



Maine Association of Mediators June 2007 Bulletin



Maine Association of Mediators
Professionals Committed to Cooperative Conflict Resolution

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Jonathan Reitman Wins NE-ACR's 2007 Pioneer Award

By Tracy Quadro

Each year at its annual conference, NE-ACR presents a Pioneer Award to an individual who has been active in the ADR field since its early years, has made significant contributions to the conflict resolution community, and has demonstrated a commitment to the growth and development of the profession. This year the award went to Jonathan Reitman of Brunswick, Maine.

Jonathan's practice partner Ann Gosline presented the award to her longtime friend. Ann recalled Jonathan's early career as a union lawyer, which he left in the early 80's to "follow a different path" and become a mediator, a decision considered so unusual that he was interviewed by a local newspaper. Ann characterized Jonathan's thriving practice as one defined by his great generosity, his faith in the human spirit and his tenacity in working with those in intense conflict "whether there is hope or not" of coming to terms. Mediation the way it is practiced by Jonathan is not work, but a calling. She recalled Larry Susskind's characterization of Jonathan as the "real deal."

Upon accepting the award, Jonathan noted his feeling of great honor, but also the odd feeling of suddenly being "visible" in a profession where "invisibility" is often the hallmark of good practice – ie. the process ironically sometimes works best when the parties come to settlement thinking the mediator was no help at all! Jonathan thanked his colleagues and mentors, including a few who have passed on, and spoke from his heart to recall the words of his father: a reminder that, no matter how many times you encounter people with the 'same old' conflicts, to those parties it is the most important thing in their lives right now, and they deserve all the respect and compassion we can muster in listening to their stories. Jonathan ended with great advice for mediators: "Never give up, never give up, never give up."

*Tracy Quadro is a new member of the
NE-ACR Board of Directors*

Factors in the Choice of Mediators - An Evolving Dynamic

By David Plimpton

As the "modern" era of the professional alternative dispute resolution (ADR) field approaches a quarter century or more of experience, it seems an appropriate time to reflect on what this experience can tell ADR professionals (in particular, mediators) about trends in the marketplace. What sells in the marketplace and why? What mediator characteristics, qualities, skills, knowledge, experience, styles, and even connections appeal to mediation consumers (parties and their representatives)? To the extent any preliminary conclusions can be drawn or apparent trends identified, are there any implications for mediators (training, development, marketing and search for professional opportunities) and/or for the mission of ADR professional groups? While a thorough treatment of these subjects is far beyond the scope of this article, I hope that it will provide food for thought, as well as spark reflection, study, and discussion.

For purposes of this article, I will make some assumptions about the marketplace for mediation services in Maine. ADR and the "demand" for mediation services have grown in recent years, particularly with the advent in Maine of court-connected and mandated ADR. The court-connected and mandated phenomenon, as well as a profusion of mediation training programs offered in Maine and elsewhere, has also induced many more people into ADR, thus increasing the "supply" of mediators. There appears to be significant competition for available mediation work. Retired judges and lawyers with specialty and litigation backgrounds have entered the field in significant numbers. More people in the field are advertising and engaging in promotional activities. The result: the "supply" of established and aspiring mediators outstrips the "demand" for mediation services, and at least some mediators don't have as much work as they would like. Evidence of this imbalance is seen in the fact that many people who started out as aspiring mediators have either left the field or shifted a major part of their professional effort to working as trainers and faculty members for mediation and ADR training, academic, and other educational programs.

Historically, in identifying the ideal attributes of a mediator from both a marketing and professional perspective, those in the ADR field have seemed to agree on these key factors: (a) adequate training, (b) competence/skill, (c) substantive and process knowledge and experience, (d) the most "effective" mediation style (e.g., (i) evaluative/directive or



**Contributions to the
Christopher Clark Memorial Fund
may be made to the
Kennebec Valley YMCA
Union Street, Augusta, ME 04330**

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REALITY CHECK

The President's Message

By John Alfano

THE GOOD NEWS! The Association is the only voice solely committed to ADR in Maine. The Association has redesigned itself to better serve its members closer to where you live and do business. The new name describes us clearly and distinctly, and is easily recognized, especially in the electronic world. The Association's alliance with the Maine Association of Realtors to provide professional mediators to resolve real estate disputes has been a success for both the Realtors and the mediators on the roster. The Bulletin with articles written by our members has evolved into an interesting and professional document reflecting the activities of the Association and the profession. The website will be redesigned. The hiring of our first executive director presents a more businesslike public face to the Association.

