



DRS DIALOGUE

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DISPUTE RESOLUTION SERVICES
OFFICE OF THE EXECUTIVE SECRETARY
SUPREME COURT OF VIRGINIA



The Most Special of Gifts

Turkey or ham?
A ribbon or bow?
Big questions at this time of year
With so much to decide and so little time
It's easy to miss what you hear

When we miss what we hear
We infer and assume
And these can be great skills, of course!
But when conflict arises, the thoughts one surmises
May distract from getting to the source

And this, my friends
Is why we need you
And the gifts that you use everyday
To stand in the gap, as an impartial voice
And **mediate** our conflicts away

So, this holiday season
As choices are made
And those whom you love disagree
Remember to use your most special of gifts
And always charge them a fee!

Happy Holidays from DRS!

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2023 PARENT EDUCATORS SYMPOSIUM

ANN WARSHAUER,
PARENT EDUCATION
COORDINATOR

On November 3, 58 parent education providers gathered at the Virginia Public Safety Training Center in Hanover for a Parent Educators Symposium. It was the first one held since 2019.

The day began with Dan Wassink introducing the DRS staff. He then explained how the recent change in the Virginia Code effects the parent education provider approval process. Following Dan, Carolyn Fitzpatrick, from Peaceful Alternatives Community Mediation Services, led a Show & Tell segment where providers could share teaching techniques and innovative approaches when conducting their seminars.

Terry Dysick, from Guidance, Inc, finished the morning presentations with a discussion on conducting the seminars by webinar.

After lunch, Keith Cartwright and Marrin Scalone, from the Virginia Department of Behavioral Health and Developmental Services, gave an informative and energetic presentation on finding resilience following trauma.

They stressed the importance of relationships, or Life Is a WE Thing, in identifying what anchors us and what can serve as an anchor for others.

Symposium attendees expressed gratitude for the opportunity to be together to share ideas and ways to enhance the parent education seminars.



JOINT MEDIATION COORDINATORS MEETING

MICHAEL BARR,
ADR ANALYST

On November 9, we at DRS hosted, online, a joint meeting with the GDC and JDR coordinators who nobly serve the courts in the Commonwealth. One thought behind the joint meeting was to discuss the referral program that often differentiates the work of the GDC mediation court coordinator, many of whom rely upon court-sitting, and the JDR coordinator that may schedule mediations with parties in advance of the hearing date.

Jon Lamp, with DRS, provided updates on the new contract formulas that determine how coordinators are paid. It was helpful to have a joint forum in which to get feedback since contracts are based upon the information gleaned from quarterly reports that provide a guide for how cases can be equitably distributed among mediators on the court roster. Jon also gave an update on the Electronic Voucher Payment System and noted its successful implementation compared against the older Mediation Information System.

We then gave the mic (or WebEx speaker box) to Doreene Thomas, GDC coordinator for the court in Chesapeake. She wanted to hear how the referral process for cases works in the various courts and share tips from her own experience. Over several years, she has developed a good relationship with the clerk and judges which seems to be key to a coordinator's success. It is a hope that a model referral program can be developed that would provide an increase to the cases mediated at the GDC level overall. More controversially, she discussed how their court has devised a safe way to mediate cases that involve protective orders, minimizing the risk while taking advantage of the fact that many of these cases do not involve violence. It is an area that DRS has provided training on in the past and would like to do so in the future, so we welcome input from mediators.

DRS IN THE FIELD

Judicial Management Program

DAN WASSINK,
DRS MANAGER

Court-referred mediation programs – if they are to succeed and endure – rely on the support and collaboration of many individuals. Clerks of court are a prime example.

Clerks of court help spread the word about mediation, approve payment vouchers for mediators, ensure the use of proper referral forms, and in many cases provide the documents mediators and coordinators need to assess whether a case is appropriate for mediation.

The critical role played by clerks of court is the reason DRS continues to train and educate them about mediation whenever possible. The latest example occurred August 8 when Dan and Michael attended the Judicial Management Program (JMP) in Glen Allen.

The JMP offers new GDC and J&DR court clerks a three-day crash course on their job duties. Dan and Michael used their allotted time to explain the work of DRS, and to encourage the clerks to support mediation as a critical access to justice tool. The presentation once again featured an interactive quiz, along with ample time for questions and answers.

DRS IN THE FIELD

Judicial Conference

MICHAEL BARR,
ADR ANALYST



As part of DRS efforts to promote the understanding of mediation and increase the availability of its services around the Commonwealth, Dan Wassink and Michael Barr attended the Judicial Conference of Virginia for District Courts. While it is THE annual event for judges, organized by the Educational Services Department here at the Office of the Executive Secretary, it is the first our office has attended and exhibited at a table in several years.

