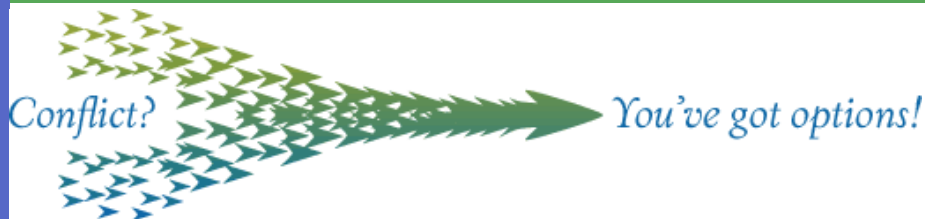


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Professionals Committed to Cooperative Conflict Resolution

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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.

Submission deadline for
March issue:
February 15, 2012

FMI: bulletin@mainemediators.org

Community Issues and Mediation: A Conversation with Maine's Sole Community Prosecutor, Trish McAllister

The Bulletin recently met with attorney and FDP mediator Trish McAllister. She talked about municipal government's role in conflict resolution, mediation and public policies related to quality of life and civility.

BULLETIN: What is your background and what brought you to Maine, if this isn't your native state?

MCALLISTER: I was stationed in Portland with the US Coast Guard in 1991. The reason I left the Coast Guard was so my husband and I could stay in Maine and raise our family. We loved it here. So I resigned my commission as a marine inspector working on the Portland waterfront, after ten years of active duty. That law enforcement experience molded my career choices: first to work as a certified code enforcement officer, then as a law school student. After Maine law school, I practiced in private firms as a litigator. An interest in mediation came naturally from the code enforcement days: mediating between a town that wanted its laws enforced and property owners who wanted to put in a deck!

BULLETIN: You were selected as one of the initial core group of Maine Foreclosure Mediators. How did that fit your career path?

MCALLISTER: I've always had as a goal to serve on the bench. Mediation is a great skill to have for that goal. My foreclosure mediation program (FDP) training and experiences have been invaluable for working as Portland's first Community Prosecutor.

BULLETIN: Why is that?

MCALLISTER: Not only the training in mediation that FDP mediators received but that opportunity to see and work with people in Maine society who are struggling, who are in distress of some kind: 'people in distress' is a common theme when you work with the police on community disputes. In the foreclosure work, I learned how Maine people are struggling and trying to cope with the economic downturn. When I started doing foreclosure work, I expected to see the balloon mortgage people. You know, people who are making \$50,000 a year who bought \$600,000 houses.

Community Issues and Mediation (cont.)

I have not seen one of those in two years. What I've seen is the hard-working, reasonable Mainer who we all know, who took out a normal mortgage for their lifestyle and income and in the second wave of the recession, they lost their job. That's been an eye-opener for me. To see struggles like that helps me to better understand what's going on in our local society.

BULLETIN: In what way exactly?

MCALLISTER: Particularly in the public policy arena. I work with all levels of city government, with the management, with counselors, as well as within the police department. It helps with that. But of course one of the main areas of work I do is with landlords. A lot of what I do is work associated with enforcement of Portland's Disorderly House ordinance.

BULLETIN: If you are an "enforcer," aren't you too interested in the outcome to be seen as a mediator?

MCALLISTER: The history of the ordinance is that there was little enforcement of the ordinance until I was hired. A Disorderly House law is designed to keep some control over absentee landlords who aren't taking enough responsibility and provide a process for suffering neighbors to pursue for excess noise, parties and so forth. It was a decade old law but it was a hard standard to reach since it required eight police calls within a month. Can you imagine living next door to someplace where you have to call that often before something is done?

BULLETIN: And the mediation part? Why aren't you Portland's in-house mediator instead of its community prosecutor?

MCALLISTER: Actually, I serve in a mediator role often. It's just that there is also the need to have someone ready to go to the mat, go to court, to enforce the law: particularly the nuisance and disorderly house ordinances. We're talking about very small things. Things that the police rarely enforced before this position came along. Yet, it is these "small things" that affect such a broad part of the community. They form a major part of our real, not just perceived, quality of life. It's incredibly important to people that someone is out there taking charge of littering problems, illegal dumping, graffiti. You have to do more than issue a citation.

