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Tracking Growth

Advancing ADR and Consensus Building in States

In the early 80s, several state courts began creating dispute resolution programs at the state level. Shortly after the court programs got underway, other state government leaders began to recognize the utility of dispute resolution methods for dealing with environmental and other public policy disputes. The National Institute for Dispute Resolution (NIDR) began offering seed money grants to states, which helped get state programs going in Massachusetts, Hawaii, and nine other states.

The number of programs has grown steadily since then. In 1997, when PCI began, Dr. Jill Purdy conducted a survey for PCI and found 28 comprehensive programs housed in state government.

That landscape has changed dramatically in three years. This fall, PCI completed a Directory of DR Resources in States that includes more than 150 programs. A draft version of the Directory was circulated to all states that included correction forms which state programs returned to PCI with missing or additional information. In December the directory will be available on PCI's website. Hard copies will be available after Jan. 30.

In all probability, with the growing number of programs emerging across state governments, there are programs or state-sponsored initiatives not included in the directory that should be. PCI will continue to track this growth, updating the information as it

becomes available. States are encouraged to contact PCI with any new or changing information on their programs.

The Directory includes a range of dispute resolution services, from phone mediation for consumer complaints to programs that provide training and certification, dispute systems design, and facilitation and mediation services. The directory does not include arbitration, labor-management, or workers compensation mediation programs, but lists the following types of programs:

- ♦ 34 state court DR programs
- ♦ 8 comprehensive statewide programs located in the administrative branch
- ♦ 3 statewide cabinet level DR coordinating bodies

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PCI and Portland State Announce Consensus Center

PCI has established a partnership with Portland State University's (PSU's) College of Urban and Public Affairs to establish The Policy Consensus Center. The Consensus Center will serve as an applied research, education, and training arm of PCI. The William and Flora Hewlett Foundation has granted \$284,490 to PSU to launch the Center.

Through applied research, education, and training, the Center will develop processes for addressing contentious policy issues and provide education and training for current and future leaders in how to use these approaches most effectively.

The Center will enable PCI to offer education and training programs to public officials, practitioners, and program administrators. The Center will be unique among institutes that provide training for public officials because of its emphasis on consensus building and collaborative decision making. No other center exists today that focuses specifically on public leaders,

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New Mexico Pilots Government Leadership Program

Adapted from an article by Bob Horwitz, printed by the Environmental Commissioners of States (ECOS). Horwitz is Director of Administrative Services at the New Mexico Environment Department and DR Coordinator for the New Mexico ADR Advisory Council.

New Mexico state government is engaged in a bold experiment to develop the decision-making and leadership skills of its employees. The initiative, called the New Mexico Public Servant Leadership Program, is being piloted by the Human Services Department, the Energy, Minerals & Natural Resources Department, and the Environment Department. The program is modeled after community leadership programs around the country and is designed to teach public employees facilitative leadership skills they can use in their offices, agencies, and communities.

In four, two-day sessions, participants explore the meaning of personal leadership in their own lives and in organizational cultures and contexts. They examine the need for different types of leadership for different communities, and principles and challenges associated with managing organizational change.

New Mexico government is a pioneer in developing such a leadership program for public employees. Community leadership programs throughout the United States are typically intended to engage community members, activists, and political and business leaders in identifying the resources available for tackling difficult *community* issues (such as housing, economic development, crime, etc). New Mexico's program is the first to be initiated and piloted by state agencies, and to teach leadership skills within govern-

ment, build personal connections across agency boundaries, and assist employees in identifying their own resources to deal with difficult governance issues.

"We've complained for so long about not having skilled leaders in our agencies that we finally decided to do something about it," said Peter Maggiore, Cabinet Secretary of the New Mexico Environment Department. "This program promises to create a meaningful culture change in government."

Participants in the program learn basic conflict management skills and applications for those skills in hands-on exercises. While the course is not designed to teach in-depth conflict management principles and techniques, it does give students an opportunity to consider new methods for interacting with their employees during difficult situations, and presents alternatives to traditional adversarial approaches to office disputes.

Jennifer Salisbury, Cabinet Secretary of the Energy, Minerals and Natural Resources Department, said agencies tend to promote employees based on their technical expertise without regard to their interpersonal skills, which are critical in leadership situations. "Essentially, we set them *and* the agency up for failure when we don't give them the tools they need to be successful leaders in their own organization," she said.

The Public Servant Leadership Program began in September and will complete its first series of sessions in December. A second series is planned for March through June 2001. Organizers are already examining how to expand the program to other agencies of state government and ways to measure the impact the program has on participants and their agencies.

ALJs Hold Panel and Offer Training on ADR

The National Association of Administrative Law Judges (NAALJ) included a half-day panel session on dispute resolution at its annual meeting in October in Albany, NY. The session was organized by Daniel Louis, Chief Administrative Law Judge for the Office of Hearings and Mediation Services in the New York Department of Environmental Conservation.

