



Maine Association of Mediators

February 2007 Bulletin



Maine Association of Mediators
Professionals Committed to Cooperative Conflict Resolution

Volume XII, Issue I

February 2007

Association Members Meet with Attorney General

By Jonathan W. Reitman, Esq.

In early December, a small group of Maine Association of Mediators members met with Attorney General Steve Rowe to advocate for increased uses of ADR within state government. This was a follow-up to the invitation to meet with him that he extended when he spoke at our meeting last spring.

The Attorney General was quite receptive to our research and our approach. The two arguments we used as a basis for our efforts were

A) Documented Cost Savings:

- 1) The New Mexico Loss Control Bureau spent \$606,000 on ADR training with a documented **savings in Civil Rights actions of \$4.3 million.**
- 2) In Oregon, a contested litigation case costs \$60,557 whereas resolution of a comparable case through ADR costs \$9,537 – **saving over \$51,000 per case.**
- 3) In Florida, mediation of environmental enforcement cases yielded **median savings of \$150,000 per case** (2004 study of 19 cases), and

B) Creates more Business Friendly Environment: One advantage of promoting the use of ADR within the framework of state government is to foster business development within Maine. It is no secret that Maine has significant challenges in attracting businesses to the state, and many companies doing business here have concerns as well. The newly announced Business Court is an attempt to address these concerns. Likewise, a comprehensive and meaningful commitment to ADR by Maine administrative agencies will signal a more "user friendly" environment that will encourage business development. This is not in any manner intended to change the outcome, or to tip the playing field in favor of one interest at the expense of another. Rather, it is a commitment to a process that is less formal, less costly and speedier, while at the same time protecting the important goals of Maine's administrative processes.

We asked the Attorney General, in collaboration with the Maine Association of Mediators, to convene an Attorney General's Working Group on ADR in government. The purpose of this group would be to explore opportunities for increased use of ADR within state agencies, and to identify five priorities for action. Among the areas which could be explored are review of state agency regulations, review of state contractual policies, and ADR as alternative to litigation and the use of consensus processes in public policy making.

Steve Rowe was responsive to our request and appointed Deputy Attorney General Christopher Leighton to explore this further. Initially, Leighton discussed our proposal with the 12 division chiefs within the AG's office. Their collective response was that since they only provide legal advice on specific legal issues to state departments, they were not the appropriate channel to advocate for increased use of ADR by their clients. Leighton felt this is more properly an Executive function (as indeed it has been in many states). Leighton has therefore discussed our initiative with Michael Mahoney, the Governor's new legal counsel, and with Pat Ende, a Senior Policy Advisor to the Governor. Leighton will help set a preliminary meeting for us with Mahoney and Ende, which Leighton will also attend. The purpose of that meeting would be to engage the Governor's advisors on this issue, in hopes that an all-department approach could be formulated.

Continued on page 2

MEMBERSHIP RENEWAL TIME IS NOW

You should have received an email with renewal information recently. If you don't have it, you can access the **Membership Application online** at <http://www.mainemediators.org/forms/Membership2007.pdf>.

Print off the form, fill it in and send it to the address provided with your check. No credit card payments accepted now—coming soon, though!



SPEAKING OF WHICH . . .

If you haven't received emails in the past month it may be because we don't have your **correct email address**. (Or, your spam filter is catching any emails from our new organizational name!)

The Public Relations Committee reminds you to update the Association with your new email address. The April issue of this Bulletin will only be distributed electronically.

Contact Jennifer Fox (jenniferfox@verison.net) with your email address changes.



Association Members Meet with Attorney General, *Continued from page 1*

Given that the Legislative session has just started, it seems likely that this initial meeting will be just to "plant the seed," with a more in-depth meeting to take place at the close of the legislative session in June. As this initiative evolves, we will keep members informed. For more information: contact Jonathan W. Reitman, Esq., jreitman@goslinereitman.com, or (207) 729-1900.

PRESIDENT'S MESSAGE By John Alfano

This issue of the Bulletin is our first electronic edition. Let us know what you think, and email us any suggestions.

The name change transition should be completed when you are reading this message. Legal registrations with State and IRS have been completed. The web page has made two transitions. First, is the name change. Second and most difficult has been the change in web host companies. It seems that our Practitioners Directory was in a format not supported by the new host. With much work on the part of Tina Aubut and Roger Moody, the directory is up and running. *Check it out to make sure we did not lose you in the transition, <http://www.mainemediators.org/advanced.php>.*

It seems that my presidency has been stuck in the transition. We spent the last twelve months working to adopt the changes. Now that they have been adopted, we are dealing with the housekeeping related to the changes. I hope that the results of the last year will be evident soon.

The most exciting change for me is Regionalization. Association programs will be held in the regions, providing training and outreach. Training for members will be more readily accessible. You can attend those meetings without traveling long distances and without losing a full day of work. Secondly, we hope to reach out to our client base and the public to attend those meetings. We will gain credibility in the field of ADR, as the organization to go to for ADR specialists and training.

