NAFCM on the Move

This year promises to be an exciting year for the National Association for Community Mediation. After a four-year stay on M Street, we moved to our current location in the historic Dupont Circle area. Our new offices are located at 1527 New Hampshire Avenue, NW, 4th Floor, Washington, DC 20036. This building also houses the National Institute for Dispute Resolution, Conflict Resolution Education Network, the Society for Professionals in Dispute Resolution and the American Political Science Association.

After a month at our new location things are falling into place and we are beginning to feel at home. The increase in office space facilitates the growth of the organization. Our present location also fosters increased cooperation between the dispute resolution organizations mentioned above.

The general number is (202) 667-9700. Our individual extensions are as follows: Larry Ray, Executive Director – ext. 212; Joanne Hartman, Associate Director – ext. 219; Cheryl Meade, Administrative Coordinator – ext. 213; Thameenah Muhammad, Administrative Assistant – ext. 224.

Our e-mail address and website have not changed. They are nafcm@nafcm.org and http://www.nafcm.org respectively.

Mediation Centers Receive Vouchers for Software

In August of 1998, NAFCM announced the availability of financial assistance for case-management software programs. Eligible community mediation program members were provided with vouchers that cover a portion of the cost of pre-selected software programs. Software vouchers were distributed based on the center’s need, as determined by the guidelines developed by the Software Assessment Committee.

The goal of this project is to enhance the ability of community mediation centers to collect and store caseload data by underwriting software. The three software programs that were subsidized are: Dispute Resolution Case Management System (DRCMS), New York; MADTrack, SoftGoals, Oregon; and Mediation Manager, TekData, Maine.

All software programs meet certain minimum requirements. They each provide strong technical support, adaptability, specific data fields, the ability to generate statistical reports and cross-tabulations among other things.

To date, sixty-one centers have already received vouchers. Thus far the centers that have purchased and installed the software are expressing satisfaction. Through this venture NAFCM also expects the national data collection to lead to useful research for the field as well as increased recognition for community mediation centers nation-wide.
1998 Board of Directors

Terry Amsler
Oregon Dispute Resolution
Commission
Salem, OR
(503) 378-2877
Fax: (503) 373-0794
terry.amsler@state.or.us

Elizabeth Binger
Shiloh Family Life Center
Niantic, CT
(860) 739-6942
Fax: (860) 739-6947
lbinger@snet.net

Scott Bradley
Mediation Network of North Carolina
Chapel Hill, NC
(919) 929-6333
Fax: (919) 933-4465
mnc@mnc.org

Melissa Brodick
Cambridge Dispute Settlement Center
Belmont, MA
Phone/Fax: (617) 484-8769
mbrodick@jgc.org

Benjamin L. Carroll, III
Neighborhood Justice Center
Honolulu, HI
(808) 261-9821
Fax: (808) 263-9631
bencarol@pixi.com

Ilene Chaya Gusfield
Conciliation Forums of Oakland
Oakland, CA
(510) 763-2117
Fax: (510) 763-7098
cfo@grin.net

Barbara Hart
Neighborhood Mediation Center
Portland, OR
(503) 823-3152
Fax: (503) 823-3171
bhart@teleport.com

Timothy Hedeen
Dispute Resolution Center
St. Paul, MN
(651) 482-9944
Fax: Same
tkhedeen@spacestar.net

Andrew Ivy
Community Mediation Program
Tucson, AZ
(520) 324-0561
andrewivy@jgc.apc.org

Daniel P. Joyce
Cleveland Mediation Center
Cleveland, OH
(216) 621-1919
Fax: (216) 621-3202
danjoyce@spynet.com

Charles Pillsbury
Community Mediation, Inc.
New Haven, CT
(203) 782-3500
Fax: (203) 782-3503
chapillsbury@jgc.apc.org

Judith A. Saul (Co-Chair)
Community Dispute Resolution Center
Ithaca, NY
(607) 273-9347
Fax: (607) 275-9225
jas24@cornell.edu

Andrew Thomas (Co-Chair)
Center for Dispute Settlement
Rochester, NY
(716) 546-5110
Fax: (716) 546-4391
cdsat@aoI.com

Martha Weinstein
Neighborhood Justice Center
Tallahassee, FL
(850) 921-6980
Fax: (850) 414-0166
mnjnc@juno.com

Mike Wendt
Piedmont Mediation Center
Durham, NC
(919) 620-8866
Fax: Same
mdwendt@gte.net

Executive Director's Report

The Challenging Role of the Mediator: Being Positive and Encouraging

Being positive and encouraging, on the surface, seems so simple and possibly insignificant. In reality, however, it is quite challenging and vital to a successful mediation.

Being positive and encouraging is valuable. Most of the time when parties arrive, they are immersed in negativity. Most parties do not enjoy disputing. They may feel as if they have failed because they have not been able to resolve their dispute and have resorted to mediation.

Mediators can transform this negative environment into a positive one. The first step in doing this is by thanking the participants for coming to the mediation and commending them for taking this very positive step. Mediators need to set a positive stage, assuring the parties that the dispute will be resolved in this setting.

Mediators need to explain their role and the mediation process in a positive way. Avoid "the nats:" I am not a referee. I am not an arbitrator. I am not a judge. I am not a lawyer. I am not a counselor. Mediators need to clearly state what their roles are and what mediation's role is. Then if the parties ask specific questions, the mediator can respond to them honestly and directly.

Being encouraging is challenging. Mediators need to avoid minimalizing their role. Ineffective examples: "I am just here to listen." "I am simply here to assist you." These are vital roles.

One training manual describes the role of the mediator as "non-anxious." Again, it is best to state the mediator's role in positive terms. In this case, the authors were describing a cool and calm approach for the mediator.

Some trainers describe the role of the mediator as one who creates doubts or misgivings about the parties' positions. This seems like a negative approach. The same goal could be accomplished in a positive way; that is, creating the environment for the identification of interests and the generation of many creative options.

Being positive and encouraging can be contagious and sets the stage for progress in the mediation.

Sincerely,

Larry Ray
Loving Community Mediation to Pieces

by Christopher Sheesley

The meteoric rise of the community-based dispute resolution field has fueled one of its great challenges. Traditional referral sources are embracing the community dispute resolution product by developing internal alternative dispute resolution (ADR) processes formerly offered through community programs. Local courts institute small claims diversion programs housed under law enforcement agencies and city attorney offices are other examples of community programs giving way to institutionalized ADR. Community dispute resolution, as well as we have known it, is in danger of being “loved to pieces” through this trend of specialized, in-house programs.