According to NAALJ's Alternative Dispute Resolution Committee, the panel session on ADR in administrative proceedings was designed following recommendations at last year's meeting "to

promote the use of ADR in the administrative forum," and to maintain liaison with NAALJ's Education Committee to determine the need for educational programs on the use of ADR.

The ADR Committee's initiatives include a 40-hour mediation training for ALJs, cosponsored by the National Conference of Administrative Law Judges and the American Bar Association Section of Dispute Resolution. The training has been presented in three locations, with a fourth scheduled for Spring 2001 in Denver, and meets mediator certification requirements in most states.

Recent Publications

PCI Introduces solutions Series Focused on DR in Government

PCI has published the first in a series of publications focused on government use of dispute resolution. *Solutions*, whose first edition features Executive Orders, will offer up-to-date information and guidance on best practices in the use of collaborative processes and conflict resolution in government. The aim of the series is to enable readers to pick and choose the issues that address

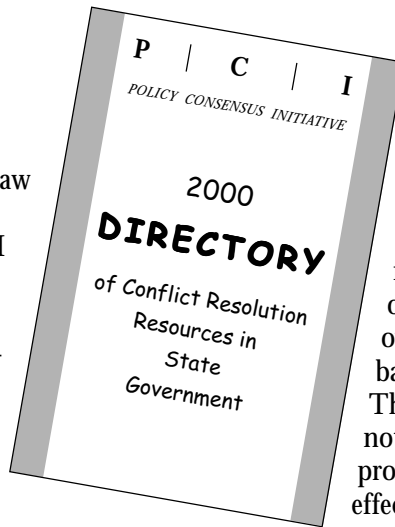
their specific needs and compile their own “bench book” on government dispute resolution practices.

Future editions will include topics such as drafting dispute resolution legislation; selecting, hiring, and contracting with neutrals; approaches to quality control; roster design and management; and guidance for agency DR coordinators. PCI welcomes suggestions for topics.

Advancing ADR and Consensus Building in States . . .

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- ♦ 34 individual agency programs
- ♦ 29 attorneys general offices list an ADR contact
- ♦ 12 states in which administrative law judges have mediation programs (probably there are more that PCI has not identified)
- ♦ 5 dispute resolution coordinators (a number likely to go up substantially as the Massachusetts, New Mexico and Oregon Executive Orders go into effect requiring all state agencies to appoint dispute resolution coordinators).
- ♦ 36 university based programs serving state government



tion leaders may be in a position to attach other statutory provisions to strengthen their states' DR programs.

Another tool being used to integrate dispute resolution in state government is the use of Executive Orders (EOs). In the past year alone, four governors have enacted such orders. EOs are being employed to help overcome some of the institutional barriers to the use of dispute resolution. They demonstrate a governor's support not only for initiating collaborative processes as a means of achieving more effective governance, but also for expanding these kinds of programs to new areas of

state government. They also send a clear message to cabinet secretaries and other department heads to encourage and use ADR wherever appropriate to resolve disputes in their agencies.

PCI also has been tracking legislative developments in states to prepare information about best practices for drafting DR legislation. There currently are more than 2000 pieces of legislation regarding the use of mediation and conciliation in states. Not all legislation is well thought out or effective, but the sheer volume of bills being introduced with provisions for dispute resolution is daunting. Last year in Texas, for example, 150 pieces of DR-related legislation were introduced and more than 30 bills were passed!

Now may be a good time for states to begin assessing their legislative framework for dispute resolution. The Uniform Mediation Act (UMA), which is on the horizon, could provide an opportunity to overcome some legal barriers to the use of dispute resolution. By riding the coat-tails of the UMA, state dispute resolu-



PCI has just published a booklet—the first in a series on best-practices in dispute resolution—describing Executive Orders and how different states developed them. The booklet, called *Solutions*, suggests guidelines for drafting Executive Orders and includes excerpts from the Orders passed in Massachusetts, Minnesota, New Mexico, and Oregon.

The growth in state programs clearly illustrates states' increasing commitment to dispute resolution and consensus building processes. For information on the tools and resources available to state programs, or on ways to design an assessment of your state's legislative framework, contact PCI or visit the website at <www.policyconsensus.org>.

Confidentiality Issues in Federal ADR Practice May Impact States

The Federal ADR Council has issued a draft report on the *Reasonable Expectations of Confidentiality under the Administrative Dispute Resolution Act of 1996*. This Federal Register document is accessible electronically from GPO Access (<http://www.access.gpo.gov>) or from the Interagency Alternative Dispute Resolution Working Group website (<http://www.financenet.gov/iadrwg.htm>). The comment period closed November 1.

