

ADR Report

Alternative Dispute
Resolution Section

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Chairman's Column

By Ceecee Paizs, Chairman

First, let me thank all of you that attended the training presented in conjunction with the annual Spring Event of the ADR Section on April 9, 2015 at Turf Valley, Ellicott City, Maryland. The trainer, Forrest "Woody" Mosten, has an international reputation for high quality Mediation and Collaborative training from introductory courses to advanced supervision for highly experienced

peacemakers. He maintains an intense focus on cutting edge issues in law and the craft of conflict resolution skill building, and enjoys helping other professionals build their own profitable practices.

At the Spring Event, Jonathan Rosenthal was presented the Bell Award by Retired Chief Judge Robert M. Bell and our featured speaker, Court of Appeals Judge Lynne Battaglia. It is hard to believe that we are coming into the home stretch of my year as Chair of the ADR Section Council. It has been a gratifying albeit busy year! Thank goodness for fabulous council members to delegate to!! It has been a year of changes, to the organization of the Administrative Office of the Courts, to new rules related to Collaborative



orative Law, and even to the change in the appellation "Master in Chancery" to "Family Magistrates".

It is important for all of us to keep up with the changes that are occurring. I recently attended a mediation in which the mediator's forms did not contain the language required under the Maryland Mediator Confidentiality Act. And I am sure

that there are areas where all of us could use some reviews or updates.

Which leads me to one last point: One of the best ways to learn about new issues and/or changes quickly is by serving on the Section Council for the ADR Section. We meet once a month at dinner time, dinner provided! And it is an excellent way to network and to keep your finger on the pulse of Alternate Dispute Resolution! If you are interested or would like more information, please contact me at ceecee@agreeonit.com or Suzy Eckstein, Vice Chair at suzy@oakleyeckstein.com

- Ceecee Paizs

History of Collaborative Law...

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- Advocating for Collaborative policies and practices throughout the State of Maryland.

www.marylandcollaborativepractice.com

The International Academy of Collaborative Professionals (“IACP”) is an international organization comprised of Collaborative professionals from all over the world (24+ countries). The IACP sets standards of practice and holds a yearly forum which is attended by many of the professionals from the 24+ countries. This year the IACP is being held in Washington, D.C. in October.

www.collaborativepractice.com

Statutes and Rules

In 2009 the Uniform Laws Commission approved the Uniform Collaborative Law Act (“UCLA”) with amendments finalized in 2010. The UCLA has already passed in approximately a dozen States and the District of Columbia and was signed into law in Maryland (“MUCLA”) on May 5, 2014 and took effect on October 1, 2014.

In addition, the Collaborative Law Rules implementing the MUCLA were adopted by the Court of Appeals on March 2, 2015 and will take effect on July 1, 2015. The MUCLA and the Rules cover both civil and family law matters.

The Comments to the Limited Scope Representation Rules recognize Collaborative Law as a permissible form of limited scope representation.

Study: The Current and Prospective Use of Collaborative Law in Maryland

A report prepared in September 2013 by the Institute for Governmental Service and Research, University of Maryland, College Park, in collaboration with the Maryland Administrative Office of the Courts (“AOC”) concluded that collaborative law (“CL”) is “an option with a high probability of substantially lowering the cost of resolving a dispute” and recommended that the AOC should work with the Maryland Bar Association and other professional organizations “to disseminate information about CL and expand CL training and networking opportunities among collaborative professionals.” (p. 44).

Conclusion

Collaborative Law, like mediation and other dispute resolution methods, is another tool in the practitioner’s toolbox which can assist clients in resolving their disputes in a less adversarial and healthier way. The durability of the Agreements has the power to reduce the number of litigants who return to court when the decisions about settlement are made hastily and/or not by the parties themselves. The Collaborative Project of Maryland continues to work with many of the Maryland Legal Service Providers and other Maryland Agencies to create greater access to justice for families of modest means by assisting those programs to incorporate Collaborative Law as an alternative to litigation.

If you want to learn more about Collaborative Law join the MSBA ADR and Family Law Sections at their jointly sponsored annual meeting program in Ocean City this year- “50 Shades of Resolution”.

Maryland Court Of Appeals Adopts Collaborative Law Rules

By Suzy Eckstein, Esq.

In May 2014 the Governor signed into effect the Maryland Uniform Collaborative Law Act (“MUCLA”) which can be found at Maryland Code Annotated, Courts and Judicial Proceedings, Section 3-2001 through 3-2015. The MUCLA took effect on October 1, 2015. On March 2, 2015 the Maryland Court of Appeal signed the Rules Order adopting the Collaborative Law Rules (“CL Rules”) which assist in implementing the MUCLA. The CL Rules can be found in Title 17 and take effect on July 1, 2015.