This evolution affirms our message, but presents some dilemmas. First, it may eliminate key referral sources as each develops internal resources. The trend may also splinter a given community’s ADR effort into smaller programs, which compete for clients, funding and other resources. Another dilemma is that the community field will be stunted through the loss of potential “markets.” This threatens to relegate community programs to a fringe status.

A more subtle impact is that institutionalized ADR tends to be more settlement-oriented and directive, which runs contrary to the holistic practices found in many community-based programs. This contrast contributes to public confusion over different services. In some cases, directive practices in another context results in a mistaken aversion to community dispute resolution.

Finally, increasingly specialized ADR services add momentum to the movement towards qualifications and professionalization. This narrows the spectrum of cases in which community ADR can be engaged. This is an ironic situation for community programs that act as incubators for ADR services and professionals.

There are antidotes to the concerns raised above. Community ADR must celebrate its success and continually assert itself back into the center of the ADR discussion. Part of this assertion is philosophical. Community dispute resolution often serves as the soul and conscience of ADR. As stated above, much of the ADR field (practitioners and practices) has emerged from this platform. On the practical side, we should highlight that the majority of conflict resolution services taking place throughout the nation occur under the auspices of community programs. The community field is rooted in a proven model of voluntarism, diversity, direct access and early intervention. The field is uniquely qualified to offer high quality, low-cost services through its expertise, training and innovation.

To flourish under the trend described in this article, community dispute resolution must build coalitions with other social movements. A perfect illustration is the community oriented policing (COPS) arena. Much of what COPS aspires to be is mirrored in the work of community dispute resolution. The field can benefit through linkages with this new way of policing. Rather than allow such forces to co-opt the work of community conflict resolution programs, we should join their efforts while retaining our unique strengths and identities. Other areas ripe for collaboration include restorative justice; family mediation; school-based mediation; court diversion; and the increasing interest in government-based ADR.

Continuing to build programs that are strong, dynamic and diverse will help reduce the urge to create competing programs. On a national scale, the development of the National Association for Community Mediation, the Society of Professionals in Dispute Resolution’s continuous efforts to include community programs and the Department of Justice’s decision to hire a Director of Community Dispute Resolution each lend greater clout and legitimacy.

Community ADR will continue to prosper despite the repercussions of its success. It is a field full of dynamic individuals, powerful ideas and ongoing creativity.

Christopher Sheesley is the Program Manager of Community Mediation Services in Vancouver, Washington. He served four years with the Dispute Resolution Center of Snohomish County. In 1993, he developed a program for Clark County, Washington. This program merged with another program in 1997. Sheesley was the 1998 Chair of the Association of Washington State Dispute Resolution Centers.
Domestic Violence and The Mediators Role
by Tony Scott, Senior Trainer, Center for Dispute Settlement, Rochester, NY

Domestic Violence is a phrase that has been getting a lot of attention in recent years. So much so that the New York State Legislature found it necessary to amend the statutory treatment of family offenses as specified in Article 8 of the Family Court Act, Section 240 of the Domestic Relations Law, and Section 530.11 and 12 of the Criminal Procedures Law which had no mandatory arrest provision. Consequently, the Family Protection and Domestic Violence Act of 1994 was enacted. The law is the direct result of testimony presented at hearings, forums and in consultation with advocates, law enforcement and specialists in the field of domestic violence and law. Most of the gathering of testimony was conducted during 1992 and 1993. Assembly member Susan John, a sponsor of the bill, stated in an announcement of the passage of the bill by the legislature:

“The Domestic Violence is a highly emotional and complex dynamic, it is important that the mediator adhere to the principles of the mediation process . . .”

“Every 15 seconds a women in America is assaulted by her husband or boyfriend. In New York State, four women a week die at the hands of her abuser. The families of Lisa Hetherington and Carla Loveberry know that domestic violence is not a behind closed doors family matter, it is a crime. We have a duty to arrest and prosecute batterers and protect victims. This bill gives law enforcement and the courts the tools they need to do the job right.”

So what does this have to do with mediation? After all, mediators know that violence is not negotiable, domestic or otherwise. In response, interpersonal dispute mediations between persons who are, or have been involved intimately has the potential for suspicions of underlying issues of domestic violence to surface. The question is, what is the mediator’s role? According to the New York State, Community Dispute Resolution Centers Program guidelines on domestic violence (part/chapter 4.030), it is the primary responsibility of staff to address issues of domestic violence. The Center for Dispute Settlement’s (CDS) policy and procedure is that the mediator stop the session and conference with the appropriate staff member to determine the next step in the event that the issue of domestic violence has surfaced in the session. It should be noted that it is CDS’ obligation to conduct follow up services with any case in which domestic violence has been identified, to assure the protection of the victim and the availability of legal and social services’ resources.

Stopping the mediation session as a matter of procedure is clear, how to stop the session without placing the abused party in further danger is muddled. This point was driven home harder than a Tiger Woods’ tee shot at a training entitled “Exploring the Complexities of Family Violence: Developing Mediation Protocols, Procedures and Training” sponsored by the New York State Dispute Resolution Association and the New York State Community Dispute Resolution Centers Program in March 1997. At the workshop it was agreed upon by all in attendance that protocol and procedures were a necessity, and screening was essential. A great deal of time was spent discussing behaviors of the parties that may indicate that violence is an underlying issue in the dispute. Major emphasis was placed on the development of strategies and actions of the mediator when abuse was suspected. It was unanimous that the safety of the victim was the first and foremost consideration that the mediator should have in mind, and that the mediator should be aware of their own reactions that could undermine the safety of the abused party. Sometimes all help is not help.

Domestic violence is a highly emotional and complex dynamic, it is important that the mediator adhere to the principles of the mediation process and the tenets of the mediator’s role, particularly that of being an impartial third party. Keep in mind that it is the responsibility of staff to pursue and make determinations regarding the issue of domestic violence in mediation sessions as dictated by policy and procedures. The mediator must maintain the integrity of the process.

The ABC’s of Effective Referrals

This article was reprinted with permission from The Fence Post, the Neighborhood Reconciliation Center Newsletter. For more information on the NRC in Detroit, call 313-592-1900.

If you have ever made a referral for mediation, you may have experienced the joy of finding that a particular dispute was, indeed, resolved even though you had doubts that it ever could be. You may, however, have found that the dispute was not resolved because they did not mediate and the problem still exists. Chances are, those referred disputes which were actually mediated were ones in which most of the following criteria were met.

A. Complete and correct information regarding all disputants was given to the center; i.e. names, addresses, telephone numbers.

B. The disputants were given a clear understanding of what mediation is and what could be accomplished; i.e. it is a voluntary process for settling disputes through which all parties could emerge as “winners.”