The report includes chapters on the Administrative Dispute Resolution Act; a Section-by-Section Analysis of Confidentiality Provisions; Questions and Answers on Confidentiality under the ADR Act; and a Model Confidentiality Statement for Use by Neutrals.

The Center for Public Policy Dispute Resolution at the University of Texas School of Law was among the respondents submitting comments on the report. They focused specifically on the question "Does the ADR Act protect against the disclosure of dispute resolution communications in response to requests by federal entities for such information?"

The Center has been especially interested in confidentiality issues since a conflict arose in the mid-1990s between the USDA Office of the Inspector General and the Texas Agricultural Mediation Program. The conflict developed when the Inspector General's Office sought to obtain mediation files from the program, and the program director objected to providing confidential information.

In *In re: Grand Jury Subpoena Dated December 17, 1996*, 148 F.3d 487 (5th Circuit 1998), the Court found that neither the Texas ADR Act nor the federal ADR Act were relevant to the inquiry of confidentiality when a request for information from a state agricultural loan mediation program was sought pursuant to the Agricultural Credit Act. Instead, the court looked to the confidentiality language in the Agricultural Credit Act, under which the information was sought. That Act required that a state agricultural mediation program must maintain confidentiality for mediation sessions in order to qualify for federal funding. The Court found this requirement to be insufficient to create "an evidentiary privilege that protects information relating to mediation sessions from disclosure in grand jury proceedings."

The Court ignored the confidentiality provisions of the ADR Act because it found no "issue in controversy" that would justify its application, although it

admitted that the ADR Act's confidentiality provisions were in sharp contrast to those in the Agricultural Credit Act.

This case is a good example of the type of conflict that can arise between a program director who seeks to maintain confidentiality and a federal office that insists on obtaining information from a mediation.

The Center felt the report's conclusion—that tension exists between the ADR Act's confidentiality provisions and federal statutes that grant authority to request disclosure of information from federal entities (and state entities participating in federally funded programs)—is an obvious one which begs the question of protection against disclosure. Although the recommendations of how to handle this tension include some useful information, Texas commented, the report needs to go further. It should provide a legal analysis of whether, and under what circumstances, the federal ADR Act's confidentiality provisions should be held to be controlling over another state's confidentiality statute or another federal statute which authorizes obtaining information in the course of law enforcement. Because the State of Texas is participating in the federal agricultural mediation program, it is important that this question be resolved so a similar scenario does not occur again in Texas or elsewhere.

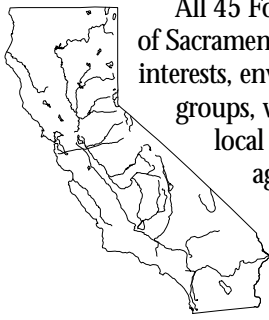
The Section of Administrative Law and Regulatory Practice of the American Bar Association also submitted comments on the Confidentiality Report. Recently, the ABA Sections of Dispute Resolution and Administrative Law convened an ad hoc committee on federal ADR confidentiality. The Committee is using a collaborative process to develop guidelines for confidentiality in federal alternative dispute resolution.

The ABA comments also highlight areas in which the report could be strengthened, clarified, and improved. It also recommends revising the report's model confidentiality statement for use by neutrals in federal ADR proceedings, which contains valuable information for parties.

While states may not experience the same confidentiality issues that federal agencies face, the recommendations may have implications for state dispute resolution programs. PCI will continue to monitor the work of the Federal Council and the ABA section to determine whether new recommendations will be applicable to state confidentiality issues.

STATE DISPUTE RESOLUTION PROGRAMS UPDATE

The Sacramento Area Water Forum, a six-year collaborative process mediated by the **California Center for Public Dispute Resolution** has received six awards for its achievements.



All 45 Forum stakeholders, a diverse group of Sacramento's business and agriculture interests, environmental organizations, citizens groups, water management districts, and local governments, signed the mediated agreement in April. An integrated package of actions and assurances, the agreement is expected to provide a reliable and safe water supply for the region through the year 2030, and to preserve fishery, wildlife, recreational and aesthetic values of the Lower American River. The work of the Forum spanned three counties and, because of the level of technical, policy, and staffing support required, cost \$13 million. Participants noted that the price was a fraction of what litigation surrounding regional water issues would likely have cost.

The six awards were presented by the U.S. Environmental Protection Agency, Association of California Water Agencies, Association of Environmental Professionals, League of California Cities, Public Officials for Water and Environmental Reform, and the International Association of Business Communicators.

The Center, a joint program of California State University, Sacramento, and University of the Pacific's McGeorge School of Law, has mediated and facilitated for the Water Forum since its inception in 1993.

The Hawaii State Judiciary's Center for Alternative Dispute Resolution

has produced a video titled "Mediation: An Alternative to Court." The video features people from diverse backgrounds involved in four types of disputes—divorce, employment, student, and neighbor—reflecting the state's multicultural population.

