



# MADRP Bulletin

## August 2006



Maine Association of Dispute Resolution Professionals

Volume XI, Issue VI

August 2006

### Southern Region's Midsummer Symposium Attracted Large Crowd

MADRP's Southern Region (York and Cumberland Counties) held a Midsummer Symposium: The Future of Mediation (Is Neutrality the Way Forward?) on July 12, 2006 from 4 to 6 at the Portland Country Club. The event was planned and hosted by **Marion Killian**, Regional Coordinator for this event.

This first meeting for the Southern Region of MADRP was exceptionally well attended with a turnout of eighty-nine attendees. Sixty-seven percent of the attendees were attorneys. People came from as far away as Georgia, New Hampshire and Pennsylvania.

MADRP is very grateful to the **Honorable Robert E. Crowley**, the **Honorable John David Kennedy**, **Doris Luther**, **James Keil** and **John Alfano** for giving their varied and frank views on mediation from their own areas of expertise.

This late afternoon program was emceed by **Diane Kenty**, **CAD-RES Director** and moderator for the event. Following panelists' presentations Diane posed questions to each panelist.

Conversation following the presentations revealed thought-provoking content. Should mediators be evaluative? Should mediators even be coercive in order to get to an agreement? Should mediators model a different communication strategy that parties' might use in the future to resolve conflict? These questions point to the complex spectrum represented by the mediation field, each of us offering a different process or outcome to our consumers. Given this complexity, additional conversation and clarity around what mediation parties' want and need, what referral sources expect, and what services we wish to offer, might serve us well.

Many people noted that the program was too short and they would have liked to have had a three-hour program instead of two hours.

MADRP would like to acknowledge and thank the Maine State Bar Association for the support provided for handling the administrative aspects of the program including printing, marketing and registrations.

*Contributions to this article are from Marion Killian, and Kaki Dimock*

### Thanks from MADRP President John Alfano

Thank you from MADRP's Board and President to **Wendy Whiting**, former Board secretary, for her much appreciated contributions to MADRP. Her ideas and suggestions were helpful to the Executive Board during the unexpected leadership transition.

Thanks also to **Carol Corwin** who has resigned as Treasurer to become Secretary. Though she continued to profess her lack of financial knowledge her work as Treasurer has been exemplary.

### Northern Region Announces September Meeting

MADRP's Northern Region will hold its September Meeting at **Penquis CAP** on

**Wednesday, Sept. 6**

9:30-10am networking

10 to 12 program on

**Nonviolent Communication**

**All are welcome**

**Peggy Smith**, with twenty years experience in education and conflict resolution, will provide insight into Marshall Rosenberg's Nonviolent Communication. She will discuss preventing and resolving conflicts to increase mutual understanding and trust; distinguishing feelings from thoughts and opinions; translating criticism, judgment, and blame into feelings and needs; setting healthy boundaries, and saying "no" with strength and compassion.

**Please contact Bambi**

at [bammo2@earthlink.net](mailto:bammo2@earthlink.net) or 862-5110  
**if you plan to attend.**

### WANTED

MADRP is seeking a **Board Treasurer**

And a **Southern Region Director**  
(for York and Cumberland counties)

**These jobs offer opportunities to do your part to move ADR forward, and connect you with some GREAT folks**  
For more info contact MADRP President at [jalfano1@maine.rr.com](mailto:jalfano1@maine.rr.com) or 282-3992



## MADRP APPOINTS FIRST EXECUTIVE DIRECTOR, ROGER MOODY

The MADRP Board of Governors has appointed **Roger Moody** as the organization's first-ever Executive Director. Roger's first official day in the 12-hour-per-week position was July 11.

He is a graduate of the University of Maine (Orono) from which he received a B.A. in history and government. He holds a Master of Public Administration from Syracuse University's Maxwell School of Citizenship and Public Affairs.

Roger's work experience includes service as a Lieutenant in the U.S. Army; employment as a Municipal Services Coordinator for the State of Connecticut Department of Community Affairs; and three years as Administrative Assistant to the Mayor of East Hartford, Connecticut. In Maine, in a public service career spanning 28 years, he has served as the City Manager of Ellsworth; the Director of Business Services for the Bangor School Department; and as Town Manager for Camden. After retiring as Camden's Town Manager in 2002, Roger worked (part-time) until last month as Vice President, Community Development and Government Banking, at Camden National Bank.