C. All parties to the dispute expressed an interest in settling their disagreement, and a willingness to at least try the mediation process in good faith, realizing they could still try other methods if mediation doesn’t work for them.

D. The dispute was appropriate and suitable for mediation i.e. it did not involve serious crimes, serious mental health problems, domestic violence or child abuse and all parties had the ability to carry out an agreement.
News From Oregon

1998 Grants

The Oregon Dispute Resolution Commission (ODRC) has awarded $385,772.50 in special 1998-99 grants to provide community dispute resolution services around the state. With this new funding, 22 organizations in 16 counties now receive ODRC funds. These special grant funds are a result of the increased filing fees approved by the 1997 Legislature, and supplement the grants awarded in the regular biennial cycle completed last year. In all but one county, local Boards of County Commissioners advertised the grant fund available, worked with ODRC staff to manage the grant process, and selected the grantees. This partnership assures valuable local input on what kinds of dispute resolutions services should be funded in each county. For more information on individual grants, call Sandy Kristiansen or Eve Ford at (503) 378-2877.

Innovative Budget Concepts

At their July meeting, the Oregon Dispute Resolution Commission endorsed a number of creative ideas to extend and improve dispute resolution practice in the state. The Commission is supporting a half million dollar package to develop conflict resolution strategies to enhance school safety and student citizenship. A centerpiece of this proposal is a significant program of mini-grants for schools in Oregon that wish to initiate selected conflict resolution curricula or peer mediation programming.

Other budget plans include efforts to enhance the cultural competence of community dispute resolution centers, focusing initially on improved and appropriate services to Hispanic/Latino communities. The proposed set of activities would help to create a greater awareness of mediation options among the general population, encourage the early use of dispute resolution services, and enhance the understanding of consumers on how to best use mediation options in courts, communities and elsewhere.

Dispute Resolution Writing Contest

For the past five years the Willamette University Center for Dispute Resolution (CDR) has conducted an annual writing contest.

The author should endeavor to simulate an actual dispute in his/her paper. This includes the presentation of a problem, confidential information about the involved parties and a teacher's guide to resolving the problem. Although there are no minimum or maximum page requirements, the best papers will be more than five pages and less than 25 pages in length.

Once submitted, papers become the property of Willamette University Center for Dispute Resolution. CDR will share the right to duplicate and distribute with the author.

Deadline for submission is July 15, 1999. Winners will be selected and notified shortly thereafter. Each year the winning simulations are published.

Five hundred dollars will be awarded to the winner.

Two second place prizes will be chosen, each receiving two hundred and fifty dollars.

For more information or to submit entries contact: Professor Richard Birke
Willamette University Center for Dispute Resolution
245 Winter Street, SE
Salem, OR 97304
503-370-6046

Book Review:

Mediation Training

by the Winnebago Conflict Resolution Center

Reviewed by Larry Ray

Mediation trainers are constantly searching for useful materials. Mediation Training, written and compiled by Kristy Bradish and Pat Nichols of The Winnebago Conflict Resolution Center, Inc. provides new materials. Testing our values, the “How You Act in Conflicts” exercise gives us a new look at comparing conflict resolution styles. Although stated in a negative way, “the non-anxious presence” delivers to the participants a list of eleven characteristics of an effective mediator. The non-anxious may be deemed equivalent to a cool, calm mediator. Five pages of the manual focus on “impasse” which is a perplexing issue for all mediators. I especially enjoyed reading “the door slammers and openers” list. The number of roleplays provides new material as well.

The authors do buy into the troubling mediation field mantra that “Progress comes from conflict....” I have heard this often to the point where some declare that they cause conflicts in order to create opportunities. I realize that conflict is inevitable. I tend to believe that opportunities arise in a variety of circumstances with conflict being one of these.

I would recommend purchasing Mediation Training for your mediation library. If you mention this review, the price will be discounted from $15 to $12 plus shipping and handling. To order contact: Winnebago CRC, 415 Jackson St., Room 412B, Oshkosh, WI 54901; phone: (920) 236-4711.
Subscribing to Listservs & Newsgroups

The following is an article reprinted with permission by the Academy of Family Mediators. It originally appeared in Mediation News (Vol. 17, No. 1), the quarterly newsletter of the Academy of Family Mediators.

Many mediation and legal organizations sponsor a ‘listserv’ or ‘newsgroup’ that provides valuable information about current changes in the field, including new reviews, upcoming events, articles, discussion groups, and legislative updates. You subscribe to a listserv the way you would subscribe to a magazine (except in most cases the subscriptions are free), and then periodic updates from the organization are sent directly to your e-mail account.

In most cases, you subscribe to a listserv by sending an e-mail to a particular e-mail address with the subject line blank. In the message, type the word ‘subscribe,’ followed by your Firstname and Lastname. (You will need to send the message from the e-mail account that you would like to have messages sent to.) If you decide you would like to cancel your subscription, you usually just need to send a new message with the word ‘unsubscribe.’ Each listserv has different criteria for cancellation, and some print the cancellation instructions at the end of each message you receive. Each time you subscribe to a listserv, however, you should make sure to keep a copy of the address you sent the original message to, along with the instructions on how to cancel.

You can find information for subscribing to listservs in many websites. A good rule of thumb is to look for one if you find a website of a particular topic that interests you, that will be sending you informational messages rather than solicitations. Some organizations will flood you with daily messages, while others only send you updates as they have something new to report.

The following is a portion of a list compiled by the Institute for Global Communications (IGC) and Mediation Works Incorporated. Listed below are listservs and newsgroups that anyone can access. There are many newsgroups that are available only to APC (Association of Progressive Communications) member internet providers, and if your e-mail account is through APC (your name followed by '@igc.apc.org' or '@igc.org'), you may obtain a complete list from APC.