The video, which premiered in July 2000, describes mediation and illustrates what is involved as it follows four scenarios through the mediation process. It closes with testimonies from people who participated in mediation.

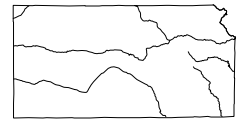
Mediators from the community collaborated with the Center to produce the video, contributing ideas and simulations, helping coordinate talent, and

providing valuable feedback throughout the project.

The Center hopes this video will educate disputants on how mediation can help them work together to resolve their disputes, and to take responsibility for resolving their own problems. Copies are available at many locations, including public libraries in Hawaii, and plans are underway to air it on community access cable television. To purchase the video, call the Friends of the Judiciary History Center at 808-539-4999.

A Kansas Advisory Council on Dispute Resolution is

working on a long-range plan to develop a better referral system, improve mediation services for lower income parties, find ways to provide mediation in rural areas, and develop a better system for mediation trainees to obtain their co-mediation requirements. The Council also is investigating ways to encourage mediation in western Kansas, where there is a large population of immigrants who do not speak English.



Also in Kansas, the State Legislature approved a law in its 2000 session allowing judges to order domestic property disputes to mediation. A Federal and State Affairs Interim Committee in Kansas has been studying the use of dispute resolution within state government.

Court DR program evaluation results issued by a Kansas Supreme Court Advisory Council on Dispute Resolution revealed that in 1999, 6,052 mediations were provided by 176 reporting approved mediators working individually or as part of an approved program. This does not include other forms of dispute resolution which are not required to report. Of the 6,052 mediations, the types of cases mediated most were domestic custody/visitation (3,351), employment (1,041) small claims (608), and parent/adolescent (198).

Consensus processes in **Maine state government** are gaining momentum. One recent project involved a two-year public process to develop management goals for 40 species of fish and wildlife. The Maine Department of Inland Fisheries and Wildlife participated in discussions with representatives of many diverse interest groups. Working with a neutral facilitator, the Big Game Working Group, one of several groups that formed around the



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Maine... *Continued from page 5*

issue, focused in part on the annual moose hunt, a highly charged topic in Maine. The working group balanced several competing interests—including habitat concerns, tourism, and moose-vehicle accidents. The Group came up with moose population goals for the state's 30 management districts and made other recommendations concerning the length of the hunting season, hunting zones, and the number of permits to be issued. During the process, a broad range of constituencies came forward. The Department, which ultimately modified the recommendations in response to concerns voiced during the process, is pleased with the results. Many of the stakeholders said they believed the process resulted in recommendations that were more responsive to a wide range of concerns and were more creative than recommendations the agency might have developed on its own.

The Maryland Alternative Dispute Resolution Commission held its final meeting in October and approved plans to evolve into an ongoing state office of dispute resolution called the Mediation and Conflict Resolution Office (MACRO). MACRO will continue the Commission's work to advance the appropriate use of ADR in the courts as well as in communities, schools, state and local government agencies, criminal and juvenile justice programs, and businesses. The office will be a court-related agency funded as part of the state judiciary's budget. A press briefing is scheduled for early December to kick off MACRO's work and to publicize its mission.



MACRO will receive guidance from a diverse, 35-member oversight board and a 12-member executive committee. In addition, the office will work in collaboration with groups of stakeholders organized around eight mutually supporting initiatives—business, government, community mediation, circuit court, district court, school conflict resolution, family ADR, and criminal and juvenile justice.

MACRO also will have three standing committees on professional responsibilities, budget/legislation, and public awareness. Robert M. Bell, chief judge of the state's highest court, will chair the MACRO Board. Rachel Wohl will serve as Executive Director, and Lou Gieszl as Deputy Executive Director.

In November, PCI Co-Executive Director Chris Carlson addressed the Commission's final meeting. She congratulated Commission members for making Maryland one of the most comprehensive DR pro-

grams in the country, as well as for their use of collaboration to build consensus and support for MACROS's future plans and activities. Creation of this new office is seen as a significant step toward meeting the state's commitment to creating a "culture of conflict resolution" for the new millennium.

Dear ADR State Program Colleagues,

After seven years as Executive Director of the **Massachusetts Office of Dispute Resolution (MODR)** I have resigned to spend more time with my children, ages 5 and 9. So I am now a FTP — Full Time Parent! I know I am very lucky to be able to do this.

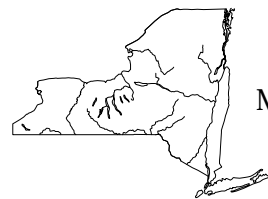


It has been an honor serving as Director of MODR, and I have very much enjoyed getting to know many of you and the wonderful work you are doing in your states.

