



THE NEW YORK MEDIATOR

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MATRIMONIAL COMMISSION RECOMMENDS EXPANSION OF ADR

By Daniel M. Weitz, Esq. and Amy Sheridan¹

During her State of the Judiciary address on February 5, 2006, Chief Judge Judith Kaye announced the publication of the Matrimonial Commission Report². Chief Judge Kaye appointed the Commission in June 2004 to examine every facet of the divorce process in New York and to recommend reforms for the primary purpose of reducing undue trauma, cost and delay to the parties and, most importantly, the children. Chaired by Associate Justice Sondra Miller (retired), of the Appellate Division, Second Department, the Commission worked for nearly two years gathering information and formulating recommendations. In her speech, the Chief Judge highlighted many of the Com-

mission's recommendations contained in the report, including the "... Statewide integration of alternative dispute resolution methods, in particular mediation of parenting disputes... ."³

The Commission heard substantial testimony and reviewed submissions and other information which indicated that alternative dispute resolution (ADR), particularly mediation is widely recognized as an effective means of reducing the delay, expense and trauma to children otherwise caught up in the process of divorce⁴. The Preface to the

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¹ Daniel Weitz is the Deputy Director, Division of Court Operations and Coordinator of the Office of ADR and Court Improvement. He also served as a member of the Matrimonial Commission. Amy Sheridan is a Principal Court Analyst in the Division of Court Operations, served as staff to the Commission and was responsible for much of the research conducted by the ADR Office for the Commission as discussed in this article.

² Copies of the Report are available at <http://www.nycourts.gov/ip/matrimonial-commission>

³ Commission report, page 27

COURT APPOINTED SPECIAL ADVOCATES ASSISTANCE PROGRAM

By Darlene Ward, CASA Assistance Program Manager

- Without her CASA volunteer, a young girl would not have had the courage to testify to the Grand Jury about her sexual abuse. Her perpetrator was sentenced to seven years in prison.
- Without CASA, a mother would have lost her housing, causing her five children to be placed in foster care.
- Without CASA, a 13 year old girl would continue to languish in residential treatment. Her volunteer advocated for her to be freed for adoption.
- Without CASA, a young man who no one thought would make it would have had no one cheering for him at his high school graduation.

Court Appointed Special Advocates (CASA's) are trained volunteers appointed by Family Court judges to advocate for the best interest of children in cases involving abuse and neglect. Last year, the nearly 800 CASA volunteers

served 3800 children.

Prior to being assigned a case, CASA volunteers are interviewed, screened, and receive at least 30 hours of standardized training. Under the supervision of professional staff, CASA volunteers gather information and prepare reports that are submitted to the Court. The CASA volunteer's report brings critical, independent information about the child's health, safety and well-being to the Court's attention. This information assists the court in making decisions. CASA volunteers work closely with the lawyers, child welfare agencies, and other service providers to ensure that cases to which they are assigned proceed expeditiously.

The CASA network has existed in New York State for more than 25 years, but recently the programs received a level of support and recognition unprecedented in New

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NANOTALK:

COMMUNITY DISPUTE RESOLUTION CENTERS AND THE FACILITATION OF PUBLIC DIALOGUE

By Peter Glassman, Executive Director, Mediation Matters

THE STATE OF OUR DEMOCRACY

I run a mediation center and, as a result, I make every attempt to present a neutral, non-partisan face to my community. So at the risk of blowing my ostensibly unbiased behind right out of the water, I have to start this piece by saying that the state of our democracy in this great land of ours is in shockingly bad shape. And it appears to be getting worse in a hurry.

“Community Dispute Resolution Centers and the process and principles of mediation can play a major role in creating an environment where citizens can be welcomed back into the democratic process at a grassroots level.”

Notwithstanding the marginally increased voter turnout of the 2004 Presidential election, we vote in alarmingly small numbers. In civic activities other than voting, we appear to also be participating in ever diminishing numbers. Many seem to feel that it matters little who we elect. And they may be right. Many of our most valued social indicators are pointing in the wrong direction no matter which political party is in power. Interests and lobbyists seem to dominate access to our elected officials and control much of the political agenda. The effect of money on politics and elections has resulted in many feeling that the needs of the average working person is ignored. We now have incumbency rates of well over 90% in congress and in most state houses.

We work harder for fewer real dollars. Poverty rates are rising. We have less leisure time. The number of voices controlling our press is rapidly shrinking. This has narrowed the range of views heard, and has led to an incendiary tone of public discourse.

At the same time, our media seem to have largely abdicated their role as investigative journalists or as watchdogs of the truth. Instead we have an overabundance of disaster-

oriented "hard" news, celebrity obsession and reality infotainment.

And of course, when we are poorly informed, democracy will not flourish.