THE 'TWEEN NEWS! The structural change still is in transition. The Officers and Board continue to deal with the unknowns that have resulted from the transition. The regional coordinators are trying to balance their commitments to their practices and the demands of the Association. We continue to redefine the executive director's job duties. Somehow we are managing to cope.

THE TROUBLING NEWS! Membership renewal appears to be at an all time low. Our current sixty members generate approximately \$5500, far less than we need to sustain the Association at a useful and effective level of service. Although our BOG members have made personal calls to former members, we have not generated the number of renewals needed. This may lead us to face some difficult decisions: Do we scale back? If so, what do we do without? The website? The executive director? Affordable dues? Many people have contributed time and effort to build the Association into the ONLY reliable voice for ADR in Maine. Help us continue their efforts! Renew your membership TODAY! If you've been a "friend" in the past, or are a new mediator, NOW is the time to join!

THE FINAL NEWS! I encourage you to speak to other mediators and professionals about joining. As members of this emerging and growing and changing profession, all of us have the responsibility to keep the organization strong by renewing our own membership in a timely fashion, encouraging others to join and attending events. We can continue to list you on the website and provide you with the services of the Association only if you have renewed your membership

Please pause your reading of this Bulletin to renew your membership now by logging on to

www.mainemediators.org

printing the application form, and mailing it with your 2007 membership payment as quickly as possible!



Regional Events

The Northern Region

The Maine Association of Mediators' "Spring Tune-up" mediation training was held on **May 17 in Bangor**, with twenty people in attendance. Magistrate Bruce Jordan and attorneys Kerry Jordan and Jane Clayton served as panelists, followed by a wide-ranging discussion with District Court Judge Stitham.

The main focus was the relatively new legal recognition for the status of "*de facto*" parent. According to the panelists, a person willing to serve as a "*de facto*" parent may gain that status despite the lack of any prior legal or biological relationship between the *de facto* parent and the child.

The status of *de facto* parent can be created in various ways, according to attorney Jordan, including (1) due to misunderstanding: "I thought I was the father and I have been acting like one;" (2) in the step-parent context: "I have been acting like the parent of my soon-to-be ex's child for years and I would like to continue to do so;" (3) in the grandparent context: "the child has been living with me for years and I have been the primary caretaker;" or (4) in same-sex couples: "the child either biologically or legally (via adoption) 'belongs' to my partner, but I have been in a parental relationship with the child for a period of time and want to continue to parent the child."

Jordon adds that the issue of *de facto* parenting arises when the court is asked to issue an order related to divorce or dissolution of a relationship. Custody, residence, parental rights and responsibilities, contact, support, etc. vis-à-vis the *de facto* parent typically would be referred to mediation following preliminary legal determinations. Mediations that include *de facto* parents may involve multiple parties and complex emotional and practical issues. Although these cases are still relatively unusual, it is likely that with the changing nature of today's families, they will become more frequent.

Attorney Jordon states: "I have heard it said that the more adults that a child has to love and be loved by, the healthier the child. It is sometimes hard to make adults in the process of divorce/dissolution believe this. The challenge of the mediator, and other professionals involved, is to help all the adults acknowledge the role of the *de facto* parent and allow the most number of responsible and caring adults to continue to have a relationship with the child."

Many thanks to attorney Jordon for her detailed email notes, which this article closely follows.

Written by Mary Kellogg

Regional Events

Southern Region presents:

Ethical Considerations in Mediated Settlements

A SUMMER SYMPOSIUM: MEDIATION: HOW FAR IS TOO FAR?

July 26

3pm-6pm

Portland Country Club
11 Foreside Road, Falmouth, Maine

The symposium is intended to provide a stimulating 3-hour program for attorneys, mediators and other conflict resolvers who will be challenged to question their own views about mediation, and to reflect on their role in arriving at an agreement through mediation, and if there is a disconnect between what client advocates want and what the mediators provide.

The Symposium will touch on the following questions:

- How far should the mediator push for settlement, if at all?
- Should the mediator attempt to rescue a failing mediation with heroic measures?
- What are the signs that indicate that the mediation is failing?
- At what point does the mediator inform the parties that the mediation will not result in an agreement?
- What are some of the ethical implications for the mediator? The advocates?