<table>
<thead>
<tr>
<th>Name of Listserv</th>
<th>How to subscribe</th>
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| ABA Dispute Resolution Listserv      | 1. listserv@abanet.org  
2. subscribe addr Firstname Lastname                                      |
| conflict resolution education        | 1. Listserv@pulsar.acast.nova.edu  
2. subscribe ccrnet Firstname Lastname                                    |
| conflict resolution public policy    | 1. Majordomo@igc.org  
2. subscribe cr-publicpolicy Firstname Lastname                             |
| broad dispute resolution             | 1. Listserv@listserv.law.cornell.edu  
2. subscribe dis-res Firstname Lastname                                     |
| National Association for Community Mediation | 1. Majordomo@igc.org  
2. subscribe nafcm-network Firstname Lastname                               |
| The Peace List                       | 1. Listproc@willamette.edu  
2. subscribe peace Firstname Lastname                                       |
| Recent Developments in Dispute Resolution | 1. Listproc@willamette.edu  
2. subscribe dis-res Firstname Lastname                                     |
| VORP listserv                        | 1. Owner-vorp@fresno-edu  
2. subscribe vorplist Firstname Lastname                                     |
| Philanthropy Journal Alert           | 1. pjalert@mail-list.com  
2. subscribe                                                            |

The U.S. Department of Justice (DOJ) has extended its grant to the Key Bridge Foundation for Education and Research to train professional mediators to mediate Americans with Disabilities Act Complaints referred by the DOJ. The Key Bridge Foundation is inviting experienced mediators interested in mediating disputes that arise under the ADA to apply to be trained and become members of the mediator pool for the ADA Mediation Program. Training consists of a one-day workshop covering public accommodations (title III) of the ADA and portions of title II of the ADA that govern the provision of goods and services by state and local governments.

Three training sessions will be held in the Spring of 1999: April 24 in Tampa, FL; May 15 in Boston, MA; and May 17 in St. Louis, MO. Members of the mediator pool will be assigned ADA complaints to mediate pro bono. Mediators will be assigned approximately eight complaints over the period of the grant. Although the training is free, trainees are responsible for the cost of travel and associated expenses, such as lodging and food. For more information, contact Ms. Jinu Evan at 1-888-528-1609.
NAFCM PRACTICE NOTES

Representatives & Advocates

Ben Carroll  · Honolulu, Hawaii  · bencarol@pixi.com

Mediating with a representative party, or with an advocate present — whether lawyer, special education advocate or abuse counselor — can add complexity to the process and present challenges. Educating mediators, parties and advocates how to make this work is important if mediation is to run smoothly.

“Representatives” appear regularly in many community mediation settings. “Representative” as used here simply means an agent or one who is there to “represent” the interests of another party that may not be present. Typical examples include an employee appearing for a company; a parent or guardian coming with (or for) a juvenile or incapacitated person, and a board member of a community or condominium association.

“Advocate” is used to mean an advisor or person engaged to assist a participant in various ways. A common example is an attorney. Advocates may impact mediation at several points, ranging from preparing parties for mediation and reviewing agreements and proposed terms to actually attending and participating in mediation sessions. The same person may appear as both representative and advocate for a party.

WORKING WITH REPRESENTATIVES

In the ideal situation, all affected parties appear in the mediation. However, in many instances, mediators are faced with situations in which attendance or participation of an interested party or entity is not practical or possible; for example, when a party is an organization or large group such as a board of directors. Two issues arise whenever a representative appears without the party: whether the goals of the mediation can occur without the presence of a particular party; and whether the representative can usefully act for the absent party.

Representative Not Appropriate  An example of a necessary party for mediation might be the juvenile offender in a restitution program; many community mediation centers feel mediation with the victim and parent of a juvenile offender (but without the offender) is not worthwhile. These centers feel that both the juvenile and parent are required and that the parent cannot adequately “represent” the juvenile, given what is expected to happen through interaction of victim and offender. Each center determines which participants are critical for mediation.

Representative Appropriate  In other situations, representatives may be normal and acceptable. Typically, businesses appear in a mediation through some type of representative unless a sole proprietorship. Community mediation centers which routinely deal with representatives need to develop appropriate questions to ensure that the “right” people show up for mediation; obviously, some situations may not permit this, e.g., on-site small claims court mediation. Questions a community center can ask before setting up a mediation with a representative:

• Has the representative been selected, approved, appointed or otherwise chosen by the person, people or organization which will be represented?

• Does the representative have authority to negotiate for the party? If additional approval is required, is the opposing party aware of this necessity? How, when and where will subsequent approval be obtained?

Understanding of Representative Role  If the parties present cannot “sign on the line” to finally conclude the matter, this fact needs to be clear to all parties before the mediation begins. Nothing can kill the “deal” quicker (or more permanently) than a surprise announcement at signature time, “We can’t sign this. We need to have the others review it — we’ll get back to you.” Thus, the representative capacity needs to be clear from the beginning to avoid problems with differing expectations as to what the mediation can accomplish at a particular session.

Ratification  If a representative does need to go back to the group, and this requirement is known to and agreeable to the other party, there are still a number of issues to lay out in the mediation so that everyone is clear on what will happen outside the mediation. For instance, is ratification simply a formality or will there be a “knock down, drag out” fight over any perceived “compromise”? How long will it take? Will the representative be an advocate for the proposed agreement, simply a messenger, or a naysayer once they leave the mediation room? How exactly will the proposed agreement be presented to constituents and who else will be involved in that presentation?
WORKING WITH ADVOCATES

Whereas a representative is often a member of one of the mediation parties, an advocate is generally a third party hired or engaged to assist parties in protecting their interests and presenting their position. Advocates (including attorneys) are sought for their expertise in the subject matter and their experience in handling proceedings.

Advocacy Role  Advocates, by nature, are seldom neutral about their work; they are usually deeply committed to the issues (e.g., special education, family violence). They can appear zealous or adversarial and believe their duty is protecting clients from opponents. For some, getting the “best” for clients means the maximum available under the law; this approach may ignore client non-monetary or non-legal needs or desires. This view of advocacy may be compounded by suspicion about the efficacy or advisability of the mediation process or the mediators.

Why Advocates May Object to Mediation  Advocates who do not view mediation as a neutral or valuable process will not encourage participation by their clients and may be obstructive if the client decides to attend anyway. Some concerns on the part of advocates may stem from prior experience with mediation and sometimes these can be alleviated by the mediators.

- Impartiality  In the past, some education departments had their own internal special education mediators who were employees or selectees. Understandably, parents were concerned over the orientation of these departmental mediators. If this is part of the problem, mediators can demonstrate their impartiality.
- Competence  Advocates are often subject matter experts; community mediators usually are not. Advocates may be unclear on the mediator role or have concerns over the mediator’s ability to ensure informed decision-making. If so, the center can establish that its training and process are adequate for the role the mediators play and that expert input is desired and included as part of the mediation process.
- Loss of Control  Advocates are often the sole (or, at least, prime) movers in assisting their clients through a legal or administrative process. This relationship can become quite personal and may result in an “us” versus “the system” mentality. Such advocates can have trouble relinquishing control, even to the client.

Advocates Favoring Mediation But...  Even advocates who understand mediation and favor it may believe it is inappropriate in particular cases. This valuable feedback should be elicited and considered; such input can assist the center in screening and reassessment of what cases are suited for mediation. However, centers can identify advocates who never find mediation appropriate in their own cases although they “approve” of it for everyone else.