As polarized as our nation has supposedly become, with our red and blue states and our much-publicized opposing moral values, I talk with very few people, regardless of political affiliation, who feel bullish on the state of our democracy. Most everyone seems to agree that democracy has seen better days in our land. And many believe that voting will not change anything in a meaningful, positive way. It is an issue around which I have noticed a remarkable degree of consensus across the political and ideological spectrum. There is far less agreement about why this is so or what must be done.

I know that this is a staggeringly complex issue and that what I am about to propose is not a panacea and is, at best, one piece of a larger effort that must be advanced on many fronts if we are to have the democracy envisioned by our founding fathers and by all who have fought and died to preserve our freedoms, our rights and our liberties.

That being said, I firmly believe that Community Dispute Resolution Centers and the process and principles of mediation can play a major role in creating an environment where citizens can be welcomed back into the democratic process at a grassroots level.

NANOTALK AND MEDIATION

Mediation centers currently provide services in the vast majority of our nation's counties. They provide trained volunteers to act as neutral mediators in a large volume and stunningly varied range of cases. Mediation cases are referred by Courts and attorneys; by educators; by elected officials; by police departments and district attorneys; by social service agencies, by schools; by social workers and therapists; and by the clergy. Most cases involve private issues between two or a few parties.

Although caseloads are rising, many mediation centers have difficulty getting enough referrals to keep their volunteers mediators as busy as they would like to be. Why not utilize this passionate, trained and skillful human re-

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¹The prefix nano means extremely small or, more precisely, one-billionth. Nanotechnology is the art and science of manipulating materials on a very small scale in order to build microscopic machinery. Metaphorically, then, Nanotalk is the art and science of developing *processes* in order to build and grow local *infrastructures* for democratic participation

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source and put these folks to work facilitating public discussions – what I call “nanotalk” – in our communities.

Our volunteer mediators already possess most of the skill set necessary for the facilitation of public dialogue. They are trained to be neutral and unbiased, without a stake in the outcome of any conversation. They know how to listen; how to reframe; how to focus on areas of agreement; and how to brainstorm. They are comfortable managing conflict, comfortable with disagreement and with high levels of emotion. With modest amounts of additional training at minimal expense, our volunteer mediators can become very well qualified to facilitate small group discussions in our communities on a variety of public issues.

Adding such a public component to the more private services already provided by mediation centers offers several benefits to CDRCs in addition to improving the health of our democracy. It increases CDRC caseloads. It raises the public profiles of CDRCs, providing increased visibility and increased opportunities for developing new referral and funding sources. And it attracts new volunteer mediators by providing new, richly interesting, challenging and rewarding opportunities for our volunteers.

Many of our elected officials would welcome the creation of a Nanotalk infrastructure in their community. They see themselves as largely benefiting from higher levels of citizen participation and a more informed citizenry. For one thing, Nanotalk gives elected officials the benefits of polling except that it is more accurate and less costly than polling. Nanotalk enables our leaders to gain a better sense of where their constituents stand on the issues of the day. Since Nanotalk encourages full participation and brainstorming, there is a better chance that some creative, innovative and effective solutions to public problems will be brought to the attention of our elected officials. And implementing policy will be easier for public officials after the public has had an opportunity to fully discuss and explore the issue.

Of course, there will be those elected officials who will resist, and even oppose efforts to bring Nanotalk to our communities. They may perceive the process as a threat to their authority, or may simply resist any type of change. Certainly, there are plenty of places to start and plenty of issues with which to start.

The idea of promoting citizen participation in the democratic process through small group discussion is not mine. Groups like the National Issues Forum, the Study Circles Resource Center, the Consensus Building Institute, America Speaks, the Dialogue to Action Initiative and the Public

Conversations Project have been doing this work for years.

I am proposing that Community Dispute Resolution Centers are uniquely positioned to run with these models and replicate them on a large scale at relatively modest cost. This could result in sweeping and positive changes in the state of our democracy on a statewide or even a national level.

THE NANOTALK TEMPLATE

Since “Nanotalk®” is, by definition, a localized, grassroots effort, any model for its implementation needs to remain flexible and customizable according to the needs of the community. With that in mind, I would like to describe a template for the creation of a replicable, self-sustaining model of Nanotalk, which can be cultivated by CDRCs throughout the country. The Nanotalk template consists of seven fundamental, but flexible elements

TRAIN A PANEL OF FACILITATORS.

This is not difficult. I have found that a significant number of volunteer mediators are interested in extending their skills to the public arena. A one or two day training, accompanied by an apprenticeship program, is more than sufficient. To gain trainees experience, CDRC staff can host internal discussion events as in-services or continuing education. If staff has difficulty finding a qualified trainer in their area, they can contact one of the organizations I

“Groups like the National Issues Forum, the Study Circles Resource Center, the Consensus Building Institute, America Speaks, the Dialogue to Action Initiative and the Public Conversations Project have been doing this work for years.”

listed above, the National Association for Community Mediation or the local League of Women Voters.