I am pleased to announce that Susan Jeghelian, Esq., has been appointed MODR's new Executive Director. Susan has been MODR's Director of Court Programs for the past five years and knows the agency well. For those who do not yet know Susan, I am sure you will enjoy getting to know her and working with her. She was pleased to meet some of you at the September conference in Albuquerque and looks forward to meeting others in the future.

Many thanks to you for sharing great information about the ADR activities in your states and for being such a great resource. I wish you all the best as you continue your important work.

Yours sincerely,
Fredie Kay



Allen J. Zerkin and Jean-Ann McGrane of the Program on Negotiation and Conflict Resolution at **Wagner Graduate School of Public Service at New York University** recently facilitated two statewide consensus building processes in New York.

The 15-member New York State Roundtable for Consensus on Tire Management reached full consensus around a legislative proposal to address the issue of remediating and preventing illegal scrap tire piles. The approach focused on public investment in new markets for products made from used tires and on public education about extending tire life. The proposal recommends a surcharge on vehicle registration to finance the program. Leadership in both houses of the legislature and the Governor's office have reacted

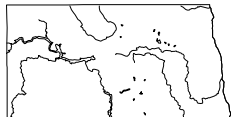
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New York ... *Continued from page 6*

favorably to the proposal. A bill was signed establishing a commission to review the recommendations and to submit the legislation. Key members of the roundtable are expected to serve as commissioners.

The second facilitation involved the Pocantico Roundtable for Consensus on Brownfields, with 30 members and four nonvoting representatives of state government agencies. New York is one of the few industrial states that has not adopted legislation to enable redevelopment of brownfield sites. Yet despite members' enormous commitment to difficult negotiations on a number of wide-ranging and often technically complex issues, the year-and-a-half long process failed to produce a full consensus. There were several key sticking points. One was the authorization of community-based organizations to do planning in areas where there were concentrations of brownfield sites. Another was the refinancing formula for the state's Superfund Program (an issue that had not initially been on the Roundtable agenda).

When it became clear the impasse was intractable, the Roundtable formally disbanded and the majority of members reconstituted as the Brownfields Coalition. Following the same creative approach that the initial process had introduced, the group's efforts have been translated into legislation that is currently pending.



The International Flood Mitigation Initiative for the Red River (IFMI), recently completed a meeting of the governors of Minnesota, North Dakota and South Dakota and the Premier of Manitoba to discuss a Memorandum of Understanding for the supervision of this international watershed basin. Other major institutions have formed from this consensus process focused on strengthening basin resilience to Red River flooding. The Grasslands Stewardship Initiative, facilitated by the **Consensus Council in North Dakota**, involves ranchers, recreationists, environmentalists, and government officials in addressing management issues on nearly 1.5 million acres of national grasslands. Issues include coordinated resource management, weeds, sprawl, monitoring, and multiple use economic strategies. The Devils Lake Region Community Conversation is implementing an ecotourism and recreation consortium, a regional, intergenerational community center, and regional K-12 education partnerships. The Rural Education Support Initiative provides facilitation and shuttle assistance to rural school districts to help build partnerships that address rapidly declining enrollments

and the future viability and quality of K-12 education. This Initiative will establish multi-school district pilots as models to be replicated throughout the state.



The **Supreme Court of Ohio Office of Dispute Resolution Programs** has completed a three year grant cycle to fund 11 court staff mediator and support positions. Two of those courts are receiving supplemental grants to expand services, and only one court needed "stop-gap" funding for a fourth year. All the other programs have developed funding through a combination of add-on filing fees and county budget dollars.

Five child protection mediation programs are among those that are fully funded. Three additional programs have been added with combinations of grant and local funding, and two courts are mediating termination of parental rights cases.

The Office of Dispute Resolution Programs provided training in October for mediators from six courts. The mediators will help develop or expand additional child protection mediation programs in the next year. Program highlights include the following:

- ♦ Clark County Juvenile Court (Springfield) has increased participation in the Truancy Prevention and School Conflict Mediation Program to include 25 schools—more than doubling the number of schools receiving services.
- ♦ Cuyahoga County Bar Association and the Juvenile Court Mediation Program (Cleveland) for unmarried parents have been recognized by Congress as an exemplary programs providing services to families and children. Executive Director Mary Malloy accepted the award in Washington, D.C.
- ♦ The Office of Dispute Resolution Programs now provides mediation forum meetings for staff mediators. The first in October focused on mediator style and the second will focus on the Uniform Mediation Act and Model Standards for Family Mediators.

In **Oregon**, mediators, peer mentors, agencies, and the public participated in a two-day training on ADA (Americans with Disabilities Act) mediation in Salem in October and in Medford in early December. The training is part of a new mediation service soon to be offered by the Oregon Disabilities Commission (ODC).



