participation when they had attorneys present.

The US Postal Service data analysis identified the following factors as significant in increasing the beneficial effects of a support person:

- They are repeat players in the mediation system
- They have an on-going relationship with parties on both sides (management and union)
- They can advise the party based on their knowledge of successful non-economic settlements
- They have no investment in an economic settlement

Complainants are most satisfied with their level of participation and the fairness of the mediation when they do not have a representative. The opposite was true for respondents. The conclusions drawn from the US Postal Service data show "dispute resolution systems that permit [parties] their choice of representatives are likely to function at least as effectively, if not better, than systems where [parties] have no right to bring a representative." (p. 377)

There are several other programs that intentionally include various types of support persons and offer insight into their effectiveness. The Pennsylvania Special Education Mediation Service (PA SEMS), under the Department of Education, offers parents and school administrators an opportunity to build agreements on an educational plan for a special ed student. Since its initiation in 1987, agreements have been reached in more than 85% of its cases. Under the SEMS program, no attorneys are allowed to participate in the mediation; instead, parents are able to bring a volunteer advocate from a parents' support group. These support persons contribute a store of knowledge and experience in the special ed system and are able to answer parents' questions, as well as give them an opinion during a caucus on the merits of a proposed solution.

The Montgomery County Mediation Program has developed an interesting option for working with parties whose mental capacity may raise concerns about their ability to participate meaningfully in mediation. The mediators help the party assemble a circle of support using an established group of caregivers (social worker, family member, etc.). These are people chosen by the participant to accompany them and lend support during the mediation. Their presence provides a sense of safety and comfort that enables the person with capacity issues to participate more fully in the mediation.

As these few examples show, the use of a support person in mediation can be a significant tool to enhance the parties' level of participation, their perception of process fairness and their satisfaction with the outcome. In general, the positive effects of a support person appear to outweigh the potential for some increased costs and a slight increase in time for the mediation.

Training Opportunities

LANCASTER MEDIATION CENTER:
Basic Mediation (24 hours)
March 7-9, 2003
July 11-13, 2003
October 24-26, 2003
Divorce and Custody Mediation (40 hours)
June 23-27, 2003
For more information, contact Barbara J. Spiegelberg, Assistant Director, at 717-293-7231

GOOD SHEPHERD MEDIATION PROGRAM:
Mediating Disability-Related Disputes (24 hours)
November 7-9, 2002
May 15-17, 2003
The training follows the recommended curriculum from the *ADA Mediation Guidelines.* and is accredited for 19.5 CLE credits. For more information, contact Dorothy Davis at 215-843-5413.

News from the Centers

Mediation Services for Conflict Resolution, Inc., in York has dissolved its own 501(c)3 organization and merged with Catholic Charities to become Mediation Services, a program of Catholic Charities under their 501(c)3 status. They are very excited about this for a host of reasons! First, Catholic Charities is a well-known and well-respected provider of social services in York and the surrounding counties. And both organizations share a similar mission. Through this merger, they are increasing the opportunity for cross-referral and program growth, as well as heightening their community visibility.

As part of Catholic Charities, the program looks forward to continuing its service to the community through a victim-offender mediation program and increasing the number of community mediations. They are also in the process of expanding conflict resolution services and organizational CR trainings, as well as providing more divorce/custody mediations to help children remain in intact familial relationships, and adding the facilitative process of community conferencing. The staff and volunteers are excited by this wonderful opportunity for growth!

For more information, contact: Stephanie Geisler, Program Director, Mediation Services of Catholic Charities, 26 East College Avenue, York, PA 17403; phone (717) 854-6727, fax (717) 854-4579.

The **Lancaster Area Victim Offender Reconciliation Program (LAVORP)** is pleased and honored to be the recipient of the Daily Point of Light Award presented by the Daily Points of Light Foundation. This award is given each weekday to an individual or organization that makes a positive and lasting difference in the lives of others. Instituted during the first Bush administration, the program was reinstated in 1998 during the Clinton era and has awarded this recognition to over 1,000 individuals and organizations since that time.

LAVORP received a congratulatory letter from both President George H. Bush and President George W. Bush, as well as a certificate and a letter from the CEO of the Points of Light Foundation. Volunteer mediator Ruth Weaver received this honor as well for her work with Bridge of Hope. You can view both Ruth's and LAVORP's Awards by going to www.pointsoflight.org and click on Awards, then Daily Points of Light Award, then Past Winners, then enter March 2001 and Ruth is listed as March 22nd. For LAVORP, click on September 2002 and then on September 24th.

The **Pittsburgh Mediation Center** (PMC) is pleased to announce two new programs:

In August of 2002, PMC secured a contract with Allegheny County to provide conflict resolution and anger management skills training for individuals moving from welfare-to-work. Workplaces can be difficult environments to negotiate even if you have workplace experience. According to a recent Pittsburgh Post Gazette article, research by Franklin Covey found that "more than three quarters of workers spent at least 25% of their time on cover-your-back communication, conflicts with other people and departments, and hidden agendas." PMC's conflict resolution training will provide the skills that new workers need to cope with these workplace stressors.

Thanks to a grant from The Founder's Trust, PMC will pilot Community Accountability Panels (CAPs) in the city of Duquesne beginning this fall. CAPs are composed of community members who volunteer to meet with first time juvenile offenders, who admit to a crime, to discuss the offense. The panel holds them accountable for their actions and determines an appropriate response including community service, educational activities, and/or specific restitution. If the child successfully completes the contract, he/she will not have a juvenile court record.

New 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.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 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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