The major effort for the next two months is membership. We need to increase membership so that we represent a broader base of ADR practitioners to increase our voice and credibility in all things ADR. This will be helpful, especially, when we are dealing with legislative issues. Anyone who had dealt

Regional Programming Announcements

Anyone from any region may attend these meetings. Just notify the person indicated.

The Northern Region

The Northern Region will be presenting workplace mediation training with David Webb. David is an experienced Attorney, Mediator, Arbitrator and Trainer who has conducted ADR training in Israel and Ireland.

A Family Mediation Round-table is also in the planning stages. The round table, featuring judges and mediators, will look at how non-traditional families and parenting roles are influencing divorce and child custody agreements. Contact: bammo2@earthlink.net for more details as they develop.

The Southern Region

PEER DISCUSSIONS

The Southern Region has scheduled monthly lunchtime peer discussions for the **final Monday of each month**. This is an opportunity to explore general issues facing the ADR field of practice, or specific questions you are facing in your private/professional practice. Use this opportunity to get feedback, input and support from peer practitioners. All members are invited to attend. The peer discussions **start at noon and are held at ADR Works, 60 Pearl Street in Portland**. Contact: adr@maine.rr.com or jaybartner@yahoo.com

SKILL BUILDING EVENTS

Skill Building Events will be planned for every 6 weeks. The first one will be held on Thursday, March 15, from 4-6pm at Youth Alternatives, 400 Congress Street in Portland.

"Working With Challenging Behaviors and High Emotions", an experiential learning opportunity, will be presented by Deb Bopsie and Karen Groat of YA's Family Mediation Program. Snacks will be provided. RSVP to Deb Bopsie at dbopsie@youthalternatives.org or 632-1109.

Details on Regional Programs will appear on the website's Event Calendar at: <http://www.mainemediators.org/events.html>. If your e-mail is current, you will also receive additional information and reminders of all events in your region.

Maine Municipal Association Initiative

By Roger Moody

A significant marketing step for the Association took place in late January when John Alfano and Roger Moody met with the editor of the "Maine Townsman" to talk about dedicating an entire issue to the subjects of facilitation and mediation. The "Maine Townsman" is the monthly publication of the Maine Municipal Association, and reaches thousands of local elected officials, town managers, local department heads, planning boards, etc. The idea received a positive reception for "Maine Townsman" editor Mike Starn. Such exposure to the municipal government sector can raise the profile of facilitation and mediation as they apply to helping to solve contentious management, community, and development issues, generating work for Association members. John and Roger will develop an outline of the magazine articles to be generated by Association members, and contact the "Maine Townsman" editor again to finish publication details.

with government knows that numbers get the attention of lawmakers.

Our membership Chairwoman, Tamar Mathieu, and Jennifer Fox, Public Relations Committee Chairwoman, are new to the Association's leadership. They are coordinating their committee activities so that each will be more effective. Their fresh ideas and enthusiasm will benefit the Association tremendously.

Email me with thoughts and ideas jalfano1@maine.rr.com.

Part II of
**DOES THE MEDIATOR NEED TO LOOK AT A FAMILY MATTERS CASE
 DIFFERENTLY IN A POST-JUDGMENT CASE?**

By Jane S.E. Clayton, Esq. and Edward C. Spaight, Esq.

*Part I of this article appeared in the October issue of the Bulletin, accessible at
 www.mainemediators.org.*

Turning first to the issue of new spouses and partners, it is fundamental for the mediator to always remember exactly who the parties are. All too often, it is the new partner or the new spouse who is driving the litigation. Many times, the new partner is the one who is creating the problems between the parties to the original divorce - when the parties, if left to their own devices, may be able to cooperate, communicate and work well together. If this is the dynamic, it is imperative for a mediator to identify and address the problem quickly.

Just as frequently, however, the mediator will find that the new spouse is the one bridge between the parties. It is not uncommon to see the new spouse and the former spouse being the ones who are making all of the arrangements regarding the children. Again, identifying whether the new spouses are more allies or adversaries can improve the mediator's ability to help the parties reach a satisfactory resolution.

There are also a myriad of issues which are caused by new children. Sometimes when a party has a new relationship and new children with somebody else, the older children are forgotten about. The mediator may encounter a situation where the parties have been locked in a contentious struggle over primary residence in Round 1, but now one party has little or no interest in seeing the children. The other party may be willing to embrace this situation or may feel a desire to force the issue of contact with the other parent, in the name of the interests of the children. Conversely, a party with new children from a new relationship may seek to be more involved with older children where there was little prior interest in having a meaningful relationship.

At the same time, a mediator in the latter rounds of a custody case may find herself faced with the issue of older children who now feel that they deserve some say about what happens in their lives. What is a mediator to do with a 14-year old child who states that she is going to live with Dad - regardless of what any Court Order says? How does a mediator respond to the mother in that case when Mom refuses to listen to what her child is saying?