HERE ARE THE TOP TEN THINGS YOU NEED TO KNOW:

1. ***The MUCLA and the CL Rules apply to Civil and Family Law Matters.*** Collaborative Law is used in many different types of cases around the U.S. and the World, including, probate, employment, business, medical errors, et al. For an interesting glimpse into use in medical errors cases go to IACTProgram.com.
2. ***The MUCLA provides similar protection in Collaborative Law cases as the Maryland Mediator’s Confidentiality Act.*** Sections 3-2008 through 3-2011 deal with confidentiality of collaborative law communications and

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COA Adopts Collaborative Law...

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evidentiary privilege.

3. **The MUCLA also provides:**

a. *Requirements for Collaborative law participation agreements*

b. *When a Collaborative law process begins and ends*

c. *Allowance for emergency orders*

d. *Approval by the*

Court of agreements reached in the process

e. *Disclosure of information without discovery*

4. **The CL Rules were added to Title 17 which was revised to provide for out of court settlements in the Collaborative Process.**

5. **The CL Rules provide what information you need to provide clients with informed consent to enter a Collaborative Law Process.**

6. **The CL Rules provide for a Certification and Acknowledgment by the client as part of the Participation Agreement.** The D.C. Metro Protocols Committee is in the process of updating the form Participation Agreement to bring it in compliance with the MUCLA and CL Rules. The update will be provided in a future Newsletter.

7. **The CL Rules provide the Court shall grant a stay for a reasonable period if a joint motion is filed to allow the parties to enter a Collaborative Law Process.** Despite the implementation over four years ago of a suspension of the DCM time standards for stays in Collaborative Matters, Courts have been reluctant to grant stays. The Courts were not required to implement the stays. This provision of the CL Rules will assist in moving cases forward in the Collaborative Process, and the CL Rule makes clear in the Committee note that “time elapsed during a stay under this Rule is not included in the computation of time under any applicable case management time standards or guidelines.”

8. **That an attorney cannot represent a party in a Court proceeding related to the collaborative law matter other than to enter agreements or in an uncontested proceeding.**



a. *There are important exceptions to the requirement of withdrawal:*

i. *Legal Service Providers representing clients on a pro bono basis.* Maryland is a leader in providing Collaborative Law Process services to clients and families of modest means. The **Collaborative Project of Maryland** was formed in 2011 and is supported by a grant from the Administrative Office of Courts,

Family Administration Division. The project has volunteer attorneys, financial professional and mental health professionals who all work together to provide support to families in transition. For more information go to www.collaborativeprojectmd.org.

ii. *Legal Departments of government entities*

These exceptions are designed to protect pro bono clients and government agencies who otherwise might have difficulty finding another attorney to represent them in Court if the collaborative process does not conclude successfully. The Participation Agreement must specifically provide for these exceptions.

9. **The CL Rules apply to collaborative law processes regardless of whether an action or proceeding is pending in a court.**

10. **Representation of a client in a Collaborative Law Process is a permitted type of limited scope representation.** Comment 9 to Rules of Professional Responsibility 1.2 now reads: “Representation of a client in a collaborative law process is a type of permissible limited representation. It requires a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 (b) and is signed by all parties after informed consent.”

For more information about the Collaborative Law Process in Maryland go to www.marylandcollaborativepractice.com . For more information about Collaborative Law around the world visit www.collaborativepractice.com.

This is a new column dedicated to providing information on efforts in the community to promote the use of ADR in family law cases. The column will focus on partnerships and programs that create opportunities for Maryland families to resolve their domestic law disputes more peacefully leading to outcomes that are better for families.

While mediation and settlement conferencing has become commonplace in domestic cases, the collaborative law practice has been gaining momentum.

In 2014, the Maryland General Assembly passed the Uniform Collaborative Law Act; in the past weeks, the Maryland Court of Appeals adopted new rules governing the practice and authorizing the practice as limited scope representation.

Prior to 2014, there had been a surge of activity regarding collaborative law. In 2011, the Maryland Judiciary's Department of Family Administration (DFA) sponsored the first in the nation mass training of attorneys in the collaborative process. Since that time, yearly trainings have been held as part of this initiative, attended by hundreds of attorneys and other collaborative professionals. All trainees having committed to accept collaborative cases pro bono. A Summer 2015 training is currently being scheduled.

In 2012, the first statewide collaborative pro bono project was created, with development support and resources from the Maryland Judiciary's DFA. Two programs have been funded for this project. One is the Collaborative Project of Maryland, serving the entire state and located in Montgomery County. The other, Mid-Shore Pro Bono, serves the Shore. The two organizations often work together to place clients.