*Watch for further information and
registration form in your email!*

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Contact John Alfano at jalfano1@maine.rr.com

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(ii) so-called collaborative and problem-solving models, such as facilitative/narrative or transformative/elicitive) and (e) adherence to ethics standards for neutrals. See, *Study in Mediation Styles: A Comparative Analysis of Evaluative and Transformative Styles*, <http://www.mediate.com/articles/fosterK1.cfm>. These attributes and factors have been regarded as necessary to function as a mediator. Also, promotion of an ADR practice could reasonably be based upon a "resume" which featured these strengths. One way at looking at the essence of the proper ethical and professional standards for mediators, and which has been my own approach to ADR practice, is to emphasize autonomy, independence, and a lack of direct connection to the parties.

On the other hand, I am unaware of much thought, at least by me, or discussion in the past on the issue of what the marketplace (or segments thereof) really wants (rightly or wrongly) in a mediator. Perhaps this is because there has not been enough mediation experience to identify what mediation styles appeal to consumers, or because so much about mediation is confidential and private that reliable information has been difficult to gather. And mediators may have assumed that participants did not know what they wanted in a mediator and it was up to the mediation profession to educate them.

Two groundbreaking articles, which address some of these issues, are based in part on cross-cultural observations, and have the potential to shape discussion and debate on the future of mediation in the United States for years, are:

1) Honeyman, Christopher, *Something More Than Skill: What are Parties Really Seeking in a Mediator, Alternatives* - CPR Institute for Dispute Resolution and Wiley Periodicals, Vol. 23, No. 4, p. 63-66, April 2005.

<http://www3.interscience.wiley.com/cgi-bin/abstract/110433187/ABSTRACT?CRETRY=1&SRETRY=0>

2) Honeyman, Christopher, Goh, Bee Chen, and Kelly, Loretta, "Skill is Not Enough: Seeking Connectedness and Authority in Mediation, *Negotiation Journal*, Vol. 20, No. 4, pp. 489-511, October 2004. (<http://www.blackwell-synergy.com/doi/abs/10.1111/j.1571-9979.2004.00040.x>)

This article will be continued in the August issue of the Bulletin



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Section (k) imposes a confidentiality obligation on the neutral. The proposed amendment would have extended the non-disclosure requirement to other mediation participants.

Still looming on the horizon is the question: "Should Maine adopt the Uniform Mediation Act?" In 2003, when the Maine Legislature considered the Uniform Mediation Act, MADRP (the predecessor organization to the Maine Association of Mediators) supported its passage, but the legislation was not enacted. Many mediators view a confidentiality statute as the best measure to safeguard the privacy of discussions and documents in mediation. For now, Rule 408 and Rule 16B(k) remain the source of legal authority for protecting mediation-related information under Maine law.

The president of the Maine Association of Mediators, John Alfano, also served on the Task Force on Confidentiality and ADR.

CONFIDENTIALITY RULES UNCHANGED

by Diane E. Kenty

In November of 2006, the majority report of the Task Force on Confidentiality and ADR recommended amendments to rules that protect the confidentiality of mediation and inadmissibility of information arising from or in connection with mediation. The Maine Supreme Judicial Court, which had appointed the Task Force in January of 2006, recently issued a notice that the proposed amendments were not adopted. As a result, the rules will remain the same.

Rule 408 of the Maine Rules of Evidence, entitled "Compromise and Offers to Compromise," makes evidence concerning mediation and other compromise negotiations inadmissible in subsequent court proceedings. The Task Force majority had recommended a complete revision of Rule 408 that would establish a general rule of inadmissibility, coupled with a set of well-defined exceptions. A minority of the Task Force members proposed a different amendment.

The Task Force had also recommended an amendment to Section (k) of Rule 16B of the Maine Rules of Civil Procedure, which governs ADR in Superior Court civil actions.



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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

See elsewhere in this publication for further details

- June 25 **Workplace Mediation** with Dave Webb, Bangor
1 to 3, Acadia Hospital, Penobscot Room
- July 26 **Summer Symposium: How Far is Too Far?** Falmouth
- October 17 **Annual Meeting** of Membership
- December 5 **BOG Retreat**