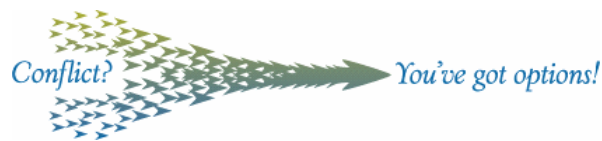




# Maine Association of Mediators October 2007 Bulletin



Maine Association of Mediators  
Professionals Committed to Cooperative Conflict Resolution

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## The End

By  
John Alfano, President

I presided over my last Annual Meeting on October 17<sup>th</sup>. I have mixed feelings about my two years as president. As you may remember, I became president in December 2005 when the president-elect resigned to take a job out of state. From that point forward, the Association hired a new first ever executive director as a result of the work of former president, Susanna Liller. We implemented the restructuring plan that was devised after two years of planning and study. We adopted a new name. The Association adopted the new and comprehensive Standards of Conduct for Mediators, developed and adopted by AAA, ABA and ACR. There is a committee headed by Jonathon Reitman to introduce ADR in more areas of State government. The Association continues to grow and change to meet the ever-changing needs of its members.

Next year we need to revisit the Association's organizational structure. Regionalization does not appear to have lived up to its promise of bringing the Association closer to the members in each region. The website needs a complete makeover into a more professional and user-friendly tool.

The Association needs to look inside itself to continue its promise to be the only effective representative of ADR specialists in Maine. The Association will use 2008 to undergo a comprehensive analysis to determine what needs to be done to continue its mission. The officers for 2008 are in 'acting capacity', to study,

*Continued on page 2*

## OCTOBER'S ANNUAL MEETING

### FEATURED JUDY RINGER, AUTHOR AND TRAINER

Judy Ringer, founder of *Power & Pressure Training*, a prominent conflict consultant, and author of *Unlikely Teachers: Finding the Hidden Gifts in Daily Conflict*, demonstrated techniques for transforming conflict into power. She applies the principles of aikido to resolve and gain insights into conflict resolution. The stories behind individual conflicts are "hidden gifts" that provide opportunities to know the world and understand each other. Conflict gives us the chance to take a different path, to make new and different choices.

The aikido metaphor involves six facets: resistance, connection, practice, discovery, power and teachers. Judy demonstrated the aikido technique of 'centered response' to conflict. When we are centered, we are calm, in control of ourselves and able to choose meaningful options. If we start each day centered, we will be ready for whatever life puts in front of us. The centered person will be more able to use the power of conflict to learn and grow, make better choices and turn conflict into resolution. Each of us practiced her centering techniques to use in our practices.

The Association has extra copies of her book for sale. Contact Will Van Twisk at [willvan@suscom-maine.net](mailto:willvan@suscom-maine.net) to purchase your copy.

### Your New officers and Board of Governors Members for 2008

#### Officers

Acting President:	Anita Jones
Acting Secretary/Treasurer & CADRES rep.:	Diane Kenty
Immediate Past President:	John Alfano

#### BOG Members (alphabetically)

Jane Clayton (Maine Bar rep.)	Colleen Newcomb
Peter Malia	Mary Beth Paquette
Tamar Mathieu (Membership)	Tracy Quadro (Community med.)
Sheila Mayberry	Will Van Twisk (Prof. Dev. )



*Continued from page 1*

analyze and recommend changes to the Association. Their first meeting will be a joint planning meeting with the outgoing and incoming officers and BOG on the December 12<sup>th</sup> retreat. Stay tuned for more information.

I want to thank the Executive Committee and the Board of Governors for their expertise, patience and time. I especially want to thank Anita Jones for her guidance, moral support, and her work on the nominating committee and editing the Bulletin. Thank you Doris Luther for assisting Anita on the nominating committee. Good job, Will Van for planning and executing the Annual Meeting. Finally, I want to thank the members for continuing to support the Association.

I will be a member of the executive committee, and continue to solicit articles for the Bulletin. Any one is invited to contribute to the Bulletin by sending their articles to me at [jalfano1@maine.rr.com](mailto:jalfano1@maine.rr.com).

Ciao.



## The Challenge of Standards of Conduct

By John Paul Erler, Esq.

What is Standard I of the Model Standards of Conduct for Mediators?

I regularly ask myself this question while I'm mediating. It's not that I don't remember what is Standard I. Rather, it is because I want to remind myself of the requirements of that Standard when the temptation to ignore it heightens.

