



MADRP Bulletin

March 2005



Maine Association of Dispute Resolution Professionals

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National Mediator Certification: Is It Feasible?

by Diane E. Kenty

The topic of certification for mediators is a controversial one. Some mediators support certification as a timely development in the evolution of the field that will help to establish higher practice standards, expand the credibility of conflict resolution and increase the public trust in mediators. Others see certification as unnecessary bureaucracy, a barrier to entry in the field and irrelevant to quality of mediation services.

To gather more information about the extent of support for a broad-based mediator certification program, two national organizations have jointly undertaken market research. Together, the Association for Conflict Resolution (ACR) and the American Bar Association Section of Dispute Resolution (ABA) have retained a consultant to conduct a feasibility study. The project was underwritten by the William and Flora Hewlett Foundation.

One component of the feasibility study is an internet survey. ACR and ABA circulated the survey to all members of both organizations,

and liberal forwarding to other individuals and conflict resolution groups was encouraged. The internet survey, which used the electronic tool *Zoomerang*, has drawn nearly 3,000 responses as of February 12. More than one-third of the respondents listed themselves as members of statewide ADR organizations. The survey was distributed to all members of the MADRP Yahoo Group in late January.

Based on the large number of responses to date to the joint ACR/ABA survey, it appears that there is strong feeling about certification. The consultant's report is expected later this spring. Each of the sponsoring organizations will then review the report and consider the options.

ACR published a proposed model for a national certification program in April, 2004. It can be found on the ACR website at www.acrnet.org/pdfs/certificationreport2004.pdf.

Diane E. Kenty is co-chair of ACR's Certification Implementation Task Force.

Message from the President

First, let me thank Tobey Williamson for joining the MADRP Bulletin Editorial Staff. Tobey is responsible for this new format. I think it looks great. Feel free to contact him with your thoughts.

Second, I'd like to echo Lucy Weiss on how to market ADR to the public, "in terms they can relate to" (see more about Lucy and what she told us on page 2). Your Board of Governors is doing a great deal of planning around how we market. Diane Kenty recently sent me marketing advice as prepared for The State of Hawaii's Judiciary Center for ADR. Their marketing consultant, *The Brand Strategy Group*, assessed the current "market position of mediation" and found that media-

tion associates "put the market position of mediation at 'obvious superiority'", meaning mediation is clearly superior to the others in its category, i.e., litigation. However, the perspectives of the general public and potential end-users, who had little awareness of mediation, fell substantially short—putting the market position as a "perceived inferiority" Meaning that the public doesn't recognize it as a better option. There definitely is a disconnect. Our Public Information Committee is working to fix that.

Lastly, you should have your invitation to the MADRP cocktail party on April 3rd. Please send in your R.S.V.P. and come!

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What do you think of the new Bulletin layout?

Want to sponsor an issue?

Feel free to contact Tobey Williamson with your comments and ideas.

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or 774-2458 ext.115





“Marketing Your Mediation Practice” Focus of March Membership Meeting *by Kathy Leen*



Networking at the March Membership Meeting

Educating the public about the value of ADR is still critical and the key is to do so in terms to which the public can relate.



Bambi Magaw updating the Board of Governors on Expansion Committee activities

And the day came when the risk it took to remain tight inside the bud was more painful than the risk it took to blossom.

-Anais Nin

The focus of the March Membership Meeting was “Marketing Your Practice” with Virginia “Lucy” Weiss. Lucy has recently retired from a lengthy career as a Marketing Executive for a Portland radio station group and completed her mediation training through the University of Southern Maine. Her presentation was well prepared and researched. For an hour she kept the 20 attendees engaged with great discussion filling the air of Room 218 at the Student Union on the Augusta Campus of the University of Maine.

She reminded us that educating the public about the value of ADR is still critical and that “the key is to do so in terms to which the public can relate.” It is also important to focus on the cus-

tomers’ needs not on our own needs and not to underestimate the time that marketing takes. If you are just starting your practice you can plan to spend 50% to 70% of your time on marketing your practice.

To begin a marketing effort, Lucy suggested that mediators offer their services to nearby businesses, agencies, and organizations. She stated that success in gaining new clients is more likely if we follow up with an offer to personally meet and share with them the benefits of ADR. Some of the benefits that you could mention are that ADR: may address the emotional discomfort of a disagreement between two parties; may be a way to introduce a neutral 3rd party; is voluntary and non binding; creates an opportunity for

disputants to be responsible for their own agreement; has an economic advantage over and is quicker and more satisfying than court.

During the wrap up of her presentation Lucy played a 60 second MADRP radio spot. There was very favorable reaction and discussion to this professionally produced advertisement for MADRP. All attendees agreed we should have further discussion on how to use the radio spot to benefit both MADRP and its membership throughout the State.

Thank you, Lucy, for sharing your marketing expertise in such an informative and engaging presentation. Lucy she can be reached at Mediation Matters in Falmouth, 207-233-9585 or mediation-matters@maine.rr.com.