Also in 2012, the Maryland Judiciary supported two programs at the University of Baltimore School of Law to promote collaborative law. In the Family Law Clinic, under the direction of Professor Jane Murphy, students were trained to represent clients in the collaborative process. Feedback from clients who have participated suggests the while there had been skepticism, the process was transformative, allowing parties to reach agreement. In Professor Barbara Babb's family law

seminar, students are introduced to collaborative law and learn that this is another option for parties.

In 2013, the Statewide Referral Network for Collaborative Law was created. Through coordination from the Judiciary's Department of Family Administration, partners in

the legal service community serving low-income individuals were brought together to develop a system that would 1) educate people seeking legal assistance in family law cases about the collaborative option and 2) place

WITH THE ADOPTION OF
the collaborative act, the adoption of the rules, the increased numbers of practitioners being trained, and with strength gaining for delivery of collaborative law services to low-income citizens, there is every reason to believe that the collaborative momentum will continue.

clients with pro bono collaborative attorneys.

Partners include the Collaborative Project of Maryland, Mid-Shore Pro Bono, Maryland Legal Aid Bureau, Maryland Volunteer Lawyers Service, Pro Bono Resource Center of Maryland, Women's Law Center, Community Legal Services, Allegany Law Foundation, Montgomery County Bar Foundation, and the Harford County Bar Foundation.

The partners have coordinated their client-intake protocols to include the collaborative option; they have created a generic brochure, for statewide distribution by any legal service organization that describes the collaborative process and identifies partners who provide the service. The network also maintains a list of other collaborative professionals who offer their services pro bono. These include mental health, child development, and financial professionals.

Currently, efforts are underway to have collaborative attorneys immediately available to litigants who are present in court for various pre-trial proceedings.

With the adoption of the collaborative act, the adoption of the rules, the increased numbers of practitioners being trained, and with strength gaining for delivery of collaborative law services to low-income citizens, there is every reason to believe that the collaborative momentum will continue.

Connie Kratovil-Lavelle is an attorney, mediator, and collaborative practitioner and currently the director of the Department of Family Administration within the Administrative Office of the Courts.

ADR Research in Maryland: Talk About It!

By Kate Quinn, Esq.

Most ADR practitioners in MD are aware, to one degree or another, of the statewide ADR research that has been conducted and is nearing completion. This research is unique in that it is probably the only project of its kind in the country. It compares attitudes of people who went through the standard court process with the attitudes of those who participated in an ADR process. That, and so much more. The data and findings are rich and complex, and support the benefit of using ADR in the courts. This is good stuff.

The beginning steps for the research project, the planning and funding, began in the spring of 2010. The research process involved live observations in court ADR sessions, along with interviews and other data collection tools, beginning in the summer of 2012. By the spring of 2014, much of the data collection and analysis were completed, and the first reports were released. So far, four reports have been released, with more planned. Upcoming reports will look at long-term data. The reports released are:

- ADR Landscape: An Overview of all ADR in the Maryland Court System, spring 2014
- Collaborative Law, June 2014
- Impact of ADR on District Court Civil Cases, July 2014
- What Works in Child Access Mediation, September 2014

You can find the complete reports and more on the interactive website: www.marylandadrresearch.org

This article will focus on the Child Access Mediation report. The ADR Section Council works hard to bring interesting and useful information and topics to Section members, including webinars, this newsletter, the Spring Event and dinner, and the Pizza & Professionalism evenings. The Child Access report was the topic for the last P&P (as they are called), held February 3, 2015 at the University of Maryland Law School. A panel, consisting of Lorig Charkoudian, Ph.D., Principal Investigator and Nick White, Ph.D., Evaluation Advisory Board, was moderated by Council member Toby Guerin, Esq., Judiciary ADR Evaluation Advisory Board. All were directly involved in the research project. It was reported as an interesting, informative and lively evening.

A two page flyer with a summary was issued as part of the publication of the report, which can be found on the website (above). In Maryland, all contested child custody cases are

referred to attend mediation (with the exception of abuse situations). The belief is that mediation will help parents to work together toward their own solutions and increase the likelihood of settlement. Among other things, the study identifies and analyzes mediator strategies used in child custody (also called child access or parenting agreements in some locations), and the measurable impact of those techniques.

This is useful information for those who practice in the family law area. For those who work in other areas, it would be interesting to speculate and discuss the use of these techniques and their impact on mediations for other types of cases. This is not to say the analysis and findings for the court research are wholly transferable – clearly not. But they do provide rich areas for discussion, speculation and consideration.

The chart on the 2 page flyer found on the website provides a clear and simplified version of mediator strategies and their likely impacts on the parties. To summarize the strategies used by mediators and their likely impact:

Reflective strategies – reflecting emotions and interests; clarifying what topics participants want to discuss.

