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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.

**Past Issues**

Check the MAM website for archived issues of The Bulletin at [www.mainemediators.org](http://www.mainemediators.org)  
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**The President's Message**

By Peter J. Malia, Jr.

Mediation has come a long way in the State of Maine over the past three decades. At our recent program which took place on October 18, 2013 at Youth Alternatives in South Portland to celebrate National Alternative Dispute Resolution Day, **Doris Luther**, a long-time mediator and member of the Maine Association of Mediators, gave an overview of the history of mediation in the State of Maine.

Doris's presentation was illuminating, and it also inspired several in the audience, including **Claudette Thing**, to reminisce about the early days of mediation in Maine. Doris covered the advent of Rule 16B of the Maine Rules of Civil Procedure (which requires litigants to engage in alternative dispute resolution), the creation of the CADRES Program, and the history of several community mediation and restorative justice groups as well as 40-hour mediation training programs in the State of Maine. Those of us in attendance learned so much about mediation from **Nancy Markowitz** and **Paul Charbonneau** through the University of Southern Maine program.

In addition to Doris's "History of Mediation in Maine" presentation, I presented a brief history of the Maine Association of Mediators, which included a list of my predecessor presidents, in chronological order: **David Plimpton, Jeff Sosnaud, Shari Broder, Pat Jennings, Kathryn Monahan Ainsworth, Anita Jones, Susanna Liller, John Alfano, and Anita Jones** (again).

I also summarized several important achievements in the history of the Maine Association of Mediators, including the adoption of Standards of Professional Conduct, the development of Recommended Standards for the Practice of Mediation, the development of the MAM Ombuds Process, and the hiring of our first administrator (in 2002). The October 18th program also included a role play/panel discussion on resolving mediation impasse. Many thanks to mediator and attorney **Chris Dinan** of Monaghan Leahy in Portland for joining this panel.

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As I write this, my last, President's Message, I am wrapping up my fourth and final year as president of the Maine Association of Mediators, having taken the position in January 2010. It has been my pleasure to work with such wonderful and talented board members for each of my four years as president. In looking back through our meeting minutes, I learned that one board member has been with me for all four years: **Maria Fox**. Maria's upbeat personality, her sharp intellect, and her dedication to the Association's success, have certainly made it easier for me as president, and I wish her luck as she transitions to a new job at Mittel Asen in Portland.

**Sheila Mayberry**, who served as treasurer of the association for several years, was also on my first board, together with past presidents **John Alfano** and **Anita Jones**. I learned quite a bit from John and Anita about the organization, about being president and about ADR in general. 2011 was the last year on the board for long-time board member and mediator **Deb Belanger**, from whom I also have learned a great deal. I would also like to thank **Karen Groat** and **Matt Caras** for their dedicated service to the Board of Governors, both having served multiple terms.

I would also be remiss if I didn't thank **Paula Craighead**, the editor of this, her last, Bulletin. Paula has done an incredible job bringing the publication to the "next level."

One of the best decisions that we made last year was hiring **Liz Andrews** of Freeport to be our new administrator. Liz has done a great job keeping us organized, and we are extremely happy to have her. Also many thanks to **Eliza Nichols**, the administrator of the Maine Residential Real Estate Mediation Program. Eliza has done an outstanding job running that program since she took it over three years ago.

The programs and seminars that we have presented over the past four years are too numerous to mention. We, as a board, continue to strive to offer members interesting, informative, low-cost programs to improve mediation skills and allow members and the public to network with ADR professionals. In fact, we are in the process of planning a first-ever collaborative effort between the Maine Association of Mediators, the Maine State Bar Association ADR Section (headed by **Lauri Boxer-Macomber**), and CADRES (**Diane Kenty**). It's been great working with Lauri and Diane (and Maria Fox) to plan this program, which will focus on Mediation-Arbitration issues. If you want to pencil in the date, the program is tentatively scheduled to take place on February 6, 2014 in Freeport.

In closing, once again, it has been a pleasure for me to serve as your president. Please join me in welcoming **Meredith Richardson** as our incoming president at the annual meeting on November 7 in Brunswick. Meredith has been a tremendous asset to the board of governors, and I'm certain that she will make a fantastic president.

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## Conversation with Bill Mulvey

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By Paula Craighead

**A** major settlement, announced in the general press in September, resolved a lawsuit over the Owl's Head air crash last year that resulted in three fatalities. The mediator for the settlement was New Hampshire-based attorney and mediator William "Bill" Mulvey. Mulvey, who has a law degree from Suffolk University, talked to *The Bulletin* recently about his mediation experiences and approach.

