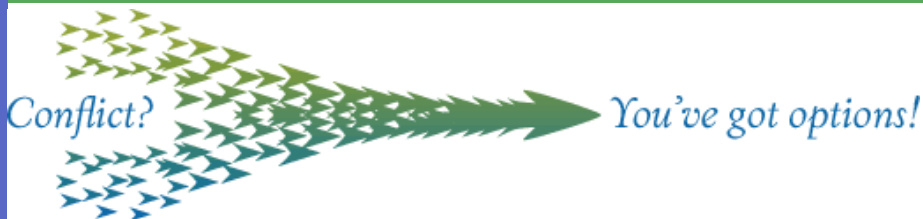


# BULLETIN OF THE MAINE ASSOCIATION OF MEDIATORS



March 2012

Volume X, Issue II

Professionals Committed to Cooperative Conflict Resolution

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## Our Mission

The Maine Association of Mediators is a nonprofit organization of diverse professional interests seeking to broaden public understanding and acceptance of alternative forms of dispute resolution. The Association strives to enhance professional skills and qualifications of mediators, arbitrators, and other neutrals through training, educational development and promotion of standards of professional conduct.

Submission deadline for  
May issue:  
**April 15, 2012**

FMI: MAMBulletin@aol.com

## The President's Message

By Peter J. Malia, Jr., Esq.

I am happy to report that your Board of Governors has remained substantially intact in 2012 compared to 2011. Our only departure was **Deb Belanger**, whose term expired. Deborah's outstanding reputation in Maine's mediation community is well known. She was also an outstanding Board member, and she is sorely missed. However, we are excited to welcome **Diane Edgecomb** to the Board. Many of you undoubtedly know Diane from her work in southern Maine as a lawyer and mediator.

The Board held its annual retreat on January 19, 2012 at Youth Alternatives Ingraham in South Portland. We tackled a couple of important topics, including MAM's Ombuds Process which was created in 2000. **Dick Romeo**, the head of MAM's Practice Quality Committee, will be undertaking a review of the Ombuds Process and report back to the Board of Governors. Look for more information on this topic in the President's column as the year progresses.

At our February Board of Governors meeting, **Todd Ketchum**, chair of the Meeting and Events Committee, announced that his committee is firming up program plans for mediators who practice in Maine's Foreclosure Diversion Program (FDP) to be held on Thursday, March 22. The program will take place at the law offices of **Verrill Dana** in Portland. Please register early and check out the interview elsewhere in this issue with its new administrator Laura Pearlman.

Please save the date of Thursday, May 10, 2012, for the MAM Spring Conference coordinated by **Stacy Mondschein-Katz**. It will take place at the Hilton Garden Inn in Freeport and will run from approximately 8:30 a.m. to 3:00 p.m. We are excited to announce that **Ericka Grey** and **Melinda Gehr** will be presenting on the topic of "Adapting Mediation Skills to Interpersonal Conflict Intervention." Our keynote speaker, **Steve Wessler**, will discuss "Civility in Professional/Personal Discourse". We will also be offering several breakout sessions, including Education (school law) Mediation and Employment Mediation.

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This will be a conference that should not be missed, so again, please save the date: **Thursday, May 10, 2012.**

Finally, the Maine Supreme Judicial Court issued a decision of interest to mediators and arbitrators on January 24, 2012, entitled Carrie B. Anderson, et al. v. Constance Banks, et al. The decision discusses a mediation agreement which contained an agreement to arbitrate any further disputes with the same mediator. The clause in question reads as follows:

“ARBITRATION. The parties agree that any dispute regarding the interpretation, enforcement, or implementation or execution of this agreement or the documents necessary to effectuate it will be decided by binding arbitration by (mediator). He shall award attorney fees and costs for any such arbitration against the unsuccessful party.”

In short, the Supreme Court upheld the validity of this arbitration clause. For a full review of the decision, go to [www.courts.state.me.us/opinions\\_orders/supreme](http://www.courts.state.me.us/opinions_orders/supreme).