More likely to lead to participants

- saying the other person listened and understood;
- becoming more able to work together;
- developing more personalized agreements, and makes it
- Less likely that they will dismiss the other's perspective AND
- **Less likely** they will reach an agreement.

Elicitive strategies- asking participants to think of solutions; summarizing solutions; asking how solutions might work for them, led to participants being more likely to:

- Reach an agreement;
- Say the other person listened and understood;
- Become clearer about what they want;
- Voice the underlying issues.

The really interesting finding is that, when reflecting and elicitive strategies are combined, participants are more likely to report positive shifts in their ability to work together; in feeling the other person listened and understood them better; indicate that the underlying issues came out; and to **reach a personalized agreement**.

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Talk About It...

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The flyer also looks at directing and telling strategies:

Directing strategies – introducing and enforcing guidelines; explaining one participant to another (carrying); and advocating for one participant’s ideas, all made it **unlikely** that participants would report that the mediator listened to and respected them.

Telling strategies – include the mediator sharing opinions; offering solutions; assessing legal options; and introducing topics. These strategies were not statistically significant in any positive or negative outcomes.

The findings for the impact of caucusing in mediation are interesting, in that they are both positive and negative. Caucusing led to positive attitudes toward the mediator, in that the participants reported that the mediator respected them and did not take sides. On the negative side, however, more time spent in caucusing resulted in participants feeling more hopeless about the situation, feeling less likely that they could work with the other person, and less likely to believe there are a wide range of options for resolution.

Some questions that might be explored, even if working in another area:

- What strategies do you use in your mediations?
- Do you combine strategies from the described groups?
- Do you notice any differences in the parties and / or the mediation when using different strategies?
- Do you make suggestions or offer opinions in your

mediations?

- If so, what impact do you think that might have on mediation outcomes?
- Do you use caucus often? If so, for how long?
- From your personal experience and your own practice, do you agree or disagree with the findings and conclusions in the research? How strongly do you agree or disagree?



Many more questions and ideas can be pulled from the research information. There is more to come – long term study will look at how custody agreements are working for children, changes in the parents’ ability to work together, and filings for modifications and enforcement. And that is just for the child access report.

The Council plans to host another P&P evening on the findings for District Court civil cases, also a rich area for discussion. It includes findings on parties taking responsibility for conflict and a sense of empowerment and having a voice in the process and resolution of their own conflicts. Also significant

is the likelihood of greater satisfaction with the judicial system on the part of those who participated in ADR, **even if no agreement was reached**. There will be long term data here, as well, looking at changes in attitudes three months later, the durability of any outcome, and any re-litigation or appeals.

So get together with some colleagues and talk about the research findings, speculate on whether and how they might describe your practice, examine your strategies and compare them with those of your colleagues. We all have so much to learn from each other. And stay tuned for the next Pizza & Professionalism.



CALLING ALL ADR SECTION MEMBERS!

As the incoming Chair of the ADR Section Council, I am asking all of the members of the ADR Section of the MSBA to consider becoming involved with the Section Council. We have openings on the Council for three year terms and are seeking applications for those positions. In addition, we are seeking applicants for the positions of Secretary of the Council, which is the first position in the leadership progression for the ADR Section Council,

Each of these positions on the Council requires attending monthly dinner meetings and chairing a committee designed to promote alternate dispute resolution throughout the State of Maryland. To apply, send your resume with a cover letter outlining your experience in the ADR as well as your motivation for applying to suzy@oakelyeckstein.com on or before
May 15, 2015.

ADR Annual Forum and Awards Dinner Huge Success!



On April 9, 2015, the ADR Section held its annual training and awards dinner at the Turf Valley Resort. The training was presented by Forrest “Woody” Mosten, an international trainer from California, who presented 30 of his “47 Things a Mediator and Collaborative Professional Should Know.” Woody’s presentation generated an interactive discussion regarding various tools of mediation, from orientation meetings to Mediator proposals.

The evening event began with a cocktail party followed by dinner. The Honorable Lynne A. Battaglia, Judge on the Court of Appeals, was the keynote speaker, followed by the presentation of the Chief



Judge Robert M. Bell Award to Jonathan Rosenthal, Esquire, Executive Director of ADR Programs for the District Court of Maryland. Chief Judge Bell (ret) introduced Rachel Wohl, Executive Director of the Maryland Mediation and Conflict Resolution Office. Rachel, a longtime colleague and friend of Jonathan’s, introduced Jonathan, outlining his accomplishments over the years. When Jonathan took to the stage, his remarks primarily thanked all of those who had assisted him and/or paved the way for ADR processes within the court system. All in all, a well attended and well received training and dinner program.