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Oregon... *Continued from page 7*

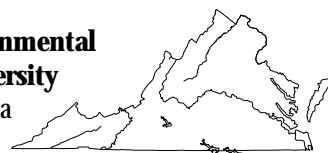
The ADA, which was signed into law in July 1990, makes it illegal to treat people differently because of their disability. It covers discrimination in employment, activities of state and local governments, public accommodations, transportation and telecommunications. The ADA allows parties to file a formal complaint with the U.S. Department of Justice, and it encourages alternative dispute resolution. The State of Oregon has similar laws, and in some cases Oregon's laws are more strict than the ADA. People with disabilities are protected by both state and federal laws.

Last year ODC received a grant from the **Oregon Public Policy Dispute Resolution Program** to design and implement an ADA mediation service. ODC created a design team, drawn from interested individuals with a wide variety of expertise. Many of the team members are individuals with disabilities and/or have experience in designing services for specific client populations. The team identified and consulted with many stakeholders and interested parties during the design process to provide information, dialogue about needs, raise interest in the service, obtain input, and seek support. In June 2000, a plan to provide ADA mediation service by the end of the year was circulated to stakeholders for comments before moving forward.

The **Institute for Environmental Negotiation at the University of Virginia** has launched a

new program to help Virginia leaders in the public, private and nonprofit sectors resolve conflicts over environmental issues. The Virginia Natural Resources Leadership Institute is a partnership between two state universities—UVA and Virginia Tech—and the Virginia Department of Forestry. The year-long program consists of six seminars and training workshops held at various locations across the state. Participants will learn about processes and strategies for conflict resolution as well as the complexities of natural resource challenges in Virginia. The first class brings together nearly 30 people from all levels of environmental work—private business, community and environmental nonprofits, and local, state, and federal governments.

The Institute also reports that Richard Collins is stepping down after 20 years as Director to focus on graduate and undergraduate teaching in the planning program at the School of Architecture, where the IEN is located. Collins founded the IEN in 1980 and will continue to be involved with the Institute and its projects. Frank Dukes, who has served as Associate Director for four years, will replace Dr. Collins as Director.

**DR NOTES . . .*****Consortium Focuses on Evaluation***

The Consortium on Negotiation and Conflict Resolution (CNCR) at Georgia State University is increasing its focus on research and evaluation. In early November, CNCR convened a mini-conference for researchers and court administrators who have worked on evaluating court-connected ADR programs in the United States. The goal of the conference was to produce useful guidelines, adaptable sample instruments, and a plan for future action to improve evaluation of such programs. The primary focus was not on data, but on methods for collecting and analyzing data. A secondary focus was on data *not* being captured and how to go about capturing it. The Consortium hosts a forum for the Conference on the Evaluation of Court Connected ADR Programs at <http://law.gsu.edu/CNCR/Conferences/conferenceframe.htm>

Also in November, CNCR's Carolyn Benne and Wendy Garrard of Vanderbilt's Center for Evaluation Research and Methodology, presented their paper "Logic Model as Method: The Nuts and Bolts of Making it Happen." The paper examines ways to merge conflict resolution processes with evaluation methods to help practitioners and researchers understand the key objectives and processes to be evaluated. For more information on the Consortium and its activities, visit their website at <http://law.gsu.edu/CNCR/>.

Oregon Commission Publishes Collaboration Handbook

A Handbook for Public Policy Decision-Making and Conflict Resolution is now available from the Oregon Dispute Resolution Commission. Published in August, the handbook is a collaborative effort of the current and former staff members of the Oregon Public Policy Dispute Resolution Program. It is written for agencies, organizations, and others involved in

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Commission Drafts Principles for Provider Organizations

The CPR Georgetown Commission on Ethics and Standards of Practice in ADR has developed a set of draft Principles for ADR Provider Organizations as a guide for ADR service providers and their clients, the public, and policy makers. The Commission is a joint initiative of the CPR Institute for Dispute Resolution and Georgetown University Law Center.

Under the leadership of Carrie Menkel-Meadow of the Georgetown University Law Center, the draft principles were developed by a committee co-chaired by Margaret L. Shaw and Elizabeth Plapinger. In September, Menkel-Meadow addressed the PCI State Programs Meeting in New Mexico to explain the purpose of the principles. As the use of ADR expands into almost every sphere of activity, she said, public and private organizations that provide ADR services are coming under greater scrutiny. The growth and increasing importance of ADR provider organizations, coupled with the absence of broadly-recognized standards to guide responsible practice, propelled this effort by the CPR-Georgetown Commission.

An ADR Provider Organization is defined as any entity or individual which holds itself out as managing or administering dispute resolution or conflict management services. This includes all private and public entities, including courts and state agencies, that provide conflict management services such as roster creation, referral to neutrals, process administration and management, and similar activities. It does not include neutrals who provide direct services.