How Advocates Can Help  By definition, advocates provide parties with services that mediators cannot. In most community programs, mediators may help parties determine whether they need additional information for decision-making but are not a meaningful source for such information. The issue, then, is not whether advocates will be involved with mediation clients but rather how they will be involved. Advocates who understand and favor mediation as a valuable option for their clients can serve in a number of valuable roles:

- providing information and expertise the mediators are not able to share because of mediator ethics;
- serving as agents of reality for their clients; and
- predicting the possible range of outcomes at trial or hearing.

ADVOCATES IN MEDIATION SESSIONS

To Have or Not to Have  Some centers exclude or discourage participation in mediation sessions by attorneys or other advocates. This typically is done because of the desire that parties themselves be engaged and work out their own solutions and the feeling that this will not occur with advocates present. Mediators may feel that having attorneys/advocates involved will inject adversity into the process and focus the parties on rights and positions rather than interests. Other programs welcome (or at least tolerate) advocates in some or all of their mediations.

Involvement Useful  Mediators in specialized or complex areas such as Americans with Disabilities Act, civil rights or abuse cases find increased attorney/advocate involvement. Centers mediating these matters often find advocates are useful in clarifying issues and options -- both before and after mediation -- and through actual participation in sessions.

Legal Right to Advocate  Various laws entitle mediation parties to have their representative with them. For example, courts which permit mediation when there are allegations of domestic violence may specifically require that attorneys or advocates for both parties can attend mediation. Community centers which handle these cases do not have the option of excluding attendance by attorneys or advocates.
SUCCESSFUL MEDIATION WITH ADVOCATES

Mediation programs which have had successful experience with various advocates have found several factors which promote this working relationship.

- **Advocates' Familiarity with Mediation Process** Often advocates seem out of place in mediation because no one has helped them differentiate between what is happening in mediation and the adversarial processes they often work in. Offering special training to advocates in what mediation is and “how to participate in mediation” can establish common working ground and reduce the feeling of working at cross purposes.

- **Mediators’ Familiarity with Advocacy Function** Although some mediators may be attorneys or other advocacy professions, many other mediators may not be familiar with legal or social service advocacy. Some mediation centers include presentations from advocates in their mediator training or have staff or mediators attend training provided by advocacy organizations (e.g., special training for abuse cases).

- **Comfort with People and Process** As a general rule, advocates accompany parties because either the party, the advocate, or both feel that: (1) the party needs specialized information or assistance; or (2) the party is at a disadvantage in dealing with the other side. An effective process will allow consultation and review with the advocate and assurance that parties will be protected from harassment during mediation.

- **Understanding of Roles** If advocates are seen as empowering clients, mediators are more accepting of their role in a common purpose. Also, advocates invited to participate and welcomed into the process, interact very differently than if begrudgingly permitted as a “necessary evil” or impediment.

- **Established Guidelines** Mediation centers can work with organizations which regularly advocate for clients involved in mediation to set out common understandings and the best way to work with each other to advance the interests and empowerment of the client, including letting the client talk for themselves.

**LAWYERS**

**Attorney Concerns with Mediation** Many lawyers are not trained in Alternative Dispute resolution, although law schools and bar associations now do this. Furthermore, even ADR-trained attorneys may not be familiar with typical community models of facilitative, non-directive, non-agreement-driven mediation. Depending on area of practice and personal orientation, lawyers may be more or less familiar with emotional and non-legal needs of their clients. Since these are part of mediation, there may be a disconnect between mediators and lawyers dealing with the same party. Lawyers concerns and reluctance may include:

- **Mediators are “Anti-Lawyer”** Just as mediators feel that lawyers don’t know mediation, lawyers feel that mediators do not understand or appreciate when legal help is necessary or beneficial. Most centers agree that some cases need the legal system (e.g., temporary restraining orders); lawyers need to hear mediators say this. Centers can jointly work out checklists with lawyers as to when mediation is or is not appropriate.

- **Mediators Compete for “Legal” Business** Actually, most work community mediators handle does not impact the majority of lawyers. In fact, many lawyers will utilize mediation for certain cases, or parts of cases, if they do not fear someone “stealing” their client or “badmouthing” lawyers. Many court rules now promote ADR and lawyers can be “heroes” by referring cases to economical determination, i.e., mediation.

- **Mediators Do Not Protect Legal Rights** Most centers handle this by expressly referring participants to experts when they need legal financial or other advice. Some have “Ask your lawyer” checklists as well.

**Improving Interaction** Obviously, the relationship between community mediation centers and local lawyers varies greatly. Here are several ways centers have found to engage attorneys and mediators as allies.

- **Center Volunteers** If you do not have lawyers as mediators and board members, you are missing a valuable resource. Community mediator-lawyers have made the transition out of the “gladiator” mind-set and can help bridge this gap for other lawyers. They can also help mediators understand lawyers.

- **Bar Associations** Many bar associations have opened their Alternative Dispute Resolution sections to non-lawyers (often the only bar section so open). Membership in the section, joint presentations and other efforts can build rapport and support. Also, check other relevant bar sections (e.g., family law).

- **Mediator/Legal/Judicial Education** Develop a reputation as a resource for mediators ("how to work with lawyers") and lawyers ("how to prepare clients for mediation.") Open your training to lawyers and judges and tailor sessions as needed for a legally trained audience. If your court has a divorcing parent education program, offer to produce a piece on mediation. Use mediator skills -- Look for common ground.
WHAT OTHERS SAY ABOUT ADVOCATES & REPRESENTATIVES


“Usually, for mediation to be most effective, disputants need to deal with each other directly, to air their differences, learn to perceive the dispute from each other’s point of view and work together to find a resolution. Against this background, the presence of a lawyer, especially one trained to function in the more adversarial atmosphere of the courtroom, can sometimes be self-defeating, especially in interpersonal disputes involving family, friends, neighbors or business colleagues where preservation of the underlying relationship is a goal.”


“Before you begin negotiating, you need to figure out who has the authority to make all final decisions involving the negotiation. That’s the person who can say ‘yes’ to you. ... Lawyers are not obligated to have their clients present during negotiations. If your opponent has a lawyer, you might be stuck dealing with the lawyer rather than the ‘yes’ person (the client). Ask if the lawyer will bring her client to the bargaining table anyway. ... In other situations (for example, if you’re dealing with a large corporation with a complex hierarchy), the ‘yes’ person might not be immediately obvious. If you’re in doubt, ask who has the authority to resolve the matter. Then arrange to meet with that person.


