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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.

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mainemediators.org

The President's Message

By Peter J. Malia, Jr.

Your Board of Governors is constantly striving to make sure that the Maine Association of Mediators remains the “go to” source for alternative dispute resolution in Maine. To that end, we have been working on a number of projects. One of them involves our Ombuds Process. Although the Ombuds Process has been on the books (in other words, in existence), for many years, to my knowledge it has never been used. This is undoubtedly partly the result of the competent and skilled mediators that we have on our roster. However, as mediation becomes more prevalent in our society, we are bound to receive an occasional question or complaint about the mediation process or outcome.

Therefore, board member **Dick Romeo** has spearheaded an effort to update our Ombuds Process. This process is designed to facilitate a conversation, and possibly fashion the resolution, of a dissatisfaction between a MAM member and a member of the public with whom the MAM member has facilitated or mediated a matter. The Board reviewed Dick's suggested changes to the Ombuds Process at our October meeting and made several comments and changes. We plan to review what we hope to be a final product at our annual retreat on December 6 and approve the same. In short, the process will provide an opportunity for a consumer to have a discussion about his or her issues. We believe that all MAM members, as a criteria for membership, should be required to participate in the process if a complaint is filed. However, we anticipate that our membership will welcome this because it provides an opportunity for a discussion before a dispute escalates.

In other news, also at our October 11 meeting we heard a report from **Eliza Nichols**, the Administrator of our Maine Residential Real Estate Mediation Program. Eliza updated us on her recent meeting with the Maine Bar Association Real Estate Section. They reviewed paragraph 17 from the standard purchase and sale agreement produced by the Maine Association of Realtors, which requires mediation through our program. Apparently it was a lively discussion, and Eliza will follow up with the President of the Maine Association of Realtors to discuss a couple of possible changes to paragraph 17.

Finally, I hope to see you all at our Annual Meeting in Augusta on November 1 featuring a presentation by **Craig McEwen**. Registration begins at 1:00 p.m. As always, please feel free to send me an email or give me a call if you have any questions, comments or concerns regarding the Maine Association of Mediators.

A Conversation with Prof. Craig McEwen

Craig McEwen has spent his professional life in Maine in academia as a sociology professor or faculty administrator at Bowdoin College. He received his doctorate from Harvard College. During his long career, he has not only taught sociology but presented papers and published widely on mediation. Craig is a past recipient of the Maine Bar Association's Distinguished Service Award and the recently retired chair of Maine's Committee on Judicial Responsibility and Disability. He and spouse **Maggie McEwen** live in Brunswick where they may be found spending leisure hours gardening and baking. **Paula Craighead**, MAM board member and Bulletin editor, spoke with Craig recently about his mediation research and upcoming presentation at MAM's annual meeting on Thursday, November 1.

MAM: Where did you grow up and what brought you to Maine?

CM: I grew up in Ann Arbor, Michigan, left there for Oberlin College in Ohio, then off to graduate school in Cambridge, Massachusetts. What brought me to Maine was a job offer at Bowdoin College, which I'd never heard of before but which I came to learn provided an undergraduate liberal arts education that I so valued at Oberlin. Also at Bowdoin at that time was a strong, well-known, imaginative leader, **Matilda White Riley**, who was building a new [sociology] department. Her field is the sociology of aging. I spent my career in Bowdoin's sociology department with the exception of time away for a while at Ohio State College of Law.

MAM: How did you first come to mediation as a research topic?

CM: In the early 1980's I was one of the first mediators in the Maine Court system when mediation became mandatory. Later in the 1990s, I served on the grievance commission for the Maine Board of Bar Overseers...

MAM: You see it all there, don't you!

CM: Ah, yes. The underside. But I saw also the wonderful professional commitment of lawyers who want to keep the profession strong. So you see the both sides there.

MAM: Was it during your time with what later became Maine's Court Alternative Dispute Resolution (CADRES) program that you began to research aspects of mediation?

CM: There was a training of mediators in 1978 as part of outreach to develop community mediation in Maine. I was one of those trained early on but there wasn't any work for me! Another mediator who piloted with what was then called Court Mediation Services was **Richard (Dick) Maiman** in the Political Science department at University of Southern Maine. Together we applied to the National Science Foundation in the 80's to get a grant to study small claims mediation in Maine as a nationally innovative effort. My early involvement turned quickly from mediating training to standing back, with Dick, and studying mediation. That research became quite widely known because we found significantly higher compliance rates in cases that were mediated in contrast to cases that were adjudicated.