Remember in a post-judgment custody case, the first question is always whether a substantial change in circumstances has occurred. While the burden of proof on this hurdle is a preponderance of the evidence and is often easily overcome, there are cases where this initial burden is an issue.

Also, even if there has been a change in circumstances, it must also be "...sufficiently substantial enough in its effect upon the best interests of the children as to justify a modification of the custody arrangement." *Cloutier v. Hear*, 1997 ME 35. If there are all kinds of changes but the children are unaffected, there may be no insufficiently substantial change and therefore no modification.

If the Court determines there is a substantial change in circumstances, "...the Court must consider the factors provided in 19-A M.R.S.A. §1653(3) to determine what, if any, modification of the existing order is in the child's best interest." *Sargent v. Braun*, 2006 ME 96. Do you as a mediator want to spend more time discussing those factors if an impasse occurs?

The post-judgment mediator also needs to recognize that financial concerns are often the primary motivating factor in the post-judgment arena.

Maine Law has recently changed to provide that if the parents are providing "substantially equal care" for a child, this fact may have an impact upon child support. No longer are the Maine courts supposed to count the number of days each week or each month that a child is with each parent (the quantity of time), but now the courts are required to consider the quality of the time a child spends with each parent, such as who takes them to school? Who goes to the doctor appointments? Who takes them to after-school activities?

A mediator would be wise to be familiar with the change to the law, and to assess the motivations of a party who is seeking to modify an existing custody arrangement. Is the party motivated by a desire to spend more time with the children, or is the party primarily motivated by financial considerations? In *Jabar vs. Jabar*, 2006 ME 74, the Maine Supreme Judicial Court was recently faced with this issue. This decision - where the father had the children approximately 45% of the time - appears to have set the bar rather high for a parent seeking to establish substantially equal responsibility.

The role as a mediator does not make us the judge. This is a role that is left for the courts - and a situation that we as mediators hope to help our clients avoid. We cannot make decisions for the parties - only help them reach agreements for themselves.

Understanding the different dynamics in a post-judgment case, and using these dynamics to our advantage, however, can help to make our job a little easier, and will hopefully lead to the best possible result for all involved.

**USM COURSES IN
 MEDIATION & FACILITATION**

Certificate Program in Mediation (40 hours)
Instructors: Diane Kenty and Jonathan Reitman
 Thursday, Friday, Saturday, March 15, 16, 17,
 and Thursday and Friday, March 22, 23, 8:30
 a.m.-5:00 p.m.
 \$945 includes morning refreshments each day
 and lunch the last day.

Certificate Program in Meeting Facilitation
 (21 hours)
Instructors: Pam Plumb and Dee Kelsey
 Wednesday, Thursday, Friday, April 25, 26, 27,
 8:30-4:30
 \$515 includes morning refreshments each day
 and lunch on the last day.
 \$40 materials fee includes *Great Meetings! Great
 Results!* and workbook.

**New – Certificate Program in Divorce Media-
 tion** (see course listings below). Requirements
 are the Certificate Program in Mediation (or
 equivalent 40 hour training), 16 hours of Di-
 vorce Mediation training, 10 hours of Family
 Law for Mediators, and 8 hours on Mediation
 and Domestic Abuse.

Family Law for Mediators (10 hours)
Instructor: June Zellers
 Thursday and Friday, May 10 and 11, 9:00 a.m.-
 3:00 p.m.
 \$250 includes morning refreshments

Divorce Mediation: Fundamental Skills (8
 hours)
Instructor: June Zellers
 Wednesday, May 16, 8:00 a.m.-5:00 p.m.
 \$205 includes morning refreshments

Divorce Mediation: Complex Issues (8 hours)
Instructor: June Zellers
 Wednesday, June 6, 8:00 a.m.-5:00 p.m.
 \$205 includes morning refreshments

Mediation and Domestic Violence (8 hours)
Instructors: Jacqueline Clark and Debbie Mattson
 Monday, May 21, 8:30 a.m. – 5:00 p.m.
 \$205 includes morning refreshments

Negotiation Skills and Strategies (7 hours)
Instructor: Diane Kenty
 Friday, May 18, 8:30 a.m.-4:30 p.m.
 \$195 includes morning refreshments

*Course descriptions and registration are
 online at www.usm.maine.edu/cce (click
 on the Business and Management cata-
 log.)*

*Questions? Contact Susan Nevins at
snevins@usm.maine.edu or 228-8410*



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MISSION

The Association is a non-profit 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.

Maine Association of Mediators 2007 Calendar of Events

- February 6 So. Region Peer Discussion at noon at ADR Works, 60 Pearl St, Portland
- March 7 BOG meeting at University of Augusta, Student Center, *Members welcome*
- March 15 So. Region: Working With Challenging Behaviors & High Emotions
At YA from 4 to 6pm, 400 Congress Street, Portland
- June 6 BOG Meeting at University of Augusta, Student Center, *Members welcome*
- October 17 Annual Meeting of Membership
- December 5 BOG Retreat