“In some disputes, the mediator will deal with attorney advocates as representatives of the parties through all phases of mediation. This is common in court-ordered mediation, when the parties will likely have engaged attorneys to file a lawsuit, and the matter has now been referred to mediation as an alternative to litigation. In these cases, the rule of thumb is for the mediator to treat the attorney advocates as representatives of the parties unless otherwise instructed. For example, you will ask the attorneys about the appropriateness of the parties speaking for themselves during the session (usually the attorneys will encourage the parties to do so), and also whether there will be meetings with the parties alone when the attorneys are not present (often a helpful shift in the negotiation mix, requested by the attorneys themselves).”


“The lawyer’s ultimate job in mediation is to help the client successfully complete the mediation, resulting in an agreement that the client considers fair based on as much information as is reasonably available. The job is not to negotiate for the last dollar or receive vindication of all legal rights available to the client. Leaving some money on the table or passing up possible legal protections may be well worth it to the client if the overall agreement satisfies other needs, such as finality, preservation of an amicable relationship and healthy children, privacy, and other non-monetary or legal benefits to clients. Informed consent means that the client makes these value choices. ...

“[M]any clients are unwilling to try mediation without the backup advice of their own lawyer. Often ,however, potential mediation participants are riddled with conflict: they want protection, but they don’t want lawyers taking over the mediation. Many have chosen mediation for the self-empowerment and control it affords, and they don’t want to have to convince the lawyer to support the resulting agreement or to be told how shortsighted or stupid their actions have been. And they certainly don’t want to spend their children’s college education money fighting each other.


“There are several obstacles to appropriate involvement of lawyers in alternative dispute resolution. First is unfamiliarity, which can breed either contempt or misjudgment. Many lawyers have little understanding of alternative methods because they lack either education or interest. This is changing as law schools, bar associations, and courts promote knowledge about alternatives, but you should not be surprised to find lawyers who are unaware of differences between arbitration, mediation and a mini-trial, or who will tell you they are opposed to arbitration because it means ‘splitting the difference.’ Second is generalized fear of the unknown combined with the apprehension that the lawyer might make less money or lose control if he is involved in alternatives. The third obstacle is that many lawyers view their role primarily as advocate, and this affects the way they see the world -- what they notice and what they ignore. The basic problem here is that the adversarial perspective, so valuable in some settings, often constrains the way lawyers function in settings where a problem-solving approach might be more appropriate.

If you have comments, questions or suggestions concerning advocates or representatives in mediation, please contact Ben Carroll or the National Association for Community Mediation, 1527 New Hampshire Avenue, NW, Fourth Floor, Washington, D.C. 20036, Tel: (202) 667-9700 Fax: (202) 667-8629, E-mail: nafcm@nafcm.org
The Road to Mediator Credentialing and Standards of Conduct in Pennsylvania

by Winnie Backlund, Director, Montgomery County Mediation Center, Norristown, PA

Approximately three years ago, the Board of Directors of the Pennsylvania Council of Mediators (PCM) raised the issue of standards and credentials for mediators in the state. Some of the motivation came from legislation being passed and concern over who would define mediation and mediator qualifications in Pennsylvania. Members of PCM wanted to have a say and thus began their journey. The Board formed a Core Committee of PCM members who were interested in this topic. The decision was made to convene a Task Force meeting in Harrisburg, PA. All members of the mediation community and others expressing an interest in the topic of mediator credentialing were invited to the Task Force meeting in October, 1996.

As part of the planning process, the Core Committee used the services of an outside facilitator to help them identify the goals and objectives for the Task Force meeting. PCM wanted to begin a dialogue about credentialing with those who would be affected.

On October 17 & 18, 1996, about 140 mediators from all practice areas, with a geographical diversity from throughout Pennsylvania, gathered at the Dixon University Center in Harrisburg. By the end of the Task Force meeting it was clear that not everyone in attendance thought that credentialing was necessary. There were some fears around credentialing and the potential of excluding individuals. A decision was made to continue the dialogue. Fifteen work groups were formed, whereby those interested in a particular type of mediation or topic related to credentialing agreed to continue the work begun at the Task Force meeting. Each work group had a chairperson who was responsible for setting the meeting, facilitating discussions, and assisting in the drafting of any work product produced by the group. The Core Committee was overseeing the progress of the work groups.

At the PCM Annual Conference in June, 1998, the work group reports were presented to the PCM membership. In response to the work group reports, the membership mandated that the Core Committee, using the work group reports, prepare a document to be presented to the Board of Directors at the September 18, 1998 meeting. The Core Committee met over the summer and drafted a document which included mediator qualifications, standards of conduct and a code of ethics. At the September Board Meeting the document was accepted, but approval was withheld until the membership had an opportunity to comment. The document in its entirety was published in the Fall PCM Newsletter and members were invited to comment by contacting Board members or attending the November 6, 1998 Board of Directors meeting, at which time a decision about the document would be made.

On November 6, 1998 the Board of Directors met in Pittsburgh and considered the suggestions and comments from the membership. After a lively discussion, the Directors adopted the amended Standards and agreed to review them in one year.

For more information contact Winnie Backlund at the Montgomery County Mediation Center, 26 West Main Street, Norristown, PA 19401; (610) 277-8909; fax (610) 277-5126; e-mail mcmcpeace@aol.com.

Community Mediation Calendar

APRIL 16-17 Annual Pennsylvania Council of Mediator's Conference. Wilkes-Barre, PA. PCM, (814) 355-6768 or (215) 563-7860 or (717) 233-8255; http://www.libertynet.org/pcomenned

APRIL 23-24 1999 Midwest Mediation Conference. Lawrence, KS. Heartland Mediators Association, Sandra Sabanske (913) 381-4458; Barbara C. Frankland, e-mail bcf@unicom.net

MAY 28-JUNE 1 National Conference on Peacemaking and Conflict Resolution: Weaving a New Beginning. Phoenix, AZ. NCPKR, (877) 39-PEACE; fax (703) 993-3070; e-mail NCPKR@gm.edu; http://www.gmu.edu/departments/NCPKR

JUNE 20-23 12th Conference of the International Association for Conflict Management. San Sebastian-Donostia, Spain. Bruce Barry, Vanderbilt University, Nashville, TN 37203; (615) 322-3489; e-mail IACM99@owen.vanderbilt.edu

JULY 6-10 Academy of Family Mediators Annual Conference. Chicago, IL. AFM, (781) 674-2663; fax (781) 674-2690; e-mail afmoffice@mediators.org; http://www.mediators.org

JULY 25-27 14th Annual Conflict Resolution Education Network (CREnet): Education & Leadership for Safe Schools. Boston, MA. Mike Ambrose, CREnet, 202-667-9700; fax (202) 667-8629; e-mail nidr@crenet.org; http://www.crenet.org