That [study] got me connected to a national mediation research community. It was a lucky find. I've been [involved with] its implications for a long time!

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MAM: Last May in this newsletter **Ann Gosline** spoke about the direction of professional mediation as globalizing and generalizing. You recently finished writing a textbook entitled “Designing Systems and Processes for Managing Disputes.” Will it support Ann’s view that a mediation approach has caché and a mainstream future?

CM: I’ve known Ann for twenty years. This new book in a sense does reflect that globalizing perspective but it also suggests a place for thoughtful professionals who can look beyond the case before them and can design systems that not only resolve disputes but may diminish their number by improving communication relationships, changing power structures and so on.

MAM: Who is the target audience for the book?

CM: It’s meant as a text book with the targeted audience of law students taking some kind of course on dispute system design.

MAM: What do you mean by “systems” referenced in the book’s title?

CM: Definition of a system may be hard to come by but a notion of a “system” comes into play where there are multiple disputes. For example, the US Postal Service has regular experiences with conflicts among personnel, between staff and supervisors and with lots of Equal Employment Opportunity (EEO) complaints because people formerly had no other vehicle for complaining about what they see as unjust, problematic relationships. We know most EEO complaints are dismissed if they don’t actually raise equal opportunity issues. But they cost time and money; they are frustrating to employees because they get nowhere. So how do you design a system that reduces EEO complaints and also improves supervisory performance so there are fewer things to complain about? Designing a transformative mediation program is one way.

MAM: Will the adoption of mediation-driven systems put mediators out of business?

CM: On the one hand, it could reduce ADR professional business, on the other hand it creates new opportunities for professionals to deliver those systemic services as well as services for individual conflicts. Certainly a number of Maine mediators work for the USPS.

MAM: Is a “process,” then, a method found within a “system?”

CM: People have been inventing and re-inventing “processes”. We talk about different mediations and various styles of mediations ranging from a truth and reconciliation commission to facilitation to dialogue—there are all kinds of interventions which rely in some degree on the insights provided by mediation [protocols] and which many Maine professionals employ in one format or another but may not themselves be called traditional mediations. We are becoming more innovative in our processes by bringing together people in our own way, all with the goal of understanding conflict, improving communication, finding ways to solve problems collaboratively.

MAM: What can you say about Maine practitioners in the context of innovation?

CM: Maine was an early national leader in court connected mediation. First with small claims, then with divorce mediation. Those programs continue today through Maine’s CADRES program and of course Maine was an early adopter, although not innovator, of foreclosure diversion mediations. The early work [of small claims and divorce] put Maine on the ADR map. What Maine

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did with CADRES that remains unusual to this day is to have non-lawyers mediating divorce cases, contested divorce cases, frequently with attorneys present but they mediated all issues, not just custody. That remains an unusual model nationally and unfortunately has not been widely adopted because it has a lot of advantages. Maine, like most other states in terms of court-connected mediation in civil cases, has followed the national pattern with a style of mediation called predictive or evaluative mediation that tends to be expected by attorneys. In my view, this approach diminishes the capacity of mediation to deliver on its promise to improve negotiation, broaden settlements, and engage party participation. So, in civil case mediations, I don't think we're that different. We aren't national leaders, we don't stand out. [Court-connected mediation] has been captured, by and large, by the culture of law practice. [Court-connected mediation] has not reshaped that culture in Maine as it could and as it did, I believe, in divorce law practice. Those who practice outside courts, however, aren't constrained by the culture of legal practice and are freer to innovate. Exciting new possibilities [for mediation processes] where they exist in Maine exist outside Maine court-connected mediations.

MAM: Anything occur to you about the direction for innovation in Maine?

CM: I am probably not the one to ask from a practitioner's view... Ann Gosline and **John Reitman**, for example, are folks who come into a whole variety of settings offering customized services. Although I mention them, I realize there are many others in Maine doing new and innovative applications—I mention Ann and John because I know [their work].

MAM: Before we end, would you like to mention anyone or any work that influences your mediation research?