**BULLETIN:** Will you tell our readers about your background?

**MULVEY:** Born in Boston and lived in Massachusetts as young child then came to Portsmouth for high school, going on as undergraduate to University of New Hampshire. [After law school] I first joined Burns Bryant Henchey Cox & Shea in Dover, New Hampshire. Then I came back to the seacoast, eventually opening my own practice in 1978.

**BULLETIN:** Do you remember your very first mediation?

**MULVEY:** Oh, yes. We had just adopted Court Rule 170 in NH—and they ask me to volunteer as a mediator because I had authored it! I really wasn't sure what to do because I had no [mediation] training. It turned out to be an automobile case. So, I just started out with two basic questions A) who had the responsibility? B) what damages resulted if we identified there was someone with responsibility? These are typical issues in an auto case. After a few hours, we got it settled. Reflecting back, I didn't have a clue to what I was doing. Now, I'm wiser, patient and more persistent. Hopefully my mediation process is a better process than the one 25 years ago!

**BULLETIN:** Why were you asked to write the rule?

**MULVEY:** In late 1970s and 80s, I was litigating asbestos for shipyard workers in federal court in Portland. I met most Maine litigators on the other side. As those cases evolved, folks went into bankruptcy. An ADR process was created along with the setting aside of trust funds. I began to learn about mediation process. No one in New Hampshire was doing the work. No one in New Hampshire knew court annexed mediation. They wanted it and knew that I knew something about concepts of mediation /arbitration from the asbestos work.

**BULLETIN:** Has the New Hampshire mediation rule changed much over the years?

**MULVEY:** Yes [laughs] and I've served on all the committees! A couple years ago, we changed all arbitration rules. Last procedural change was just this year. Also, Rule 170 is now Rule 23 and is part of the basic [adjudicatory] system. The difference is that while mediation is court annexed, most mediations occur off site. In early years, all the mediations were in the court house.

**BULLETIN:** When did court-annexed mediations move off site?

**MULVEY:** About 12-13 years ago. The courts were running out of room so they began to assign mediators and let it occur in offices.

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**BULLETIN:** Do you have formal mediation training or did you learn as you went along?

**MULVEY:** Most training was 'learning as I went.' I did take a two-day court-sponsored course a few years ago and a day long refresher a while back. Mostly, I teach. By preparing to teach, I learn. Realistically, 90% of what I do is seat of the pants. Practical learning: this worked, this didn't, let's tweak. I read a lot of intellectual mediation literature and throw away, well, almost 100%. Most of the people doing the writing don't understand what it is to create success. They are writing, not doing it. The most important thing to successful mediation is this: A) making people feel good about the process and B), actually having resolution. People come [to mediation] because they want a resolution. A lot of intellectuals talk about 'process'. You want people comfortable and to feel good, but 'process' isn't what's important. People feeling good results in resolution.

**BULLETIN:** Talk some more about how to make people 'feel good' in mediation.

**MULVEY:** Truly understanding where they are coming from and really expressing empathy. I have to understand because I believe all perspectives have some validity. If I can understand [a perspective], then I can make them understand I get it, and then, and only then, can you talk about risk. If you don't understand where they are coming from, you won't get a resolution.

On many, many cases, you can have people feel good and get resolution. The key is to read all material in advance, think about it and then focus on people's concerns. Not the 'noise,' but where is the real issue? Then people can focus on the issue. Look, I have done mediations for three days. Sometimes the matter is too complex, too many parties and not everyone is in room. Yet, there are weeks when I do sixteen mediations in a week. That's three a day for five days and one on Saturday. Obviously, some of those are done in a three to four hours window. We try to ask counsel or individual litigants 'how much time do you need?' Usually, we only need a morning—they know I read things in advance. But sometimes, the lawyers will say, 'Bill, as efficient as we've been [in the past], this one is going to take two days" and we schedule that.

Sometimes if there are multiple parties, you need a whole day to coalesce them before dealing with the other side. The key is to know what's needed and then assign time frame.

**BULLETIN:** Let's talk about ways through impasse—three kinds of impasse: factual, settlement amount and emotional. Can you give some examples?

**MULVEY:** On the factual impasse, I question whether there really is a factual impasse. I will explore in private whether the factual discrepancy is real or not. Why is what A says creditable? and so forth. Force people to analyze—doing it in positive way not negative way. Involve the party in exploring. Never tell people your view is the right way. Another way is to ask: what depositions have been taken? What's been said under oath? Are they believable? Did you like them? Will a jury like them? Or why is there risk?

If trying to resolve the discrepancy isn't working and appears we're not overcoming impasse, then will talk risk: "OK, if you believe FACT A and FACT B is true, what is the risk to you?" (and reverse for other side). I tell parties in my opening remarks: I assure you that we won't resolve all disparities but we will find resolution if we work together and do some risk analysis based upon discrepancy.