As always, feel free to call or email me if you have any questions or comments regarding the Maine Association of Mediators. You can also reach out to **Administrator Lisa Fourré**. If you have not done so recently, please visit our website, [www.mainemediators.org](http://www.mainemediators.org). I look forward to seeing you at a future event!

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### *Invitation to the March MAM program*

#### **“The Balancing Act of Maine Foreclosure Diversion Program Mediators”**

**Date: March 22, 2012    Sign In: 9:15 am    Program: 9:30 to 11:00 am**

Place: Verrill Dana LLP, Portland, ME

Panel: Laura Pearlman, Director of the FDP;  
Jennifer Gordon, Housing Counselor for  
York County Community Action Corporation;  
Christopher Causey, FDP Mediator;  
David Stearns, Attorney, Ainsworth Thelin & Raftice, PA  
Moderator: Todd R. Ketcham, FDP Mediator

Cost: Free for MAM members; \$20 for Non-Members

**Please visit our website at [www.mainemediators.org](http://www.mainemediators.org) or  
email Lisa Fourré at [administrator@mainemediators.org](mailto:administrator@mainemediators.org) to register.**

\*1.5 CLE Credits Have Been Applied For with .5 of those for ethics\*

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## A Conversation with Maine's new Foreclosure Diversion Program Administrator, Laura Pearlman

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By Paula Craighead

*The Bulletin recently spoke with former FDP mediator and plaintiff's legal counsel for foreclosures, Laura Pearlman. Pearlman will appear on the MAM panel in March to discuss the evolution and some of the challenges of Maine's foreclosure diversion program.*

MAM: What brought you to Maine, if this isn't your native state?

LP: I moved with my family to Maine in August of 1995 just before our oldest child started first grade. We came from the Boston area. We were both freelance artists so we were commuting down there once a week, but we really wanted to live in Portland. I had gone to Bowdoin so I had an affinity for Maine. My husband comes from Chicago but he loved it when he came to look so we came here.

MAM: Where did you grow up and how do you think that experience influences you today?

LP: I was the eighth child in a family of nine children on the north shore about an hour from Boston, a town called Wenham. I went to the regional high school there. I grew up in a really nice town: most of the neighboring towns that shared the high school had people who had horses, so there was lots of open land. That affected me, the landscape. People had a strong work ethic, and there was optimism. It was a sheltered growing up time. We had land to explore, really good sports programs, after school programs. The community was rich—not in a financial sense, although there was some of that—there was just a lot of cultural support for trying hard, having fun and being helpful. Being from a large family and from that place shaped me: I want to be helpful and I want to have fun.

MAM: Where were you educated in law and why did you choose the law?

LP: After Bowdoin, I headed to California. Around that time, I had very strong urgings from my father to study law. He said he thought I'd enjoy the law and that I should try it. I had loved school and I was amenable, so I said "sure". I applied several places and chose Boston College Law School. I really didn't enjoy it at first, but then found an intellectual challenge in a way of thinking that was fascinating to me. Toward the end, I really enjoyed law school. Practice, [after graduation], not so much! I had gone to law school because my father urged me to go and without much thought, I went. I did like BC. While at BC, I participated in the legal assistance program, which was formative, to get out of the classroom, go to court. I really did enjoy the work. It was a great balance to all the coursework.

MAM: Can you tell us something about your experience so far as the court system's new Foreclosure Diversion Program Administrator?

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LP: I am enjoying my new position. It is a very different perspective from attending mediations which is what I was doing before. It is heartening to look at all the files and recognize how much is familiar! I appreciate the number of people I work with whom I've already met and have had the pleasure to deal with, for example, the clerks' offices. It has made the transition easier than it might otherwise have been. It is a very different perspective now, though, to have a managerial overview than to sit in the mediation room. There are different concerns that I'm coming to be aware of and trying to take into account.