His current community activities include active service with the Camden Rotary Club, as a Church Trustee, as a Trustee of the Camden Public Library, and as a founding member and current Chair of the Camden Area Futures Group.

Roger has familiarity in the conflict resolution field. In some ways, being a municipal manager was an ongoing study of dispute resolution as the various interests of citizens, neighbors, developers, employees, elected officials, and many others were addressed day-to-day. One of his current interests is in the area of community consensus building to address the plans of commercial real estate developers and businesses, by providing a community counter-balance to the increasing residential nature of coastal communities. A consensus-building model seems to be growing out of the need for communities to seek economic, social, and cultural balance for community viability and vitality, and the mediation of community segments is at the heart of this process.

He describes himself as a self-starter and a productive worker who strives to apply integrity, honesty, community, and tolerance in his career and life choices. Roger has been married to Audrey (Simpson) for 40 years, and their son Nathan lives and works in the San Francisco Bay area.

### In Case You Wondered . . .

The MADRP *Bulletin* . . . is now being published in alternating months rather than every one. *This is a Board of Governors' decision made to conserve resources & people-power So—you didn't miss the July issue—there wasn't one!*

### MADRP'S FALL CONFERENCE

#### The Power of Facilitation *From the World Stage to the Conference Table*

**Friday, November 17, 2006  
8:45am to 3:30pm  
At the Abromson Community  
Education Center at USM**

- Expand your facilitation skills
- Be inspired by successful facilitated processes
- Walk away with new ideas on process

#### Sessions will include:

- *Jonathan Reitman on Facilitating in the Middle East*
- *Facilitation Basics*
- *Facilitating Public Processes*
- *Effective Strategic Planning*
- *Introducing Effective Facilitation into an Organization*
- *Transferring Mediation skills to the facilitation forum*
- *Specialized process techniques*
- *Using Graphics to support Facilitation*

**To register & for more info:**  
www.usm.maine.edu/cce  
or, www.madrp.org

### Want to take part in a "Trial Run"?

The Youth Alternatives Family Mediation Program would like to invite you a dress rehearsal of an interactive theater piece that YA staff and volunteer mediators will be presenting at the International Conference on Transformative Mediation in St. Paul this coming September. This is an opportunity to learn about the YA FM program and give important feedback. So, if you are curious and/or have nothing to do please join us on Saturday, September 9th between 9 and 11 at Youth Alternatives. Please RSVP to **Deb Bopsie**: dbopsie@youthalternatives.org, or 632-1109.

## New Roster Process for MRREMP

By Bambi Magaw, Administrator

Because of a concern that there could be more mediators on the roster than cases available for mediation, the Maine Residential Real Estate Mediation Program (MRREMP) committee has decided to make the following changes in procedure:

Beginning October 1, 2006, the MRREMP roster will be opened to new applicants *only on an 'as needed' basis*; the guide being the total number of mediated cases from the year before. The number of mediators on the roster shall not exceed that number.

The 5-hour class on *real estate law* will *only be offered on an 'as needed' basis as well*, or at least once a year, to interested applicants. Any real estate law training or opening of the MRREMP roster for applications will be posted on the MADRP website.

Five new mediators have joined the roster this year alone, making a total of 18 mediators currently on the MRREMP roster. The MRREMP committee recognizes the special requirements and financial commitments each mediator has had to make in order to maintain his or her place on the roster. The real estate market is especially changeable, and therefore, it is difficult to predict the amount of business MRREMP will receive in any given year. The committee felt it was important not to dilute the pool of mediators to a point that quality mediators would no longer find it worthwhile to stay on the roster due to the lack of opportunities to mediate.

***Until October 1, 2006, the MRREMP roster is open and accepting applicants that meet all the required qualifications.***

Contact Bambi at [bammo2@earthlink.net](mailto:bammo2@earthlink.net) or 862-5110 with questions.

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## ONE MAN'S EXPERIENCE WITH MED/ARB

By John Alfano, MADRP President

I have been involved in what is known as med/arb for grievances between labor and management in public sector contracts in Maine. In those cases, the parties will present their positions on the issues in dispute, including exhibits and abbreviated testimony. Next, the parties attempt to negotiate a settlement with the help of the mediator. If the parties cannot agree, the mediator becomes the arbitrator and makes a final and binding decision, immediately or within 30 days.