Standard I states in applicable part: "A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. . . . A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, ego, increased fees or outside pressures from court personnel, program administrators, provider organizations, the media or others." Standard I was adopted by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution and the Association for Conflict Resolution in 2005.

I remember a study I once saw (although I now cannot remember its author) concerning disputant satisfaction in the mediation process. What I found interesting and perhaps discouraging is that although most disputants were satisfied with their mediator immediate following the mediation process, the majority said that they would not choose mediation again if they have a dispute in the future. How could that be?

Based on my experience (and without doing any scientific study of the issue) I believe there is a relationship between the results found in the study and the failure of mediators to adhere strictly to Standard I.

Forgetting Standard I can occur at any time during the mediation process. Mediators often tell the disputants how the mediator will conduct the mediation. I have heard mediators say how they can settle the case. Attorney mediators may bring their legal problem solving skills to the mediation. Non-legally trained mediators can do the same. How often we hear the mediator say, "I settled the case." These examples and others suggest the speaker has forgotten Standard I. Each of these statements may diminish the disputants' feeling, if not the fact, of self-determination.

But the most dangerous and most common time for loss of self-determination comes at the end of the mediation process. Mediation started at 9:00 in the morning. The parties have been working all day. Some issues have been tentatively resolved. There may be only one sticking point left. If there is a gap between the parties' positions, each now feels they have given-in enough.

When this mediation began, the parties were not only on different planets but those planets were rotating in different directions. For example, the claimant wanted the respondent to pay her \$50,000 and the respondent not only denied that the money was owed but asserted that the claimant in fact owed the respondent \$100,000. It has now become apparent to one side that not only is she going to get no money

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## THE HISTORY OF COURT MEDIATION IN MAINE

The History of Court Mediation in Maine: Empowering Litigants to Resolve Their Disputes is the title of a new book, written by Don Kimmelman, a MAM member and a CADRES mediator. This history is in two parts. Part One details the history of court mediation in Maine from its origins in the mid-1970s until the death of its first director in 1988. Part Two highlights the important events which follow and summarizes the expansion of court mediation into the Court Alternative Dispute Resolution Service (CADRES). Following are some excerpts from the book:

## From Chapter One: A History of Twists and Turns

*Court-connected mediation in Maine has an unusual history. How it began and how it grew is a story of surprising twists and turns which have propelled the program forward. At crucial moments in this history, times of seeming defeat became the stepping stones to successful new ventures. This, in particular, occurred in the mid 1970s when a community mediation project failed and again in the mid 1980s when the mandating of mediation for domestic relations cases appeared to be rejected.*

*Court mediation was the second mediation project attempted in Maine. It was developed locally and influenced by national events and leaders. The story begins with a Portland attorney and involves the Maine Humanities Council, Maine professors trained as mediators,*

*Continued from previous page*

settlement, but she will have to pay the other side to get the matter settled. Although she now “knows” this intellectually, she is still not ready to let go of her previously dearly held position as the injured party.

A time limit of 5:00 PM has been set by one of the parties. The building where the mediation is being held is going to close. A child needs to be picked up at school. The parties, and the mediator, are tired, maybe cranky and ready to go home.

Now is the time: the golden moment. Right now you, the mediator can put “a little English” on one side or the other and get that settlement. Yes you can, and it will work.

## REMEMBER STANDARD I?

After mediation I give each party a questionnaire with two questions: (1) What did you like about mediation? (2) What would you change?

How will the parties you mediate with answer question (2)?

*two national legal conferences, a Chief Justice of the United States Supreme Court, a President of the American Bar Association, a co-founder of CARE and a District Court judge. In August, 1977 the court mediation program began as a two month experiment with one mediator mediating small claims cases in the Portland District Court. Within months some divorce cases and a few other civil cases were also being mediated.*

*In the following years court mediation grew gradually as it spread to other courts and mediated more divorce cases. In 1983 a legislative study commission and half of the court mediators rejected the idea of making the mediation of divorce cases mandatory. For a time it appeared that another agency would be created to handle these cases in the court. However, court mediators reconsidered their opposition to mandatory mediation and others questioned the need to create a new agency. In 1984 the Maine legislature passed a statute mandating the mediation of contested domestic relations cases involving children. Within months mediation was expanded to all the courts in Maine and the roster of mediators quickly rose from 16 to 57.*

From a speech to a September, 1985 Mediator’s Workshop on how Court Mediation in Maine began, given by Dr. A. Leroy Greason, President of Bowdoin College and an early court mediator