FIND A HOST OR COLLABORATOR.

Ideally, as mediation centers, we like to stick to what we do best. Typically, this does not include planning, promoting and hosting public conversations. Certainly you can do this piece yourself – though it is not usually complex or difficult, it is time consuming. Start with Mayors, City Managers, County Executives, Town Supervisors, and State Legislators. You might also

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CMS DIRECTOR TRAVELS TO ISRAEL FOR COMMUNITY-BUILDING COALITION

by Sheila Murphy, Office of ADR and Court Improvement

Mark Kleiman, the Executive Director of Community Mediation Services, Inc. (CMS) in Queens and a board member of the National Association for Community Mediation (NAFCM), recently traveled to

Jerusalem as a member of "Partnership 2000," an independent coalition consisting of New York and Israeli facilitators joining together to share resources and ideas for the purpose of building communities.

The project, sponsored by the Jewish Community Relations Council ("Relations Council"), began in 2004 with the New York and Israeli Council members convening by telephone and video conference, and resulted in a 2005 meeting in New York in which

the group identified four areas to explore: coalition building; Muslim-Jewish dialogue; the development of the Russian-Jewish community; and community mediation. The trip was arranged for one week, culminating in a conference at Hebrew University attended by 150 people from all over Jerusalem, including mediation practitioners, various government representatives, and people from numerous other professions.

Mark's panel focused on community mediation. He concentrated on two topics: how community mediation has evolved in New York State and how Jerusalem

could benefit from New York's model of community mediation, which could be cultivated by the government and funded by contracts to provide mediation for certain types of disputes and how communities could evolve in a way that has proven successful for CMS in Queens by developing satellite offices or municipal centers that could

foster their own development through local resources. Mark also shared his ideas with trained mediators from Neve-Yakov - a community populated by 23,000 immigrants consisting of Russians, Ethiopians, and "veteran Israelis."

He shared ideas with them about how to become more effective in generating cases and expanding their practice, including the areas of: peer mediation and co-mediation with disabled mediators, by identifying the

stakeholders - local housing board members - and using a trained facilitator to help mobilize them. Mark also had the opportunity to train mediators from a local community

mediation center in Jerusalem called Mosaica, presenting them with the value-centered mediation model that he utilizes at CMS - a facilitative technique that helps people explore the issues and relationships within a conflict.

After a productive and enlightening week, the Relations Council will continue its dialogue through "distance learning" - a way to communicate with each other long distance through the use of the Inter-

net, moodle forums¹ (similar to blogs), and software known as "Skype," where users can make phone calls on their computers.

For further information, contact Mark Kleiman at markk@adr-cms.org or Sheila Murphy at sheilam@courts.state.ny.us.

"...the group identified four areas to explore: coalition building; Muslim-Jewish dialogue; the development of the Russian-Jewish community; and community mediation."



A group photo following Mark Kleiman's training for 21 mediators at Mosaica Mediation Center in Jerusalem. From left to right: Nurit Bachrach, Director of Mosaica; Tatiana, administrative assistant, Mark Kleiman, Emily, director of a school mediation program, and Einhat Ben-Yehuda, social worker and mediator at Neve Yaakov Community Center

¹Moodle is a course management system software package designed to help educators create effective online learning communities.

MATRIMONIAL COMMISSION RECOMMENDS EXPANSION OF ADR

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Report neatly outlines the Commission's ADR recommendations, which are⁵:

- that the decision to refer a case to mediation, an early settlement panel, a parent coordinator or a combination of these should be by stipulation of both parties or at the judge's discretion;
- that the proposed court Rule (attached as Appendix F) be promulgated to give Judges express authority on a case-by-case basis to order parties to mediation for parenting issues, early settlement panels for financial issues or parenting coordinators for cases involving high-conflict repetitive litigant parents;
- limits on referrals to ADR must exist where domestic violence or a severe power imbalance is present in a case;
- where parties are actively engaged in ADR processes, the time lines defined for each case category should be tolled, at the court's discretion, in an effort to encourage the parties efforts;
- judges, quasi-judicial officials and court personnel should be fully and extensively educated about ADR programs, specifically emphasizing those methods recommended in this Report;
- statewide guidelines for the qualifications and training of mediators, early settlement panelists and parent coordinators should be promulgated to ensure the highest standards of practice;
- a statute or court rule must be promulgated which provides for confidentiality in ADR, consistent with existing case law; and
- that attorneys discuss ADR options with their clients, and that section 1400.2 of the NY Ct. Rules - the Statement of Clients Rights - be amended accordingly.

The ADR section of the report begins by introducing the reader to ADR terminology, including some less commonly known terms such as "Parenting Coordinator" and "Collaborative Law". The ADR section then reviews much of the information gathered by the Commission on ADR including public testimony, visits to other jurisdictions, independent research as well as research conducted by the Unified

Court System's Office of ADR programs (ADR Office) at the request of the Commission.