BULLETIN: It's the *follow through*, then, that provides opportunity for a mediated result in lieu of court action?

MCALLISTER: Yes, it's the follow through. The nuts and bolts of what I do mean that the 'conflict' here is essentially a citation. What I then do tracks more closely to what a mediator does. The disorderly house ordinance is a good example. After a citation, the ordinance requires that the owner come in, meet with us and bring a proposed action plan. We have to agree to something in writing. After that, if the landlord gets a handle on a property where there had been drunken behavior, fights, loud parties, so that the neighbors were calling on the police to deal with it,

Community Issues and Mediation (cont.)

then we aren't going to pursue legal action on the landlord. That process-- to create the written action plan-- means meetings, phone calls and a lot of mediating. We don't say "You have to do X", we show them the police calls and say "what are you going to do about this?" I don't tell them what to do. They come up with a plan and this department has to decide to approve it.

BULLETIN: While what you are doing sounds incredibly worthwhile, and perhaps cost-saving for the police department, isn't it more like effective negotiation than mediation? By that I mean to say a good third party negotiator has authority to achieve a given result which they then work to accomplish. Yet a classic mediator has little or no follow through authority because the goal is that the parties agree together to find their own result and adhere to it because they 'own it'. So my question is: do you think mediation may be evolving so that some mediator 'follow through authority' is important for an effective mediated result?

MCALLISTER: The lines blur tremendously between mediation and negotiation in what I do. Often I mediate in-house, among departments, to help one department assist another by engendering a conversation. In the case of community mediating, it's true that there is negotiating as much as mediating. The common denominator for me is "do the parties hear each other and can they come to resolution themselves?" When I say to a landlord or officers on the line "What can we do to help you?" It means I mediate between a landlord and the police. What I can also say is that when I found out that the old disorderly house ordinance standard was so high, I worked to get a new one. We now have a 3-4-5 ordinance. It's a graduated system based on number of units. Neighbors don't have to call eight times, as they did under the old ordinance, before something happens. Depending on the number of rental units, the most they have to call is five times now, and that's still a lot to live through, if you think about it! We had twenty-five situations this year and every single landlord met with us and worked it out; none went to litigation. It's been so well received that I've testified about it in Biddeford and in South Portland. Both communities have passed a similar ordinance.

BULLETIN: Has anyone asked you to perform a mediator or facilitator function since you've had the position?

MCALLISTER: That did happen this year, a huge one. So much of mediation is bringing people together in a safe environment where they can really communicate, really hear what the other is saying. Here's what happened: In one part of Portland there is a grange hall, not insulated, that the owner rented to a promoter who brought in bands. Young people began to congregate in a residential neighborhood on weekends. The neighbors were going insane because the noise level was crazy. Again, police calls were generated

It was the kind of thing that if it had been left up to a bunch of people writing emails... well! So, within five days of parties agreeing to meet, we got them together: a city counselor, police and fire department representatives, dozens of neighbors, the owner of the grange, the promoter and even some of the young people who came often and who were, by the way, very articulate. The neighbors had their time to air complaints about kids driving erratically, leaving the concert and urinating on lawns, parking on lawns, getting sick because although the grange prohibited drinking there was drinking in cars and then they got sick, things like that.

Community Issues and Mediation (cont.)

The 18-20 year olds who came and spoke were equally passionate.

Watching everyone hear each other and take in each others' viewpoints was fascinating. The anger was still there but everyone was also happy something else could happen than what had been happening. So we pounded out an agreement, not there but later: the concerts could still go on, there would be a noise level monitor installed outside the building, a set amount of concerts and times, a no-reentry policy so that once you entered you couldn't go back to your car. The grange agreed to everything the neighbors asked of them. They also are now required to have a per concert city permit, not a carte-blanch permit that allows them to have concerts any time they like. They have to re-apply after each concert so there is an incentive to avoid neighbor complaints. They still have concerts, but under better controls and the neighbors feel like it's the old neighborhood again. Bringing people together to talk out the conflict is where this job has its highest value. This situation with the grange and its solution happened without lawsuits and without any prosecution.