CM: **Frank Sander**, professor emeritus at Harvard Law School, inspires me. He's thought of in many circles as a father of the field of ADR in the US. Our long friendship, collaborations and co-writing have been inspirational given his critical mind. He not only thinks about mediation in the context of law but wants to understand research about the phenomenon. Further inspiration has come from collaborations with Dick Maiman at USM whom I mentioned before and **Nancy Rogers**, former Ohio Attorney General and Ohio State University College of Law, dean emeritus and current holder of the Moritz Chair in Alternative Dispute Resolution. In 1988, she suggested I try to view mediation and legal practice empirically, to figure out what goes on in the room by using the social science lens to assess impacts and outcomes and get beyond ideological values.

MAM: Thank you for speaking with us.

CM: It was my pleasure.

For further reading on dispute systems design or aspects of collaborative governance:

- **Journal article:**

"Public Collaboration in Maine: When and Why it Works"
Maine Policy Review, Vol. 19,
Summer/Fall 2010,
Kenty, Gosline, Reitman
Margaret Chase Smith Center

- **Website:**

www.beyondintractability.org

- **Publication:**

"Designing Systems and Processes for Managing Disputes"
by Craig McEwen, Nancy Rogers,
Robert Bordone, Frank Sander
available spring 2013
from WoltersKluwer-Aspen, NY, NY

MAM Board Embarks on Review of its Ombuds Process

Although a format exists for complaints by consumers to MAM about a mediation process or mediator performance, few if any consumers of mediation services may be aware of the Association's process of review. Members as well as consumers may be in the dark.

At the Board of Governor's October meeting, board of governor member Dick Romeo reported on his results from time spent this last year reviewing the current documents that outline the "MAM Ombuds process". He and other board members generally affirmed the value of a peer review option for consumers of mediation services but also agreed that the current written process requires further refinement and updates. At the meeting, Dick expressed his belief that the Ombuds process, after amendments are adopted, will provide an opportunity for a concerned consumer to, at minimum, have a discussion with another mediation professional as well as the practitioner involved about any troubling issues arising from a mediation or facilitation in which the consumer and practitioner participated. There was consensus that all MAM members, as a condition of membership, should be required to participate in the MAM Ombuds process if a complaint is made or filed with the organization. It was agreed that the Ombuds process would need to be made clear to all current members and future members. One possibility for information dissemination to members and consumers alike is by providing a page on the MAM website explaining the process with links to Standards of Conduct for MAM, the American Bar Association (ABA) and the national Association for Conflict Resolution (ACR).

Other suggestions for how a consumer becomes aware of the existence of the MAM Ombuds process included : written articles from time to time in its newsletter The Bulletin about the value of peer monitoring and oversight, a special page on the MAM website, collaboration with and cooperation of the Overseers of the Bar (who may hear complaints from counsel), voluntary inclusion of a reference to the availability of the Ombuds process in the mediation agreements authored by MAM members and advertisements in general publications that mention MAM provides this service to consumers and its members.

What's ahead, MAM?

NOV 1, Thursday morning, in Augusta, ME
 Program: "Avoiding Mediator Burnout,"
 Terry Fralich, CADRES training
 FMI: diane.kenty@courts.maine.gov

NOV 1, Thursday afternoon, in Augusta, ME
 Program with 1.5 CLE:
 "Beyond the Case," Prof. Craig McEwen
 Annual Meeting of Maine Association of Mediators
 FMI: administrator@mainemediators.org

NOV 8, Thursday, in Topsham, ME
 Training: *Domestic Violence*
 FMI: elaine.bourne@voanne.org or
 207.373.1140, ext. 238 at VOANNE

NOV 9, Friday, in Topsham, ME
 Training: *Consumer Law*
 FMI: elaine.bourne@voanne.org or
 207.373.1140, ext. 238 at VOANNE

DEC 6, Thursday, in South Portland, ME
 Board of Governors Retreat
 Maine Association of Mediators
 FMI: pmalia@hastings-law.com

Calling all MAM members to the MAM Annual Meeting

DATE: Thursday, November 1, 2012

PLACE: 11 King St, Augusta

AGENDA

1:00 – 1:30 Registration

1:30 – 3:00 Presentation by Craig McEwen

3:00 – 3:30 Annual Business Meeting

3:30 – 4:30 Social Hour

(attorneys please supply Bar number for CLE)

Registration in advance by members or nonmembers requested by or before October 30. Please visit our web page at

www.mainemediators.org or

send an email to administrator@mainemediators.org

Free to members; \$15 for nonmembers who may pay the day of event following advance registration or send check payable to:

“Maine Associations of Mediators”

PO Box 8187, Portland ME 04104

877-265-9712 toll free

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