The Principles build upon significant policy directives of the past decade that recognize the central role of ADR provider organizations in the delivery of fair, impartial, and quality services. The core ideas guiding the Commission's effort included 1) the importance of establishing standards of practice in this rapidly growing field, and 2) to inform consumers, policy makers and the broad public about these standards.

Menkel-Meadow said that besides establishing a benchmark for responsible practice, the Commission hopes the Principles will enhance understanding of the field's special responsibilities to provide fair, impartial, and quality dispute resolution services. The Principles are also expected to strengthen

The principles apply to state agencies that provide dispute resolution services

providers' commitment to self-regulation and high standards of practice. In framing the nine Principles that comprise the document, drafters tried to balance the need for clear and high standards of practice against the risks of over-regulating a new, diverse, and dynamic field. Menkel-Meadow

emphasized that the Principles were developed to guide responsible practice and not necessarily to be adopted as rules.

PCI urges state programs to review the Draft Principles at. <cpradr.org>



DR NOTES . . .

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public policy decisions for Oregon, but other states will likely find it a useful resource or model for their own programs. Call the Commission toll-free at 877-205-2462 or in Oregon at 503-378-2877.

Texas Publishes Workplace Mediation Source Book

The Center for Public Policy Dispute Resolution at the University of Texas School of Law in April published *Using Mediation in Employee Complaints and Grievances: A Source Book for Governmental Entities*. The 52-page booklet—the fifth volume in the Center's Public Resource Series—was an outgrowth of two employee grievance/dispute resolution Working Groups sponsored by the Center. It contains a six-step guide to developing and implementing an employee complaint and grievance process, including mediation, involving government employers. For information on ordering the Source Book, visit the Center's website at <www.utexas.edu/law/cppdr/tdrc.html>

Florida Releases State Agency Pilot Project Report

The Florida Conflict Resolution Consortium in July issued a Report to the Governor on the State Agency Administrative Dispute Resolution Pilot Project. The 18-month project was designed to demonstrate the value of administrative dispute resolution and

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DISPUTE RESOLUTION ON LINE

Oregon DOJ puts ADR on line

Attorneys General with an interest in Alternative Dispute Resolution may want to visit the Oregon Department of Justice website at <www.doj.state.or.us/adr>. The site includes a statement of ODJ's policy on appropriate dispute resolution:

"A fundamental function of government is the orderly management of conflict and resolution of disputes. The appropriate method to resolve any given dispute can only be chosen after a careful assessment of the facts and circumstances of the case, including the interests of the parties, the nature of the dispute, and any statutory or policy restrictions governing the use of a particular dispute resolution process.

"In accordance with ORS 183.502, the Department encourages the use of collaborative problem-solving processes, which enable decision-makers and affected parties to jointly engage in problem-solving procedures and which produce mutually beneficial agreements. The Department is committed to the design, development and implementation of innovative, flexible and accessible conflict resolution processes and to assisting staff and clients in the use of these processes.

"The Department of Justice affirms the responsibility of all its employees to make every effort to address disputes as early and effectively as possible, in order to provide more creative and durable resolutions to conflict and to reduce dispute resolution costs."

The website also includes collaborative dispute resolution model rules, mediation confidentiality rules, the Oregon State Agency Mediator Roster, a model "Agreement to Mediate", a model "Personal Services Contract for Facilitation of Mediation Services," and other ADR resources.

Federal Work Group Publishes DR Page

The Interagency Alternative Dispute Resolution Working Group (IADRWG) has published a home page at <www.financenet.gov/financenet/fed/iadrwg/iadrwg.htm>. The Working Group was established to coordinate, promote, and facilitate effective use of dispute resolution processes within Federal agencies, as mandated by the Administrative Dispute Resolution Act of 1996, and a recent presidential Executive Order.

The website contains resources to help federal

agencies in developing ADR programs, and includes links to federal ADR surveys, contacts, policy statements, and Congressional testimony.

CRInfo Supports DR Field

An internet based clearinghouse for conflict resolution information is up and running at <<http://www.crinfor.org>>. CRInfo is a collaboration of a number of conflict resolution organizations and individuals and is funded by the William and Flora Hewlett Foundation. Its goals are to support the work of the dispute resolution field's many ongoing web projects, pursue new projects and fill gaps in the existing information infrastructure, and to provide tools that help users control information overload. The site has annotated and coded links to more than 2,800 web pages, 850 books and articles, and information on more than 800 organizations, programs, events, and individuals. The site is worth a visit, even if you don't have anything specific to search for. The site features a range of new websites and articles that change monthly.



DR NOTES . . .

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encourage state agency implementation of the ADR provisions in the Florida Administrative Procedure Act. The Report to the Governor reviews pilot project activities and findings, and suggests policy initiatives to encourage wider state agency consideration and use of administrative mediation. For information on the report, or to obtain copies, visit the Consortium's website at <<http://consensus.fsu.edu>>.