**BULLETIN:** And settlement amount? What if one party says \$50 thousand is the top and another says \$4 million is the bottom?

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**MULVEY:** Well, that's a situation where one is on Mars and the other is on Earth! Won't likely settle.

Although if the parties are open to it, I follow up on the phone after any unsuccessful mediation to ask, in effect, are we still on Earth and Mars? But, if during mediation somebody says, I don't think it's more the \$100 thousand and the other says don't think we would take less than \$2 million, the real question is: how much is posturing? What if there is \$300 thousand [of authority], what does that do for client, not for lawyers? Then, put risk back in the room. I try to overcome value gaps by talking about value. OK, you think it's \$2 million, why? Any [similar] verdicts you know about? What are special damages? If business dispute, what are economic losses? Is it downturn in economy or really disruption in business? Turn the questions around in other room and so forth. Always asking parties: Why? Why? It's the 'whys' that are important because it gets people to think. When they say, This is it! Well, why? Always, of course, in a positive way.

**BULLETIN:** By 'positive,' do you include tone of voice?

**MULVEY:** Absolutely, and to actually connect. I like people and I like meeting them. My dad was an auto mechanic. Just because I have a tie on, I haven't forgotten [that]. I can relate to others, and doesn't matter if they are a doctor or dock worker. I care about everybody. Whatever has brought them to mediation, it's traumatic to them.

**BULLETIN:** And emotional impasses?

**MULVEY:** Those are tough. I couldn't do family mediations, they are too hard.

**BULLETIN:** Do you find yourself in any pro se situations?

**MULVEY:** I'm doing an arbitration next week, one party fired its law firm and is coming without [legal counsel]. In a personal injury mediation next week, neither party is represented. We have had something called the FRM Problem in New Hampshire, which is a ponzi scheme. We had 100 claimants, most of whom were unrepresented. In two days, every claim was solved.

**BULLETIN:** Just you as the mediator?

**MULVEY:** Just me.

**BULLETIN:** As we conclude, can you tell us about any people who have influenced your mediation approach?

**MULVEY:** I would have to say my dad and granddad. I was the first in my family to go to college. They both told me to get an education and do something that wasn't so physically hard for my life's work. They also emphasized to me that if you are fair with people, they will treat you fairly. They were not educated men but they were wise. And they were right.

## RADIOHEAD

No, we aren't reporting about the angst-ridden, sketchy British rock-band. (Although with musical themes of alienation, disaffection and paranoia, the band and their fans may benefit from knowledge of mediation skills). Taking a classical direction, MAM is sending a broad message for public outreach in the next few months on MPBN stations throughout Maine. If you happen to hear the spot during morning drive time – the next one is scheduled for November 5 – or have ideas for public message outreach, please let us know at [administrator@mainemediators.org](mailto:administrator@mainemediators.org).

## What's ahead, MAM?

- NOV 7, Thursday, in Brunswick, ME  
MAM Annual Meeting for Members with Program  
by Cinnie Noble  
Maine Association of Mediators  
FMI: [pmalia@hastings-law.com](mailto:pmalia@hastings-law.com) or visit  
[www.mainemediators.org](http://www.mainemediators.org) to register
- NOV 15, Friday, in South Portland, ME  
One Day Transformational Mediation Training –  
\$75 per person  
FMI: [Karen.groat@opportunityalliance.org](mailto:Karen.groat@opportunityalliance.org),  
toll free 1-877-429-6884
- JAN 9, 2014 Thursday, in Portland, ME  
Board of Governors monthly meeting  
Maine Association of Mediators  
FMI: [administrator@mainemediators.org](mailto:administrator@mainemediators.org)
- FEB 6, Thursday, in Freeport, ME  
Program: Mediations – Arbitrations  
after Anderson v Banks  
Maine State Bar Association – ADR section,  
Court Alternative Dispute Resolution (CADRES),  
MAM co-sponsors  
FMI: [pmalia@hastings-law.com](mailto:pmalia@hastings-law.com)

## Invitation

*Calling all member mediators and interested persons  
to the MAM 2013 Conference/Annual Meeting*

**DATE:** November 7, 2013

**TIME and PLACE:**

**Program:** 9:00 a.m. – 4:30 p.m.

**Business meeting:** 4:30 – 5:00 p.m.

**329 Bath Road, Brunswick at Sweetser**

**Conference:** “Conflict Management Coaching: Helping People Help Themselves”

**Presenter:** Cinnie Noble

**Visit [www.mainemediators.org](http://www.mainemediators.org) to register** (program registration is limited to 60 persons)

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