The ADR Office researched custody and parenting mediation practices throughout the United States. This research revealed that 44 states have some form of statute or court rule that encourages the use of ADR, in particular mediation, where custody and parenting time is in dispute. These rules range from automatic referrals to discretionary judicial referrals⁶.

"44 states have some form of statute
or court rule that encourages the use
of ADR..."

The Commission also considered the vast amounts of independent research conducted that supports the use of mediation for resolving parenting issues.⁷ Based on all of the information gathered including the combined research, the Commission formulated a series of recommendations relating to ADR as outlined above. One recommendation which is sure to be a topic of considerable discussion in the coming months is that the Office of Court Administration (OCA) promulgate a rule that "... give[s] Judges express authority on a case-by-case basis to order parties to mediation for parenting issues, early settlement panels for financial issues or parenting coordinators for cases involving high-conflict repetitive-litigant parents."⁸ Furthermore, the report states that subject to approval by the court, parties should be free to submit any unresolved issues to whichever form of ADR they prefer.

The Commission was careful to point out that precautions need to be taken prior to referring cases to ADR, such as screening for domestic violence. The report expressly states that, "Victims of domestic violence or cases involving a severe power imbalance or in which there is evidence of child abuse should never be ordered to participate in mediation."⁹ The Commission also emphasized the importance of the participation of Counsel in ADR proceedings including mediation and made special note that Erie County Supreme Court and New York County Supreme Court have already begun utilizing mediation for parenting disputes with great success.

Recognizing the need to establish high standards for ADR professionals who provide services through the courts, the Commission recommended creating guidelines for ADR neutrals. The proposed guidelines would address training, qualifications, and ethics and would apply to ADR neutrals statewide. The Commission further noted that OCA may look to existing standards for guidance such as those promulgated in various pilot programs throughout the State and the ADR

⁴Commission report, page 27

⁵Commission report, page vii.

⁶Commission report, page 30.

⁷Commission report, page 31.

⁸Commission report, page 32.

⁹Commission report, page 32.

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MATRIMONIAL COMMISSION RECOMMENDS EXPANSION OF ADR

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Office's standards for community mediators handling family matters. Other ADR related issues identified by the Commission are the need for confidentiality in ADR and a recommendation that attorneys discuss ADR options with their clients.

In addition to the ADR recommendations discussed above, the Commission recommended sweeping changes in several areas including, the selection and education of judges, the appointment and regulation of neutral experts and law guardians, access to justice, and the administration of the legal process, among others. Of particular interest to readers of this newsletter is the Commission's recommendation to provide early screening and services to families based on the level of conflict and family dynamics¹⁰. The primary goal of early screening and triage is to assist the judge as early as possible in assessing the family dynamics and enabling the Judge to tailor a service plan to the individual needs of the family. The Commission recommended firm deadlines and case management time frames based on the level of conflict as well.

The Commission made special note of a pilot program currently being developed in Nassau County Supreme Court which incorporates the key elements of the Commission's recommendation for early screening and triage of

cases. Since the release of the report, and in consultation with the ADR Office and First Deputy Chief Administrative Judge Ann Pfau¹¹, Erie County has begun to explore a similar pilot in the Supreme and Family Courts and Tompkins County has begun discussion of a pilot program as

“...mediation is widely recognized as an effective means of reducing the delay, expense and trauma to children otherwise caught up in the process of divorce...”

well.

The Matrimonial Commission's inclusion of ADR in its sweeping recommendations has the potential to reduce the delay, expense and trauma to children often experienced during divorce. There is sure to be significant discussion among the bench, bar and ADR community regarding these recommendations while the Office of Court Administration studies the report and determines its plans for implementation. The ADR Office looks forward to assisting Judge Pfau in her efforts to study and implement the report.

¹⁰Commission Report, page 19.

¹¹Judge Pfau's office has been charged with overseeing implementation of the Commission's report

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NANOTALK: PUBLIC DIALOGUE FACILITATION

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try civic organizations such as the League of Women Voters, Kiwanis, Elks, Rotary or Masons. They can provide a site, help plan the event, coordinate publicity, provide refreshments, and turn out a crowd.

DECIDE ON A SITE & TOPICS. You'll want to select a topic that is of great interest to a significant number of people in your community. Initially, this may mean focusing on an issue that is both current and controversial. However, an issue that is very hot may not be ideal for a first effort. Consider starting your Nanotalk program with an issue that is of interest, but not the focus of immediate controversy. The hotter the issue, the more likely it is that the various stakeholders will begin to question your neutrality. "Managing Growth in our Community," "Community Visioning and Developing a Comprehensive Plan" or "Improving our Schools" are three examples of topics to begin with. These topics give participants a chance to feel what it is like to proactively address an issue instead of reacting to an active controversy where emotions may be sky high. Choosing a less controversial but important issue is more likely to allow you to manage productive, collaborative dialogue.