SEPTEMBER 16-18 7th Southeastern Mediation Conference: The Future of Dispute Resolution: Building Community through Partnerships. Charlotte, NC. Mediation Network of North Carolina, (919) 929-6333; e-mail mnnc@mnnc.org

SEPTEMBER 14-18 16th Annual International Victim Offender Mediation Association Conference. VOMA, William Preston, Administrator, (904) 424-1591; voma@voma.org; http://www.voma.org
Position Announcements

The University of Oregon is seeking a director of Conflict Resolution Services. The director works with students, faculty, staff and others to resolve interpersonal and intergroup disputes. Specific duties include: direct service as a mediator; program administration; education, including university staff development for faculty and staff and classroom and training opportunities for students; and serves as a staff member of the Office of the Dean of Student Life. Qualified applicants must possess a master’s degree in a related field with additional training and experience in mediation or conflict resolution theory and practice, facilitation, or organizational communication. For more information or to apply, send a letter of qualification, current resume, and the names and phone numbers of three professional references to:

Elaine Green
Associate Dean of Student Life
5216 University of Oregon
Eugene, Oregon 97403-5216
(541) 346-3216, Fax 346-5811

Neighborhood Justice Center, Honolulu - Center for Community Conflict Resolution is seeking a CEO to foster and sustain an active, community based dispute resolution program. Qualifications should include: inspirational and aspirational leadership abilities - to envision and implement new and expanded conflict management programs and partnerships based on community needs; proven program development and implementation abilities; excellent written and verbal communication skills; and experience in marketing and fund raising activities. Competitive salary commensurate with experience - potential for performance incentives. Interested candidates should submit resumes to:
SEARCH COMMITTEE
c/o Neighborhood Justice Center
200 N. Vineyard Blvd.
Suite 320
Honolulu, Hawaii
96817

Community Mediation Services, a small non-profit in Augusta that promotes community peacemaking with trained volunteer mediators, is seeking its first Executive Director. Responsibilities include: administering statewide contract to provide mediation services within mental health system; coordinating volunteers to mediate variety of cases in central and mid-coast area; marketing and outreach; and developing funding sources. Applicants should demonstrate administrative skills, grant writing experience, entrepreneurial spirit and commitment to CMS vision. Position is part-time until July 1, then full-time. For further information contact:
Sarah Shed, Board Chair,
Community Mediation Services
72 Middle Street
Hallowell, Maine 04330
207-623-3163
sshed@mint.net

The University of Missouri-Columbia School of Law seeks applications for a tenure-track position that will support its new J.D. program in dispute resolution and its established J.D. curriculum in dispute resolution. The appointment will begin in Fall 1999 and will involve teaching four courses per year, including two or three dispute resolution courses. Applicants should have a J.D. or comparable degree, with an excellent academic and practice record, a strong background in dispute resolution processes and a demonstrated commitment to research and teaching in that area. Submit resume with references to Leonard L. Riskin, Co-Chair, Faculty Appointments Committee, School of Law, Hulston Hall, University of Missouri-Columbia, Columbia, MO 65211

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NAFCM • 8
Miracles Can Happen in Mediation

by Martha Weinstein, Executive Director, Neighborhood Justice Center, Tallahassee, FL

The following is an article reprinted with permission by the Tallahassee Democrat. It originally appeared Thursday, April 23, 1998. Martha Weinstein writes a weekly article on a conflict resolution topic of interest to the community. To discuss this article, similar struggles that your community faces, or ask any questions about the work at the Neighborhood Justice Center, please contact Martha Weinstein at mwnjc@juno.com or fax (850) 414-0166.

It is important to remember the many connections that exist but which are not always immediately noticeable.

I am often asked if the Neighborhood Justice Center is making a difference in this community, and, if it is, how I would describe what I notice.

We are making a difference in people’s lives every day.

Before I take you there, though, let me share this wonderful piece with you for perspective. I first heard this years ago, and it’s one of my favorites. I hope you enjoy it, too.

“Starfish Flinger” (Courtesy of the Minnesota Literacy Council)

As the old man walked the beach at dawn, he noticed a young man ahead of him picking up starfish and flinging them into the sea.

Finally catching up with the youth, he asked him why he was doing this. The answer was that the stranded starfish would die if left until the morning sun.

“But the beach goes on for miles and there are millions of starfish” countered the other. “How can you make any difference?”

The young man looked at the starfish in his hand and then threw it to safety in the waves.

“It makes a difference to this one,” he said.

We get trapped sometimes by thinking that our impact must be based on large numbers. Impact is often measured one step at a time or one person at a time.

If you say one kind word, and it helps someone get through the day, did you make a difference? You bet! Did it help just that one person? Perhaps. But it is also possible that one action supports a person so that he or she is able to do something meaningful. And so on.

I think it is important to remember the many connections that exist but which are not always immediately noticeable. The important thing is that each of our actions has meaning for someone else, and is connected to someone or something.

When I speak to groups about the power of mediation, I tell them that I have seen miracles happen in mediation. When two people sit down to find common ground and better understand one another, the door opens to something that didn’t exist previously, and thus results in something that might not have occurred otherwise.

I have seen people who haven’t spoken to one another in years restore their relationship by having a meaningful conversation. I have watched individuals come in angry, and walk out arm in arm continuing their conversation in our parking lot.

Perhaps one of the most transformative moments was during a mediation where two young people resolved a problem that had gone on for several years. It had escalated to a level so alarming that parents and police thought someone would end up dead from an act of violence.

We have the privilege of helping people reach each other’s hearts and connect in a way that is often overlooked.

On a recent Sunday, the Sally Forth comic noted that “the chief difficulty in ending a quarrel is deciding who will make the first overture.” Calling the center to request a mediation is not an easy thing for many to do. Yet for those who take that first step, the result is often one they hoped could be possible but feared would never happen.

A mediation participant recently told me that mediation was “an awesome experience. I was not judged and the other party felt the same way. We left mediation being friends.” Do we make a difference? Yes. One person at a time.

Mediator dos and don'ts

by Evan Ferber, Director, Dispute Resolution Center of Thurston County, Olympia, WA

When the DRC trains its mediators, we stress the unique qualities of the neutral third party mediator. One exercise helps trainees remember the importance of what they are not responsible for. We call this the “Letting Go” exercise. Mediators need to let go of:

• results
• judgments
• assumptions
• advice
• responsibility
• enabling
• rescuing
• their personal agenda
• the need to be perfect
• the “truth”

Of course, mediators actively are responsible for many other things.