BULLETIN: How do you think community mediation, which arises after a citation for these quality of life matters, might evolve?

MCALLISTER: Well, because Portland is enforcing the so-called low hanging fruit ordinances like littering, urinating in public, graffiti, it doesn't help to unclog an already crazy court docket. I think we need a non-family law magistrate; that is, a municipal magistrate. We used to have them in Maine. That position can take the load off the overwhelmed district court judges' desk, including civil violations like marijuana possession and some traffic offenses. Take all that off the district court judges' desks and give it to someone who deals with it exclusively and has a passion to deal with it. We need to get the word out there that you can't just act any way you want in the parks or on the streets and sidewalks. The complete lack of civility is appalling. The police say to me, "seriously, we have to go around and give citations for dropping cigarette butts on the street?" Yes, you do! We have to enforce the rules we've made. There are meetings I go to on that very topic because it drives the shop owners nuts. Once it's known these kinds of things could be headed to court, there will be mediations that we can't even imagine now because, as I say to people all the time, "you don't want the government telling you how to handle that."

BULLETIN: What would you recommend to Maine mediators who are interested in community issue mediation?

MCALLISTER: An invaluable resource for me, which I recommend to anyone interested in community conflict resolution, is "Fixing Broken Windows" by George Kelling and James Wilson. I refer to it often because it makes the point that it is best to go after the small problem before it grows into a bigger one. From my vantage point, these quality of life issues we've been discussing are universally talked about; there is a lot of angst about them. There is a hole to fill [by mediation]. I don't have an immediate answer, but across the board, people in this city and this state feel that civility issues and how we behave in public is a problem. At the same time, we see great results when the parties on the ground are brought together to talk these conflicts through. There has got to be a way to bring more mediation skills into the community issues arena. It will help people better understand how they can get along, how their behaviors impact each other and how quality of life can improve.

Down to Business

Down to Business is an occasional column on the kind of conflict resolution Maine mediators have on their horizon. If you would like to share a sample of the type of mediations on your schedule, please contact bulletin@mainemediators.org

Drummond & Woodsum mediator **Jerrol Crouter** scheduled for a five party legal malpractice mediation involving real estate and title issues; a commercial mediation involving dissolution of a closely held business and another legal malpractice.

Jerrol Crouter may be reached at jcrouter@dwmlaw.com

Plimpton & Esposito mediator **David Plimpton** scheduled for fact-finding for the Maine Labor Relations board, a *pro bono* mediation for a personal injury through the Volunteer Lawyer Project, and an appointment by the Maine District Court as a special master in a partition matter concerning sale of a family's shorefront property.

David Plimpton may be reached at plimpton.david@gmail.com

Orland Family Mediator **Marian Allen** scheduled, after traveling in January, for both private and CADRES family law mediations that typically include family property settlements, retirement assets, spousal support and an emerging issue of costly health insurance access. Providers usually do not allow an ex-spouse to stay on the plan but recently she has seen an out of state insurance company that allows ex-spouse coverage until remarriage. She has also been assisting more couples who choose legal separation over divorce to divide all property and other rights except for health care.

Marian Allen may be reached at Jazzpath@gmail.com

Annual Retreat

The Board of Governors meets January 19 for its annual retreat. The meeting topics include organizational goals and actions for the coming year and next two to three years. Members are encouraged to send ideas and observations for consideration by the Board to: administrator@mainemediators.org

Factors in the Choice of Mediators -An Evolving Dynamic

By David Plimpton ©MAM Bulletin June 2007

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 (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, 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.

Factors in the Choice of Mediators (cont.)

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>)

[NOTE: From time to time we may re-print articles of interest from the archive. The article above originally appeared in the June 2007 Bulletin. The second segment may be found online at <http://www.mainemediators.org/wp-content/uploads/August07Bulletin.pdf>]

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