We travelled to the lovely waterside district of Norfolk, VA and presented on our table and in informal conversation literature and forms on mediation and parent education.

We provided information about the benefits of mediation to courts, citing such factors as: docket management, judicial oversight, caseload reduction, public perception, and the ability to focus on the actual needs of parties. We also described the benefits to parties, such as: access to justice, self-determination, procedural fairness, confidentiality of the space and discussions, and the by-product of reduced conflict.

Overall, we plan to return next year as it allowed us to meet people face-to-face and engage in numerous conversations with persons that may never think to reach out to us.



DRS WELCOMES JUDICIAL SETTLEMENT CONFERENCE JUDGES TO RICHMOND

DAN WASSINK,
DRS MANAGER

For most of us, in-person meetings and conferences came to a screeching halt during the COVID pandemic. Their recent revival comes as a welcome change of pace for people – myself included – suffering from some level of “Zoom fatigue.” A computer screen is no substitute for face-to-face gatherings.

That was certainly true on September 29 when we hosted about twenty Judicial Settlement Conference (JSC) judges. JSC judges are officially retired, but have voluntarily joined a “recall list” to mediate civil cases that are referred to the program by the presiding circuit court judge. They are trained mediators and typically use a more evaluative approach than facilitative mediators (although any agreement remains voluntary).



The September 29 meeting opened with a welcome from Executive Secretary Karl Hade and Department of Judicial Services Director Paul DeLosh. The program also featured tips and real-life examples from long-time JSC judge Walter Ford; and an open forum for the judges to share best practices, as well as express concerns and ask questions of one another and DRS staff.

Nearly 30 retired judges currently participate in the program, and they typically conduct between 1,100 and 1,200 conferences each year. Approximately 70% of conferences end with a full or partial agreement. Domestic relations cases account for the bulk (more than half) of all JSC work, while tort and personal injury cases are also common.

This was the first meeting of the JSC judges since 2019. Many attendees remarked afterward how much they appreciated the renewed opportunity to see and interact with their colleagues. DRS looks forward to giving them that opportunity again soon.

JON'S AWARD

Much of the good work done in our office is accomplished behind-the-scenes and under the radar. Like you, we do what we do because we believe in dispute resolution as a powerful, often-transformative access to justice tool. We certainly don't expect public recognition or accolades to come our way.

But that doesn't mean it's not nice when it happens!

Such was the case at the recent Virginia Mediation Network Fall Conference in Arlington. During the in-person portion of the Conference on October 7, our own JON LAMP received the VMN 2023 Distinguished Court Personnel of the Year award.

Jon is a Program Specialist who has served DRS since 2016. However, as I pointed out in presenting the award, the word "specialist" seems much too narrow. Jon actually wears many hats. He crunches numbers, analyzes data, prepares detailed program reports, spearheads efforts to modernize and automate processes, and troubleshoots glitches in our electronic payment systems to make sure you are compensated for the work you do. Amazingly, Jon can even translate complex technical concepts to a tech dummy like me!

DAN WASSINK,
DISPUTE RESOLUTION
SERVICES MANAGER



But perhaps Jon's greatest gift is that he relates well to everyone he works with, from our in-house fiscal and information technology staff, to people like you providing dispute resolution services in communities across Virginia. I continue to be amazed by how many people in the mediation community have been helped by Jon, and are grateful for his support, yet have never even met him.

Jon toils in anonymity and prefers it that way. But I nominated him for this award anyway because I could think of no one more deserving.

RECERTIFICATION UPDATE

MICHAEL BARR,
ADR ANALYST

DRS would like to extend congratulations to the mediators that renewed their Virginia mediator certification for another 2-year period. We also want to say - Thank you! - to the trainers who put time and effort into developing courses of instruction. We recognize that every training is the result of much 'underwater paddling,' so to speak, of research, analysis, brainstorming, painstaking organization, and creativity - while the trainees only see the 'duck' serenely floating on the surface providing the insights, tools, and advice mediators can implement in their practice.



In terms of statistics, there is always some drop-off of certified mediators due to retirement, relocation, reoccupation, etc.. and this year is no different. DRS has so far recertified 210 mediators in 2023 compared to 238 that recertified two years ago. That said, 18 mediators were awarded certification in November alone and many more are in the queue, which is a record-high in my time at this post.

If this was your first-time recertifying, how was the experience? Did you find the resources on the DRS website helpful? On the Certification and Training page you can find a Recertification tab and a Frequently Asked Questions about Recertification section. We would like to hear from you and anyone else with helpful feedback! We want to encourage excellence and quality in mediator practice and, generally, develop policy and guidelines out of this aspiration. Best wishes in your practice in the upcoming term.