National Survey of School Conflict Management 2000

The Ohio Commission on Dispute Resolution and Conflict Management has released a 2000 edition of its National Survey of School Conflict Management Legislation. The survey, co-published by the Capital University Law School Center for Dispute Resolution, contains legislation and pending legislation related to school dispute resolution initiatives throughout the country. The survey is available in hard copy or on the Commission's website at <www.state.oh.us/cdr/legislationscm.htm>.

PCI and Portland State University...

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public policy development, and use of consensus based approaches to governing.

Through the Center, PCI will also begin experimenting with an issues-focused approach to training leaders on the use of collaborative methods. PCI has found that public officials are more interested in learning about collaborative processes when they are linked to specific, substantive issues. In partnership with the Center, PCI is developing an agenda of such issues. Once those are identified, the Center will enlist distinguished public officials, practitioners, and scholars to identify methods and strategies for addressing those issues. Their recommendations will be carried out through pilot projects and

developed into resource materials that will be incorporated in PCI's educational and training activities.

The Consensus Center will be located within PSU's Hatfield School of Government and will serve the school's mission of enabling all those involved in governance to work together collaboratively to accomplish their aims. The Center is well suited for the Portland location, as Oregon is one of the most advanced states in the use of consensus building and dispute resolution processes. The PCI Board of Directors will govern operation of the Consensus Center, which is scheduled to begin operation in January.

REQUEST FOR FEEDBACK

ATTENTION NEW PCI NETWORK MEMBERS: PCI can serve your dispute resolution program most effectively by understanding your information needs and interests. Please FAX or E-MAIL your responses to PCI at 505-820-6836 or <kate4pci@aol.com> no later than January 15, 2000. All completed forms will be entered into a drawing for a 3-set package of PCI's most recent training materials—a 75-page how-to book on consensus building titled A Practical Guide to Consensus (\$15), A Trainer's Manual—Getting the Most out of Consensus Processes (\$60), and a 14-minute regulatory negotiation video called Transportation Rulemaking in Oregon (\$15). The winner will be contacted by phone or e-mail in February. Thank you for helping us track this important information.

1. Which of the following best describes your program?

- Comprehensive State Program
- Court Program
- Individual Administrative Agency Program
- State University Program
- Attorney General's Office Program
- State Coordinating Group
- Administrative Law Judge Program
- Other _____

2. What did you find most useful or interesting in this Newsletter?

3. What features or news items would you like to see in future issues of the newsletter?

4. Would you be willing to submit feature or news articles from your state program for this newsletter?

yes no maybe

Possible topic: _____

5. What DR-related publications do you read?

6. What DR-related websites do you find most useful?

7. Which topics or areas of DR expertise would be most useful to you in establishing or maintaining your DR program?

HOW PCI CAN ASSIST PRESENT AND FUTURE LEADERS AND PROGRAMS THAT SERVE THOSE LEADERS

PCI is a national non-profit program working with leaders at the state level—governors, legislators, attorneys general, and others—to establish and strengthen the use of collaborative practices in states to bring about more effective governance. To fulfil its mission, PCI provides information, consultation, technical assistance, educational and training programs, and sponsors meetings, networks, and joint projects.

PCI offers the following services:

- ◆ **Consultation and Technical Assistance**—PCI works with state leaders throughout the country to initiate and strengthen programs for conflict resolution and consensus building within state government. This assistance takes many forms: strategizing with state officials over ways to use conflict resolution and collaborative problem solving; co-sponsoring conferences and workshops; providing information resources and training; and assisting in developing laws, policies, and programs.
- ◆ **Joint Projects**—PCI engages in multi-state projects to help build capacity and demonstrate how states can work on problems jointly with federal, regional, and local agencies. Current projects include the Public Policy Dispute Resolution Program Evaluation, and the Gulf of Mexico Consensus Building Partnership, which will begin this Spring.
- ◆ **Meetings and Conferences**—PCI holds annual meetings and workshops for state dispute resolution programs. These meetings provide opportunities to exchange information and to network with other state DR leaders. PCI also sponsors meetings and workshops in partnership with other organizations such as the Council of State Governments, the National Center for State Courts, the National Conference for State Legislatures, and others.
- ◆ **Networks**—PCI develops and maintains networks that serve state leaders. Examples of current projects include a network of state agency DR coordinators, and a forum for state programs in which DR leaders can quickly exchange ideas and information with one another.
- ◆ **Information Resources**—PCI produces an array of informative publications and materials to promote best practices and to guide state government policies and practices concerning the use of collaborative processes.
- ◆ **Education and Training Programs and Materials**—PCI develops and delivers education and training programs for public officials in the use of collaborative processes.

www.policyconsensus.org

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To order copies of current or past Newsletters, or to submit articles about your state DR program initiatives, contact the Santa Fe PCI office or send e-mail to <kate4pci@aol.com>.

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