Med/arb works for relatively simple cases. It does not work as well for complex cases or when the disputed terms of the contract are ambiguous. Med/arb is quicker and cheaper for the parties since there are no lengthy hearings, and fewer arbitrator's billable hours.

Sometimes advocates are not comfortable divulging information that may be helpful in the mediation phase, but may be prejudicial in the arbitration phase. This leads to a less than effective mediation and arbitration, because necessary information is not made available when it is needed, or not at all. On the other hand, mediation may be more effective, because the questions, All of these factors become part of the mediator dynamic that may encourage or discourage a mediated settlement.

Once the mediator puts on the arbitrator's cap, compromise is no longer an option. Instead, the arbitrator is required by law to make a decision on the evidence and determine if the contract has been breached, and if so, fashion a remedy that does not add to, subtract from, or modify the terms of the contract. These considerations are not concerns of the mediator during the mediation phase, since the parties may freely enter into any agreement even if it modifies the contract.

Med/arb has its place, but the parties and the neutral must be mindful of their legal and ethical responsibilities. Perhaps concerns over these matters are the reason why med/arb is not as common as mediation or arbitration used separately.

## Task Force Examines Confidentiality of Mediation

By Diane Kenty, Esq.

Is mediation confidential? Should it be? A task force appointed by the Chief Justice of the Maine Supreme Judicial Court in January, 2006 is looking at these questions.

The Task Force on Confidentiality and Alternative Dispute Resolution was established to make recommendations on the confidentiality and admissibility of communications made in connection with ADR. The Task Force is chaired by Paul Rudman, formerly Associate Justice of the Maine Supreme Judicial Court. MADRP President John Alfano and Diane Kenty, Director of Court ADR, are members of the Task Force.

To date, efforts have focused on proposed revisions to Rule 408 of the Maine Rules of Evidence regarding compromise negotiations. The Task Force has also drafted a change to the section about confidentiality (section k) of Rule 16B of the Maine Rules of Civil Procedure. The Task Force will be making a report with recommendations by the end of the year.

*To obtain copies of the Task Force's latest revised drafts of the rules, or to make comments, please contact John Alfano at [jalfano@maine.rr.com](mailto:jalfano@maine.rr.com) or Diane Kenty at [diane.kenty@maine.rr.com](mailto:diane.kenty@maine.rr.com).*

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**MAINE ASSOCIATION OF DISPUTE RESOLUTION  
PROFESSIONALS (MADRP)**

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**MAINE ASSOCIATION OF DISPUTE  
RESOLUTION PROFESSIONALS**

**2006 MADRP Officers**

**John Alfano, President**  
**Tracy Quadro, Vice President**  
**Treasurer TBA**  
**Carol Corwin, Secretary**  
**Susanna Liller,**  
**Immediate Past President**

**2006 Committee Chairs**

**Events - Conference and Annual Meeting:**  
Bill Van Twisk  
**Practice Quality:** Paul Charbonneau  
**Public Policy:** Doug Lotane  
**Public Information:** TBD  
**Membership Meetings and Professional  
Development**  
*Portland:* TBA  
*Augusta:* Kim Vogel  
*Bangor:* Bambi Magaw  
**Membership:** Lisa Levinson  
**Advertising:** John Alfano

**Facilitator Section:** Pam Plumb and  
Tobey Williamson  
**ME Residential Real Estate Mediation  
Program (MRREMP):** John Alfano  
**Bulletin:** Anita Jones  
**Nominating Committee Chair:** To be  
appointed by President  
**At-large Board members:**  
Jane Clayton  
**Program Liaisons:** Diane Kenty  
(CADRES), Community Mediation Center  
TBD

**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.

**MADRP Calendar of Events**

- September 6** Non-Violent Communication, Penquis CAP, Bangor, 10:00-12:00  
(a Networking & Continuing Education meeting)
- October 4** Board of Governors meeting
- November 17** MADRP Fall Conference: The Power of Facilitation, 8:45 to 3:30,  
Abromson Community Education Center, USM
- December** Board of Governors Planning Retreat