Mediators do need to balance the playing field; check for good faith; keep the process moving forward; manage emotions; keep the proceedings civil; clarify; summarize; and help write agreements. Mediators also need to generally guard the integrity of the process, which means ending it at any time if any of the above items cannot be maintained.
NAFCM's Membership Program

The membership program is designed to build member capacity, strengthen mediator skills, and publicize the efforts of NAFCM members to a wider audience of key community leaders.

<table>
<thead>
<tr>
<th>Category</th>
<th>Base Dues Amount</th>
<th>Subscriber Members</th>
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<td>Program Members:</td>
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<td>• Program Member -- 1*</td>
<td>$100.00</td>
<td>• Up to 15</td>
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<tr>
<td>State Community Mediation Association Member</td>
<td>$50.00</td>
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Affiliated Members:

• Full-time Students: $18.00
• Friends: $50.00 minimum
• Peacemakers: $500.00 minimum
• Ambassadors: $1,000.00 minimum

*Centers with annual budgets under $25,000 may join for a base amount of $50 and will be entitled to name up to five Subscriber Members.

Program Members will select their level of participation based upon the number of "Subscriber Members" they would like to name. "Subscriber Members" could be either some (or all) of a center's staff and volunteer mediators and/or key community leaders. "Subscriber Members" will receive a copy of the NAFCM Newsletter as a source of important information and an example of the valuable work that centers like yours are doing all across the country. The volunteers that a Program Member names as "Subscriber Members" will have access to NAFCM's growing clearinghouse of information and resources, including the "Practice Papers" series, designed to advance mediator proficiencies. Through strategic use of the "Subscriber Member" category, Program Members can build capacity within their own centers while enhancing their level of recognition in the broader community.

The Individual Member category exists for volunteer mediators and staff at community mediation centers. They maintain their personal status as a voting member of the association, have a separate listing in the NAFCM Directory, have access to NAFCM's information resources, and receive "NAFCM Training Notes" on mediator skills.

State Community Mediation Association Members are associations whose primary mission is to support community mediation programs that meet NAFCM characteristics.

Affiliated Members are those "Friends of NAFCM" who wish to support our mission, but are not directly involved with a community mediation center. NAFCM also has a special category for full-time students.

---

**AFFILIATED MEMBER APPLICATION**

Name ____________________________
Organization ________________________________
Address ____________________________
City, State, Zip ____________________________
Phone __________________ Fax ____________ E-Mail __________________

Membership Fee:  
- Student $18  
- State Community Mediation Association $50  
- Friend $50 minimum  
- Peacemaker $500 minimum  
- Ambassador $1,000 minimum

Membership dues are renewed each January. Please mail membership application to:

**National Association for Community Mediation, 1527 New Hampshire Avenue, NW, Washington, DC 20036.**
Make checks payable to: National Association for Community Mediation
PROGRAM MEMBER APPLICATION

(Please Print)

Name of Center/Program

Director

Address

City, State, Zip

Phone ___________ Fax ___________ E-Mail ___________

Designated Program Representative (contact)

Center Membership Fee:

☐ $100 for up to 15 subscriber members*
☐ $150 for up to 30 subscriber members
☐ $250 for up to 60 subscriber members

Please attach a list of names and addresses for your subscriber members.

* Centers with budgets under $25,000 may join for a base amount of $50 and will be entitled to name up to 5 Subscriber Members.

Center Information:

What best describes your organization?

☐ State
☐ Federal
☐ Private non-profit
☐ City/County
☐ Other:

Please check all types of mediation provided by your center:

☐ Child Welfare
☐ Public Policy
☐ Divorce
☐ Interpersonal
☐ Parent/Child
☐ Landlord/Tenant
☐ Custody
☐ Neighborhood Conflict
☐ School Mediation
☐ Commercial
☐ Family
☐ Victim/Offender
☐ Special Education
☐ Other:
☐ Consumer/Merchant

Environmental
☐ Small Claims
☐ Workplace
☐ Minor Criminal

How many paid staff do you have? _____ How many volunteers? _____ How many volunteer mediators? _____

Describe your governing body:

How do you receive cases?

☐ Self Referral ___% ☐ Court Referral ___% ☐ Agency Referral ___%
☐ Police Referral ___% ☐ Other (list):

Cost of services:

☐ No cost ☐ Sliding scale ☐ Fixed fee (how much):

☐ Other:

Please explain if more than one applies:

INDIVIDUAL MEMBER APPLICATION

Name

Address

City, State, Zip

Phone ___________ Fax ___________ E-Mail ___________

Individual Membership Fee:

☐ Volunteer $25
☐ Program Staff $25

Name of Program where you volunteer/work

Address

Name of Director

Volunteers are asked to have their Program Director sign their application.

Director’s signature:

Membership dues are renewed each January. Please mail membership application to:

National Association for Community Mediation, 1527 New Hampshire Avenue, NW, Washington, DC 20036.

Make checks payable to: National Association for Community Mediation
Mediation Week In Florida

October 24-30, 1998 was Mediation Week in Florida. Governor Lawton Chiles saluted Florida as a leader in recognizing and promoting mediation and called upon all residents to commemorate the role of mediation in their lives. In celebration, several local events in Tallahassee were organized.

Florida's history in the formal use of mediation began in the early 1970's with the establishment of Citizen Dispute Settlement Programs. Florida was among the first states to adopt a family mediation statute establishing divorce mediation programs within the trial courts in 1982. In 1988 Florida adopted comprehensive mediation legislation allowing trial judges to refer almost any civil case to mediation or arbitration.

In 1997, an estimated 120,000 cases were referred to mediation from the courts and over 4,400 mediators have been certified by the Supreme Court of Florida. Florida’s court-connected program was the first to adopt a code of conduct for mediators along with an enforcement body. The state also has two state-wide offices for mediation: The Florida Dispute Resolution Center and the Florida Conflict Resolution Consortium.

Mediation has also become an integral part of community based programs. Peer mediation within the schools is having tremendous impact by teaching young people the tools of peacemaking and respectful conflict resolution. With the opening of the Neighborhood Justice Center in February 1995, the Tallahassee community has become the recipient of the gift of free mediation services to address a wide spectrum of community and neighborhood issues.

For more information concerning mediation in Florida call: Sharon Press, Director, Florida Dispute Resolution Center (850-921-2910) or Martha Weinstein, Director, Neighborhood Justice Center (850-921-6980).

*** ATTENTION!! BOARD OF DIRECTORS ELECTION ***

If you are a NAFCM member, you recently received a ballot for the Board elections. This is your opportunity to make your voice heard. Please be sure to send, e-mail or fax your ballot by March 26th. Call Meenah at (202) 667-9700 x224 with questions.