MEDIATION PROGRAM PERFORMANCE INDICATORS AGREEMENT RATE

JON LAMP,
ADR PROGRAMS SPECIALIST

*HOW THE AGREEMENT RATE IS
HELPFUL WHEN EVALUATING
MEDIATION PROGRAMS, AND
HOW IT ISN'T*

In facilitative mediation, mediators are thought to be completely neutral, having done their job whether or not the parties reach agreement. Yet, the programs that mediators are a part of often use agreement rates as a key measure of program health. These goals can seem contradictory and may cause tension between the mediator and the program. In my opinion, this tension is often due to the idea of agreement rates being synonymous with “success rates”. If taken in context of being a general indicator of program health and not of one as a measure of the successful mediations, I believe the agreement rate can help mediation programs identify potential issues and provide high-quality service to their parties.

Defining success in mediation has long been controversial, as there are many reasons to mediate and many benefits to mediating. The discussion around mediation success has generated several well-designed and thorough investigations, a few of which I have included at the end of this article for those curious for more information. When looking at agreement rates as a measure of mediation success, though, I believe many are approaching mediation with a goal of resolving parties’ issues in a way that does not require additional action from a court or other body. This is a fine goal for a mediation program, one that you often see in court-annexed mediation programs. However, even with this limited scope the agreement rate is not a perfect measure of success for several reasons:

First, not every case that mediates is appropriate for mediation. Sometimes, facts arise during a mediation that force the mediator to end the process early.

This is not an unsuccessful mediation on the part of the mediator or the program, but rather a natural fact of mediation that cannot be fully mitigated.

Second, not every case needs a written agreement to be resolved to the content of the parties. For example, a plaintiff might realize during the mediation that their case has no legal standing, and they chose to withdraw the mediation. Here the issues are resolved to the satisfaction of all involved, but the case may appear to be unsuccessful at first glance as it did not result in a written agreement.

Lastly, not every mediated agreement is durable, and the staying power of an agreement isn't communicated in the agreement rate. So, a mediation program might have a 100% agreement rate, but if those agreements aren't durable the parties will need to have their issues resolved in another way.

Given these issues with using the agreement rate as an indicator of program success, one might ask "why use it at all?"

In my opinion, the agreement rate is still a helpful performance indicator – it just needs to be reviewed in the proper context. For example, instead of thinking of the agreement rate as having an inherent goal of approaching 100%, it's better to develop an expected settlement rate based on other, similar programs and historical performance of the program, and checking that the rate is consistent with your expectations.

If a program isn't showing the agreement rate that you expect despite generating a consistent level of mediations, it could be worth investigating for any irregularities in that program. If a program is regularly falling outside of where you would expect agreement rates to fall, it may also be worth looking into some other measures of mediation effectiveness to determine how parties are faring through the process in that program. These indicators might include exit surveys, how often those cases return to court for additional action, etc.

Keep in mind, though, that agreement rates can be impacted by several factors – some of which are beyond the mediator’s control or may require large, structural shifts in a program to address.

In Virginia, we’ll be using data entered in EVPS to monitor agreement rates and other indicators of program health in court-referred cases across the Commonwealth. Over the next few years we plan to expand and update our data collection instruments, and to continue to improve EVPS. This data will help us provide insights that we can share with the public, courts, and mediation programs, and will enable us to better support those in the field in our shared goal of providing high-quality mediation services to parties in Virginia.

Resources for further learning:

[Cost-Benefit/Effectiveness Analysis of Alternative Dispute Resolution in Maryland](#), Charkoudian, Lorig (2012)

·An in-depth study into the cost effectiveness of ADR in Maryland, with a rich literature review into the many benefits of ADR broken out by case type

[Mediation Efficacy Studies](#), Shack, Jennifer

A list compiled and updated by the Resolution Systems Institute that contains a list of many studies into the efficacy of mediation from all over

THANK YOU

for all you do!

CONTACT US

Dan Wassink,
DRS Manager-
dwassink@vacourts.gov

Michael Barr,
ADR Analyst-
mbarr@vacourts.gov

Jon Lamp,
ADR Program Specialist-
jlamp@vacourts.gov

Ann Warshauer,
Parent Education Coordinator-
awarshauer@vacourts.gov

Jordan Blackstone,
Administrative Assistant-
jblackstone@vacourts.gov

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Have an idea for a future article? Submit your ideas to disputeresolution@vacourts.gov.
As always, thank you for all you do for ADR in Virginia.

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