MAM: Can you elaborate on some examples?

LP: For example, we're all aware of the economics of what we do. When we're sitting in the mediation room, we don't want to waste anybody's time, we want to get as much done as we can. We are all so very aware of the situation where another mediation is probably going to be helpful. Sitting here, I realize I am less aware of that. Sometimes, in this managerial position, I'm wondering: why is another mediation needed? I feel less patient about that already. I wonder: why is it taking so long? I wasn't attached to that notion when I was doing [mediations]. I thought then: we need to take the time it takes. I do still feel that. I still feel patience is important but from this perspective, not sitting in that room, I'm *thinking*: we need to be effective; we should get this done more quickly. But truly, I don't *believe* that. We need to take the time it takes. Still, I wonder and look forward to discussion on: Is it a good thing or bad thing whether [mediation] takes time or, put another way, what's the effect if the mediation process doesn't have more meetings but only extends for discussion between the parties? It's not that I didn't have awareness of the costs before, it's just a different awareness.

MAM: You didn't have the responsibility of program costs before!

LP: Right, I had a different responsibility. Now, I am responsible to be aware of costs. Also, the theoretical issues have always interested me and now I can address some of them. For instance, the role of mediator in traditional mediations and the role of mediator in foreclosure diversion is something we're all going to be talking about. I'm enjoying the opportunity to study that. Another area to address is whether we can determine at the mediation session whether there can be more consents to judgment. Now, [plaintiff] lawyers take court time to finish these things up where no [defendant] is coming to the hearing. That is costly and seems unnecessary. Some plaintiff attorneys start communications [between lenders and borrowers] earlier than the mediation session, and that's exactly what should take place.

**Learn more about mediator challenges in the Maine Foreclosure Diversion Program on Thursday, March 22 from 9:30-11 a.m. at VerrillDana law offices, Portland, ME. The program is free for MAM members and \$20 for non-members. To register, please visit the MAM website at [www.mainemediators.org](http://www.mainemediators.org) or email [administrator@mainemediators.org](mailto:administrator@mainemediators.org) by or before Wednesday, March 21. Space is limited.**

## Down to Business

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**ADR Works** principal and mediator **Shari Broder** scheduled for special education due process mediations and hearings, collective bargaining fact finding and the first Board of Arbitration logging appeal, which is pursuant to a new law with no regulations promulgated causing **Marc Ayotte** and Shari to design a procedure to use. Also a couple of securities arbitrations, one of which Shari chairs on a three-person panel with arbitrator **Peter Murray**. Shari Broder may be reached at [sbroder@comcast.net](mailto:sbroder@comcast.net).

**Stewart Law Office** principal and mediator **Harold (Hal) Stewart** scheduled for personal injury, home owner construction act mediations, and a multi-party Bangor business case, assisting parties between his base in Presque Isle and more frequently in the city of Bangor. Also upcoming is the next phase of ongoing mediations concerning a regional windmill project involving blasting contractors for the windmill project. Hal reports his law office recently joined **Marden Dubord** in Waterville but will continue to do business as Stewart Law Office in Presque Isle. Hal Stewart may be reached at [halstewart@hstewartlaw.com](mailto:halstewart@hstewartlaw.com)

**Smith Elliot, PA** partner and mediator **Peter (Pete) Schroeter** scheduled in the coming months for matters involving food poisoning; slander; liquor liability (dram shop); trespass/boundary issues; injuries claimed from an auto accident, a slip and fall incident, and a dog bite; breach of contract in a construction matter, and retiree benefits under a collective bargaining agreement. Peter Schroeter may be reached at [pschroeter@smithelliot.com](mailto:pschroeter@smithelliot.com)

Down to Business is an occasional column on the kind of conflict resolution Maine mediators have on the horizon. If you would like to share a sample of future mediations on your schedule, please contact us at [MAMBulletin@aol.com](mailto:MAMBulletin@aol.com)