MAKE EVENTS FUN & ACCESSIBLE.

Let's be honest - public dialogue does not sound as sexy as "Desperate Housewives," or "Celebrity Fear Factor." We need to think creatively about how to make these events fun, interesting, eclectic, and exciting. Consider incorporating some of these ideas into your Nanotalk event in order to appeal to and attract a large, diverse piece of your community:

Art—combine Nanotalk with a display of works by local artists, adults and children alike.

Music—showcase local talent before and after discussion events.

Child care—if possible, provide on-site child care so that young parents can participate.

Teen Nanotalk—involve teens and help them develop their own discussion groups with their own facilitators.

Piggyback with other community events like, theatre, concerts; dance; performances or art shows. Plan a Nanotalk event where people are already gathered.

Free Admission—Charge no admission or ask for donations.

Food, glorious food. It is difficult to host a successful social event without food. The dynamic between people changes dramatically after they have broken bread together. Get a

local supermarket to donate food or run the event as a pot luck.

TRAIN FACILITATORS IN EACH COMMUNITY

Training local facilitators in each community accomplishes several tasks. It builds capacity, empowerment and self-sufficiency in each community. It allows each community to continue efforts on their own, freeing the CDRC up to bring Nanotalk® to new communities. In some cases, or for certain issues, the neutrality of local facilitators may be questioned. In these cases, the CDRC can provide or locate facilitators from outside that community.

NANOWALK THE "NANOTALK®". CREATING OPPORTUNITIES FOR NEXT STEPS AND BRINGING THE RESULTS & OUTCOMES TO THE BROADER COMMUNITY

In order for the process to lead somewhere and become self-perpetuating, several things need to happen. First, people need to have enjoyed themselves. They need to feel that their views were heard and considered and that they had a chance to be exposed to the views of their neighbors. But participants must also feel that there are opportunities for them to continue the work that they began in their Nanotalk sessions. Perhaps an action group will be formed by participants who wish to continue these discussions or to further a particular cause. Perhaps all or some of the group will want to bring some of the views expressed to public officials. Some participants may be interested in planning future Nanotalk events focused on new topics. By providing some ideas for next steps or by saving time at the end of the Nanotalk session to brainstorm next steps, we will be promoting the growth and dissemination of democratic principles through public dialogue.

CONCLUSION

While mediation and democracy may not be identical or even synonymous, they share traits and values such as empowerment; participation; deliberation; impartiality, respect and justice. These concepts are non-partisan: neither liberal nor conservative, neither Republican nor Democratic. The principles and values underlying both mediation and democracy are quintessentially American. This stuff is downright patriotic!

Facilitating small group dialogue on public issues is a task well suited to the mediation panels of CDRCs. Doing such work promotes mediation, raises the profiles of CDRCs, and increases caseloads, while simultaneously enhancing the state of American democracy. How's that for win-win-win-win?

Peter Glassman is the Executive Director of Mediation Matters, the Community Dispute Resolution Center serving Albany, Rensselaer, Saratoga, Warren and Washington counties.

ELDER DIALOGUE AND MEDIATION MEETING INTERGENERATIONAL NEEDS

By Alice J. Rudnick, Office of ADR and Court Improvement, and Jeff Shepardson, Community Dispute Resolution Center, Inc.

Decision Making

Albert has recently retired, and wants to move from his home in Albany to a retirement community. He mentioned this interest to his three children, who live in Baltimore, Newark, and Boston. When they gathered for Father's Day, he shared his thoughts about his need to sell his home, and when and where he would like to relocate, so to be closer to his children and grandchildren. To Albert's distress, his children almost immediately began arguing with him and each other, about where he should move. Months later, they have yet to reach any understandings on this matter. Albert is feeling depressed and anxious about making a choice that could damage family relationships.

Guardianship

Larry, following the death of his father one year ago, has petitioned for guardianship of his 90-year-old mother, Sara. He feels that his mother can not handle her own finances or make wise healthcare choices any longer. His mother and sister, Joan, are opposing the petition, claiming Sara is capable of making informed decisions about her own welfare, and have had Joan appointed as Sara's healthcare proxy and limited power of attorney. Larry insists that Joan is not only irresponsible, but has little experience and no formal knowledge in these areas.

Sara and Joan have approached an attorney specializing in Elder Law seeking advice on what they should do, however, they would also like to communicate with Larry, without damaging feelings or the possibilities for cooperation.

Care Giving

Susan was diagnosed with dementia more than a year ago, and has been living in a nursing home ever since. She adjusted to her new surroundings after several months. A month ago, Susan was accused of physically attacking staff at the facility and the nursing home notified her family that she must leave. Susan's family is very upset that communication from the nursing home is only written, and they are concerned about the staff's capacity to properly monitor Susan's medications, diet, and hygiene. They feel certain Susan's agitation and subsequent outburst were partially due to chemical imbalances, all of which could have been avoided. Susan would like to stay at this nursing home, and her family is willing to work with them, so as to prevent Susan from suffering from another stressful move.