New Location for Augusta MADRP Meetings

March 2nd was the inaugural meeting at our new location for MADRP Board of Governors (BOG) or Membership meetings held in Augusta. The new meeting room is on the second floor of the Student Union at *the University of Maine* (see directions below). MADRP membership traveled from Bangor and Kittery and all parts in between. After the mini BOG meeting the new room was filled with sounds of laughter and conversation as old friends caught up and new friends were made during the social time between meetings. Thanks, again, Kathleen for getting this room for us!

Directions ~ University of Augusta campus in the Student Union. Take Exit 112A off 95 then follow Civic Center Drive, turn right onto Community Drive, then left onto University Drive. Once there follow the signs to the Student Union or just ask someone.

REMINDER: Yahoo Group

Please contact John Alfano if you have not yet joined the MADRP group sponsored by Yahoo. Currently, 41 members have responded to the request to join. Remember, if you want to receive MADRP notices you must submit your

name to the group. The group will be the exclusive means to receive electronic messages about training programs, workshops and other important matters related to ADR.

To join, email: jalfano1@maine.rr.com

Legislative Update

There are currently two bills pending before the Maine Legislature that involve ADR and additional one on the horizon:

LD 681, An Act Regarding the Use of Arbitration in Certain Consumer Cases: If enacted, this bill would add **arbitration** to the remedies currently available to individuals claiming violations under the unfair trade practices provisions of Maine consumer law. The law would recognize **arbitration** as an alternative to pursuing such a claim in Superior Court or District Court, only if the contract for the purchase or lease of goods, services, or property specifies **arbitration** as a remedy.

LD 797, An Act Authorizing the State Board of Education to Mediate School Attendance Disputes: If enacted, this bill would authorize the State Board of Education to mediate a dispute between school administrative units over attendance disagreements. These disputes arise

when a student resides in one school administrative district, yet wishes to attend a school in a different district which is physically closer to the student's residence. It is not clear who would actually perform mediation, were this bill to be enacted. One interesting note is that the Board of Education opposes this bill and has submitted testimony indicating their opposition.

Uniform Mediation Act (UMA) Status: This Act provides rules on the issues of confidentiality and privileges in mediation by establishing an evidentiary privilege for mediators and participants in mediation that applies in later legal proceedings. The Act was completed by the Uniform Law Commissioners of the National Conference of Commissioners on Uniform State Laws in collaboration with the American Bar Association's Section on Dispute Resolution in 2001, and was amended in 2003. This uni-

form law has been adopted in four states: Illinois, Nebraska, New Jersey, and Ohio. It is currently pending before legislatures in Connecticut, Indiana, Vermont, and Washington.

The UMA was introduced in the Maine Legislature in 2003, but ultimately was not enacted in that session. Although we had heard rumblings that the bill would be reintroduced this year, this does not appear to be the case. However, it is only a matter of time before the bill will be before the Maine Legislature again, and it will be important for MADRP to take and voice a position on the issue. A perfect starting point for this task would be for as many of our members as possible to attend the conference on **Confidentiality in Mediation**, being put on by our own Bambi McGaw and Marc Sevigny, on April 8 at the Black Bear Inn in Orono. This is an important issue that affects many, if not all of our membership.

Special Event: Confidentiality in Mediation

Confidentiality is an essential element of the mediation process. How far should mediation confidentiality extend? Does a mediation privilege require absolute protection or are there legal and public policy reasons for restricting its scope? These and other issues will be explored in an open forum discussion between the audience and a panel of representatives from diverse mediation communities in Maine. The Uniform Mediation Act will be back before the Maine Legislature this year, making this discussion on confidentiality very relevant. Put this date on your calendar and join us for this event.

Panel members include:

Jill Culver [Worker's Compensation], Diane Kenty [CADRES and the Courts], Tracy Quadro [Federal and Community Mediation], Attny. Tom Johnston [Labor and Employment], and Attny. Kevin Cuddy [member of Maine State Bar Association ADR Committee]

Contact Bambi Magaw at 862-5110 or bammo2@earthlink.net to sign up for this event. Registration deadline is March 18, 2005.



Pending Legislation

LD 681, An Act Regarding the Use of Arbitration in Certain Consumer Cases

LD 797, An Act Authorizing the State Board of Education to Mediate School Attendance Disputes

SPECIAL EVENT: *What, When & Where?*

CONFIDENTIALITY IN MEDIATION

DATE: Friday, April 8, 2005, 8:30 am - 3:00 pm

LOCATION: Black Bear Inn in Orono

FEE: \$25.00 (MADRP members) \$30.00 (non-members)

Lunch will be provided!



**MAINE ASSOCIATION OF DISPUTE RESOLUTION
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RESOLUTION PROFESSIONALS**

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MADRP MISSION

MADRP is a non-profit organization of diverse professional interests seeking to broaden public understanding and acceptance of alternative forms of dispute resolution. MADRP strives to enhance professional skills and qualifications of mediators, arbitrators, and other neutrals through training, educational development and promotion of standards of professional conduct.