*Interested in writing a short, topical article for the Bulletin? Or perhaps providing an interview of a veteran mediator (national, regional or local)? Contact us at [MAMBulletin@aol.com](mailto:MAMBulletin@aol.com) and we will send you guidelines for publication if your topic fits our format. Unsolicited articles are not accepted at this time due to limited staffing. However, article topics we are interested in publishing in coming months: mediation and the IRS, mediator health and safety (prudent steps when parties threaten or stalk), mediation trends in health care, mediation and Maine schools, mediation and cultural competency (addressing qualifications to meet Maine immigrant population needs), and mediator pay scales in the New England region. The Bulletin is published six (6) times a year.*

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## CLE offers lessons for attorney-mediators

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The Maine State Bar Association (MSBA) offered a continuing education session last month for Maine attorneys and interested mediators entitled *Attorneys as Mediators: A Look at Mediation Ethics, Standards and Malpractice*. Presenters were **Matthew (Matt) Caras**, **Matthew (Matt) Dyer** and **Eugene (Gene) Coughlin**. The Bulletin contacted Gene Coughlin following the program and asked him to share some of his tips offered to attorneys to avoid malpractice and the appearance of it.

Coughlin told us he first heard of “mediator malpractice” ten years ago at an American Bar Association ADR meeting. The malpractice claim related to a settlement agreement. His advice to Maine attorneys who mediate: don’t do it! Let the lawyers who represent the parties write up the settlement agreement. He believes the risks and aggravation of a potential lawsuit for the mediator are not worth providing the settlement document, so he does not do it. He noted that several attendees at the CLE session disagreed with his advice but he says he sticks by it. As for malpractice insurance, he reminds Maine attorneys that they should check their malpractice policies to be sure not only that “mediation” is a covered risk but that the coverage extends to claims for “bodily injury” (parties may claim physical ailment due to distress and stressful circumstances created). He suggested that attorneys can order an insurance rider if their policy is not explicit on mediation coverage.

Another tip Coughlin offered at the session was that while a mediator may gauge success by finding resolution on all issues, that “pushing [the parties] too hard” is a mistake. This is also an area of malpractice complaint by dissatisfied parties and even if the attorney wins in court, she or he is still out of pocket on the costs of a deductible and the several hours it takes to defend a case.

For private mediations, Coughlin advises that the mediator request fees in advance from a *pro se* party because it is not worth the trouble and potential counterclaim for an unpaid mediation fee. Coughlin recalled that he now makes this requirement after he was not paid by a *pro se* on a case early in his practice.

***For more information on the CLE materials, including purchase of the DVD, audio CD or textbook contact the MSBA CLE staff at 1-877-622-7554. Presenters contact information: Dyer at [matt@mattdyer.com](mailto:matt@mattdyer.com) ; Caras at [M-Caras@Leaders-LLC.com](mailto:M-Caras@Leaders-LLC.com) ; Coughlin at [ecc@vbk.com](mailto:ecc@vbk.com)***

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## ABA ADR section meets in April

At least two panelists from Maine are scheduled to appear at the American Bar Association’s ADR Section meeting April 18-21 at the Hyatt Regency Washington on Capital Hill in Washington DC. **Ann Gosline** of **Gosline & Reitman Dispute Resolution Services** in Litchfield, will join a Government and Public Policy panel on the topic of “Civil Discourse and Public Conflict: The Next Generation.” **Craig McEwan**, retired **Bowdoin College** professor and longtime mediation trends researcher, is scheduled to speak, along with four other panel members, on “Mediation Research as of 2011.” Proposals for participation in the ABA ADR Section’s annual spring conference are due each September of the year preceding its April session. The conference and panel participation is open to mediators with credentials other than a law degree, For more information, see [http://www.americanbar.org/groups/dispute\\_resolution.html](http://www.americanbar.org/groups/dispute_resolution.html) and click on “14th Annual Spring Conference.”

### MAM Board of Governors

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