Older people have the same disputes as the rest of the population: landlord-tenant problems, neighbor-property conflicts, and business-consumer disputes. In addition, elders in our communities may also face challenges precipitated by changes and loss related to living arrangements, personal relationships, and health. Decision-making and care-giving issues and conflicts may be over medical treatments, financial responsibility, self-determination, and capacity for independence, and legal guardianship concerns where appropriate.

Life can feel increasingly out of control as we or our relatives face new challenges that come with growing older. Unfamiliar

“Alternative dispute resolution can support important relationships, improve communication and protect elder rights and autonomy. Facilitated dialogue, family group conferencing, and mediation are methods that serve to provide parties in difficult situations with voices in the choices they face.”

situations and the anxiety that comes along with them can be overwhelming and exhausting, potentially compromising our physical, emotional, and financial well-being. Alternative dispute resolution (ADR) is one way to support important relationships, improve communication and protect elder rights and autonomy. Facilitated dialogue, family group conferencing, and mediation are methods that serve to provide parties in difficult situations with voices in the choices they face.

In studies as early as 1980 (ABA Commission, *The Coming of Age*, 1988), initial efforts by national organizations like American Association of Retired Persons (AARP) and the American Bar Association (ABA) Commission on Legal Problems of the Elderly referred to the potential benefits of alternative dispute resolution as “humane, lasting and expeditious, often empowering and cost-effective ways of resolving conflicts.”

Penny Hommel, the co-director of Michigan's Center for Social Gerontology (TCSG) and an organizational pioneer in the field, sees mediation as “one of the means needed to help older persons and families address disputes and difficult decisions” that can protect the rights of older people to make decisions about themselves, their care and their property. For more than decade, TCSG and others have expanded the practice of ADR to include elder/family caregiver cases.

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More recently, the dispute resolution and elder communities have developed collaborative projects at local, state, and national levels.

Currently, the Office of ADR Programs is working with local, state and national contributors to develop elder dialogue, conferencing, and mediation services. Local and state efforts in program planning began with needs assessment research, stakeholder planning groups, and outcome evaluation studies. The NYS Office for the Aging leads statewide efforts to assist individuals, families and communities to meet increased demand for services to elders. The Community Dispute Resolution Centers Program (CDRCP) has a unique opportunity and responsibility to offer decision-making and conflict resolution services. Experience advises us that early interventions are the most effective ways of helping seniors, their families, and professionals discover collaborative solutions.

Office of ADR Programs and Community Dispute Resolution Center (CSRC) staff from around the state have already participated in professional training in elder dialogue and mediation. Last year, the Office of ADR Programs helped the CDRC serving Montgomery, Fulton, and Schoharie Counties offer a regional day of training with community stakeholders and mediators to explore the possibilities of elder mediation. This year, the Office of ADR Programs provided three statewide regional introductions on elder dialogue and mediation to over 150 CDRC staff members and mediators, and the CDRCs of Rockland and Tompkins Counties developed and conducted local training for their staff and volunteer mediators. In response to increasing interest for more advanced specialty training in this area, the Office of ADR Programs and CDRCs are planning a series of statewide regional advanced trainings in elder dialogue and mediation over the coming year.

Interest in elder caregiver and guardianship is also growing among members of the legal and senior services communities. The Office of ADR Programs and CDRCs are making presentations and coordinating trainings for professionals interested in partnerships for pilot and model projects. In conjunction with these projects we are working with attorneys, judges, representatives from agencies for the aging, departments of social services, health care providers, and members of the mediation community. Together we are researching and developing best practices, protocols, publicity, training and evaluation measures that will guide CDRCP programs.

In his NYS Bar Journal article on the Model Guardianship Part, Hon. H. Patrick Leis, District Administrative Judge in

Suffolk County describes the role of mediation in the Model Guardianship Part established by NYS Chief Judge Judith S. Kaye. As the Presiding Justice of the newly created Model Guardianship Part for NYS and Co-Chair of the Guardianship Task Force for the Second Judicial Department, Judge Leis "has incorporated mediation techniques into the conferencing of cases, which provides the parties with the opportunity to take control of the proceeding and forge their own agreement." The model part "explores mediation as a tool in facilitating the resolution of conflicts" and is utilizing mediation "to assist in restoring communication, understanding, trust and harmony among family members" (The Model Guardianship Part: A Novel Approach, H. Patrick Leis, III, New York State Bar Journal, June 2006).