*“Several of us from the Law School seminar (Community Dispute Resolution Project) made up the first wave of mediators. And what a group of court mediators we were: humanists – taught by labor mediators – trained in community dispute resolution.... And we were going to mediate small claims cases and, in time perhaps, divorces. If ever there was a bunch of unterrified amateurs, we were it! And your being here is the proof that we made it work. And I would like to suggest that we made it work because we had no firm preconceptions of what should be done. We were not judicial experts testing positions against a set of laws. We were simply human beings, who in our careers had taken humanity and humane values seriously, and who were ready at least to sit down with other human beings who were often angry with one another, hurt, puzzled, insecure, and try to understand them and help them to understand themselves and the dilemmas they were often in, and to find some reasonable and workable way out. As you know, our group succeeded much of the time. We did, I think, because we were forced to be experimental, creative, responsive, to exercise those qualities of mind and concern that defy any tidy training. The continued success of this program, now in your able hands, suggests that those same qualities must still be at work.”*

First & Last Paragraphs from the final Chapter:  
Where Should Court ADR Go From Here?

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### 2007 Executive Committee

**John Alfano**  
President  
**Tobey Williamson**  
Vice President  
**Jane Carpenter**  
Treasurer  
**Carol Corwin**  
Secretary

### 2007 Board of Governors

Bambi Magaw  
Northern Region Coordinator  
TBA  
Central Region Coordinator  
Sheila Mayberry & Jay Bartner  
Southern Region Coordinators  
Diane Kenty  
CADRES  
Jane Clayton  
Maine BAR ADR  
Tracy Quadro  
Community Mediation Programs

### 2007 Committee Chairs

William Van Twisk,  
Professional Development  
Tamar Mathieu,  
Membership  
Jennifer Fox,  
Public Relations  
Doug Lotane,  
Ethics  
Pam Plumb and Susanna Liller,  
Facilitator Section  
Anita Jones,  
*Bulletin* Editor

#### 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

### Maine Association of Mediators 2007 Calendar of Events

**November 15 BOG Meeting**

**December 12 BOG Retreat**

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*Expanding services, creating alternatives, is a crucial element in the history of court ADR in Maine. In early 1978, after describing the success of the 1977 small claims mediation experiment in Portland District Court, Walter Corey and Roger Teachout asked: "Where, one wonders, should court mediation go from here?" There is a tradition in Maine of asking and answering that question. For Corey and Teachout the answer was to extend mediation to the other courts in Maine. In the early 1980s Lincoln Clark sought to expand mediation to more domestic relations cases and later to more civil cases in the Superior Court. In 1988 the Maine Bar, the Maine Legislature and the Supreme Judicial Court looked to the future and established the first pilot project for ADR in the Superior Court. In the early 1990s the Commission to Study the Future of Maine's Courts and its ADR Task Force completed an exhaustive study of what they believed needed to be done and made numerous ADR recommendations for the future. During the 1990s the Court's ADR Planning and Implementation Committee sought to implement some of these recommendations. Finally, after his very extensive analysis and evaluation of mandatory ADR in the Superior Court, Justice Howard Dana looked to the future and made his recommendations as to where ADR should go from here.*

*Where, one wonders, should Court ADR go from here? Maine has an abundance of visions and experiments upon which to build. Who will be the new pioneers who can turn these visions and experiments into on-going programs to benefit the courts and the people of Maine? Their stories will become the next chapters in the history of Court ADR in Maine.*

The History of Court Mediation in Maine will be ready for sale by the end of October. The painting on the book's cover is the work of mediator Marian Allen. Don is selling the book privately at a modest price which he hopes will reimburse him for the printing costs. The price of the book is \$11.42 plus 58 cents Maine sales tax(\$12.00 total). If the book is mailed, there is an additional \$3.00 charge for shipping(\$15.00 total).

To order the book, send your check for the total cost along with your name, address, telephone number and e-mail address to Don Kimmelman, 285 Eastside Road, Sorrento, ME 04677. Make the check out to: Donald M. Kimmelman. If you have questions, e-mail Don at donaldkimmelman@yahoo.com

Don plans to have the book available at the CADRES events in November celebrating the 30<sup>th</sup> Anniversary of Mediation in Maine Courts: Nov 1 at 3:30 PM in the Cumberland County Courthouse, Portland, Nov. 8 at 3:30 PM at Mediation and Facilitation Resources, 11 King St., Augusta and Nov. 9 at 3:00 PM in Penobscot County Courthouse, Bangor