Changes/Challenges facing the Elderly

- The death of a spouse and/or separation from parents, siblings or children, and the possibility of being alone for the first time.
- Changes in living arrangements to smaller spaces, nursing homes, or to family members' homes, sometimes resulting in less privacy and/or making it necessary to sell or give away treasures.
- Declining health conditions, greatly limiting physical participation in community life and resulting in isolation and depression.
- Chronic pain that may make daily tasks a struggle, causing dependency on others for help with driving, household jobs, finances, etc.
- High medical expenses that can be alarming and cause anxiety about financial stability, as prescription drugs, hearing aids, and eyeglasses are not covered by Medicare or many insurance policies.
- Stereotyping, bias and changes in physical appearance, health and social status affecting autonomy, self image and confidence, whereas without encouragement and support, it is often impossible to adapt to significant changes in well-being and lifestyle.
- Conflicts between individuals and within families over care giving, decision making, and other responsibilities frequently related to aging, that cause stress associated with increased illness, reduced work performance, impaired enjoyment of life, and episodes or cycles of depression.

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At the Community Dispute Resolution Center in Ithaca, staff have developed Wise Talk, a senior adult mediation program through an expansive collaboration with local professional networks. Years of experience in the community suggests that most senior citizens will come to mediation via referrals from an already existing relationship with health care, legal, and social service professionals.

The first phase of this collaborative effort has been the development of Advisory Focus Groups with professionals from the Aging Services Network, as well as elder law, medical services, religious communities, and housing providers. Each group describes situations appropriate for referral to dialogue and mediation and benefits those services will provide to their own professional communities as well as to the senior adult community that they serve.

The Wise Talk Community Liaison initiative is an innovative community outreach program based on trained senior adult community volunteers. A group of 15 to 20 senior adult volunteers from a wide range of senior adult communities will receive orientation and training in the basics of the services provided by Wise Talk and CDRC and act as the public face for the services CDRC provides within the larger Aging Services Network, making services more familiar and accessible.

Another outreach strategy in development is the Wise Talk Players, a small group of individuals who will engage senior adult communities in interactive theatre about conflict and how dialogue and mediation services can help. The Players will listen to the concerns and questions raised by senior adults and help tailor the program to meet the needs of seniors.

Finally, Wise Talk is developing a pool of Community Advocates in collaboration with the County Office for the Aging Ombudsman program and the Community Liaison initiative. Advocates will accompany a senior adult to dialogue and mediation services when capacity or other issues raise the need for assistance.

Senior adult dialogue and mediation services typically involve many players—family members who are concerned or affected by the decisions of the elder person involved, but also legal representatives, medical care providers, and those who may be called upon to participate in present or future care. The program focuses on keeping the many relationships respectful and strong and encouraging relationship growth. Staff members are working to develop and incorporate intake protocols that are consistent with Wise Talk's need to be sensitive to issues of capacity and advocacy.

With the increasing graying of our population, recognizing

“Mediation helps people search for creative responses to their needs and concerns.”

and meeting the issues of the elderly is a growing concern for individuals, families, businesses, agencies, organizations, and governments. Alternative dispute resolution has the potential to meet the needs identified by aging and elder specialty area developments in medicine, law, social work, psychology, therapy, education, exercise, housing, and other social services. Community Disputes Resolution Centers (CDRCs) around the state are valuable partners in collaborations that focus on decision making, care giving, and guardianship relationships for our senior population, their families, and their communities.

The Elder Dialogue and Mediation Programs of the Office of ADR and Court Improvement and the CDRCs are committed to providing third-party neutral facilitators—without decision-making or reporting powers—in a voluntary and confidential process. Facilitated dialogue and mediation can help individuals and their families with decision-making and conflicts. The processes are designed to respect the importance of relationships and improve communication of underlying issues and interests of the parties. The professionally trained facilitators of CDRCs have the knowledge and skills to assist others balancing the needs for safety and independence, roles and relations, protection and self-determination. Participants in facilitated dialogue and mediation appreciate their opportunities to focus on building bridges of understanding and problem-solving rather than adversarial models of settlement.

The goals of the Office of ADR and Court Improvement and CDRC Elder Dialogue and Mediation programs include:

- Helping families explore available alternatives in decision-making
- Encouraging autonomy, self-determination and efficacy
- Minimizing individual stress and relational trauma
- Supporting respectful family communication
- Fostering preservation of important relationships
- Improving capacity for problem solving

Alice Rudnick is a Senior Court Analyst with the Office of ADR and Court Improvement, serving as coordinator of Intergenerational Programs including Elder Dialogue and Mediation. Jeff Shepardson is the Program Development Coordinator for the Community Dispute Resolution Center serving Tompkins, Schuyler and Chemung counties.

AGRICULTURAL MEDIATION EXPANDS IN NEW YORK

By Daniel H. Kos and Amelia M. Hershberger

In July 2006, the New York State Agricultural Mediation Program (NYSAMP) announced a dramatic program expansion. This expansion of eligible cases will increase the visibility of services offered to the agricultural community, provide funding for Community Dispute Resolution Centers (CDRC), and help increase the ability of CDRCs to respond to agricultural related conflicts. CDRC staff will be trained to identify agricultural cases that directly or indirectly involve credit.

NYSAMP, a collaboration between the New York State Dispute Resolution Association (NYSRA) and the Office of ADR Programs, began in 2001. Eight regional CDRCs were responsible for managing and mediating cases that were strictly between the USDA and another party. A change in federal regulations has allowed program expansion to cases that do not include the USDA as a party, allowing all CDRCs in New York's 62 counties to participate in the program. The expansion of eligible cases has potential to dramatically increase the agricultural mediation caseload and identify parties who are agricultural producers more effectively. "As we look forward in our partnership with CDRCs around the state in making this dramatic expansion of services a great success, we are optimistic about the ability of NYSAMP to help build the capacity of CDRCs to serve the agricultural community," says Charlotte Carter, NYSAMP Program Manager.

In the fiscal year that began on April 1, 2006, the Office of ADR Programs seeded the program expansion with a special pool of \$25,000 to reimburse the new cases. Mark Collins, Assistant Coordinator of the New York State Office of ADR Programs, expressed his enthusiasm at funding the expansion, saying, "This is an exciting opportunity to reward the work of CDRCs serving rural areas. The new NYSAMP credit cases are a natural extension of community mediation services." Eligible cases will be reimbursed at \$25 for each mediated case, regardless of outcome, and \$15 for each intake that does not result in a mediated session. If the funds from the special pool are not exhausted by the end of the fiscal year, each program that has submitted cases to NYSAMP during the April to March period will receive a pro-rated portion of the balance.

Although the per-case level of funding has been purposely set at a modest level, there is significant potential for increased

funding in the future. As the caseload grows, NYSAMP is optimistic that funding will also be increased. Increased funds will help CDRCs serving rural areas increase their earned income, a challenge for many rural centers.

"Centers with significant small claims, family, or community caseloads are expected to have many cases eligible for funding"

NYSAMP has been actively exploring ways to expand its caseload and services to the rural community for years. The possibility for expansion through less narrowly defined eligible cases, however, was inspired by North Country Conflict Resolution Services

(NCCRS), a CDRC serving a five county region in Northeastern New York. NCCRS is a program of the Rural Law Center of New York, Inc.. In working with the NCCRS staff, NYSAMP discovered that the five county centers had been mediating more than 200 qualifying cases a year. Under the expanded definition of eligible cases, NCCRS will be able to receive funding for those cases.

Many of NCCRS's qualifying cases were referred as small claims cases in the rural town and village courts and, as such, required little additional work of their staff. In fact, all centers with significant small claims, family court, or community caseloads are expected to have many cases eligible for funding.

"The expansion...has potential to dramatically increase the agricultural mediation caseload..."

NYSAMP staff is optimistic about the participation of nearly all CDRCs, and are in the process of training CDRC staff about the expanded program.

"Although we have made every effort to ease reporting and vouching for these cases, training for CDRC staff in identifying eligible cases is still essential," says Carter. Before centers can participate in the program, and receive funding for their cases, they must schedule an hour long orientation training with NYSAMP staff. Trainings will be held throughout the summer and fall, and CDRC staff are encouraged to contact NYSAMP schedule training.

For further information about the NYSAMP program expansion, or to schedule a training for your center staff, contact Charlotte Carter, NYSAMP Program Manager, at (518) 687-2240 or charlotte@nysdra.org

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CASA PROGRAM ESTABLISHED WITHIN UNIFIED COURT SYSTEM

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York. In 2004, Chief Judge Judith S. Kaye convened an ad-hoc CASA Committee to look into ways that the UCS could better support CASA. Chaired by retired Court of Appeals Justice Howard A. Levine, the committee included Hon. Sharon Townsend, Hon. Joseph Lauria, Hon. Janice Rosa, Hon. Joan Cooney, Hon. Nicolette Pach, Hon. J.C. Argetsinger, Hon. Lee Elkins, Sheryl Dicker, Vince Moehringer, Marc Bloustein, Marlene Nadel, and Janet Fink.

The recommendations of the committee resulted in the promulgation of Rules of the Chief Judge and Chief Administrator to provide standards for the use of CASA volunteers in Family Court proceedings and the establishment of the New York State Unified Court System's Court Appointed Special Advocates Assistance Program. This unit, created within the Office of ADR and Court Improvement, provides fiscal and programmatic support to the existing network of CASA programs and technical support to family courts interested in starting a CASA program.

With more than 53,000 abuse and neglect cases before the

courts in 2005, there is tremendous need and potential for the program to grow. As Judge Kaye said in her 2006 State of the Judiciary Address: "It is my hope, and expectation, that [the creation of the CASA Assistance Program] will enable CASA programs to flourish Statewide, in all 62 counties, providing additional help for our courts and children."

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