

June 1999

## Update to State Offices of Conflict Resolution

### ✠ **Symposium/Workshops focusing on State Court Programs at SPIDR in Baltimore - September 22nd and 23rd**

On the day prior to SPIDR's Annual Conference, September 22, 1999, PCI will co-sponsor a symposium on The State of State Court Dispute Resolution Programs with the Benjamin Cardozo On-Line Journal of Conflict Resolution. The symposium will be held from 1 - 5 PM on Wednesday. Then on Thursday morning from 9AM - 12 PM, PCI will host workshops for all state programs on topics growing out of the symposium discussions, as well as other suggested topics. Since PCI hosted a meeting for public policy dispute resolution programs in conjunction with the May 1999 SPIDR Environment/Public Disputes Sector meeting, we thought it appropriate to focus the attention of this meeting on court-related programs.

The Symposium will have one panel made up of state court DR program leaders and a second panel of academics examining the following questions with the audience: *What are state court DR programs presently doing? What should they be doing? What do they need to be successful?* There will be plenty of opportunity for discussion. The results of the Symposium will be published in the new Cardozo Journal.

Arranging the meetings in this way will allow you to travel to Baltimore Wednesday AM. Please RSVP to Lee4pci@aol.com at PCI Santa Fe if you will attend the symposium and/or the Thursday morning workshop. We will keep you informed about the plans for the Symposium and the workshop as they develop.

### ☰ **New PCI Publication:**

#### **States Mediating Solutions to Environmental Disputes**

PCI has just put together a new publication, geared toward public officials, about states using consensus approaches to resolve environmental disputes. Similar to *States Mediating Change*, published last fall, the piece highlights 5 successful case studies, interspersed with background information about consensus building. The five cases in this publication cover topics such as endangered species issues, coastal zone management, Superfund clean-up, instream flows, and water quality. We will be mailing all of you a few copies, and are happy to supply you with as many as you need of this useful tool for spreading the word about consensus building in states. Please let us know how many you would like for your office.

### **Best Practices for Managing Science Information**

Peter Adler led a very interesting session at the Keystone Sector meeting on this topic. He is leading a small working group that is developing a set of core principles and best practices for managing scientific and technical information in public policy cases. We have posted the draft on the PCI website at [www.agree.org/adrtheory.html](http://www.agree.org/adrtheory.html). Peter welcomes your comments and input on the draft.

### **Training Materials available in July**

We are pleased to announce that we are publishing both the Trainer's Manual and Deskbook of the "Getting the Most Out of Collaborative Processes" project in July (although the final titles of each are yet to be announced). After many revisions, these materials have become invaluable tools for training government agency folks and others about how to sponsor and participate in consensus processes. PCI will be selling these materials as a way to raise funds to support our activities. **We need your help in marketing the materials.** Please let us know whether you can help us out in your state; we can supply you with brochures. Keep an eye out for the new brochure *or* you can pre-order your copies by calling Deb at PCI's North Dakota office.

### **National Environmental Roster Progress**

The US Institute for Environmental Conflict Resolution will probably open the application process for the national environmental roster sometime in August and the application period will be open for two months. Several states have expressed an interest in piggybacking on this effort to update, or initiate a roster you can use in your state. Stay tuned by turning to the Institute's new website, [www.ecr.gov](http://www.ecr.gov).


### **Uniform Mediation Law and Implications for States**

The June 1999 draft of the proposed Uniform Mediation Act (UMA) includes three central provisions, in addition to definitions that apply throughout the act (Section 1). The first two sections deal with confidentiality in mediation, with Sections 2 establishing a confidentiality privilege for mediation communications that may be asserted by the disputants, participants and mediator(s), and Section 3 further barring mediator disclosures to courts, administrative agencies, and the general public. Section 4 addresses three issues relating to the quality of mediation: disclosure of qualifications, mediator immunity, and the right of disputants to representation by counsel or other support persons. Finally, Section 5 proposes provisions allowing for judicial enforcement of agreements to mediate and the confirmation of mediated settlement agreements through amendments to the Uniform Arbitration Act. Section 5 is offered for discussion purposes only, and has not been approved by either Drafting Committee.

The UMA web site, [www.stanford.edu/group/sccn/mediation](http://www.stanford.edu/group/sccn/mediation) provides a vehicle for you to make comments and ask questions on issues of particular interest or concern. You can also subscribe to an e-mail contact list to receive the latest information. To subscribe, please send an e-mail to [rcreuben@law.harvard.edu](mailto:rcreuben@law.harvard.edu).

**Give Us Your Feedback:** PCI has not yet made public comment with regard to the proposal. The proposal does not deal with issues of the conflict between confidentiality provisions and sunshine laws. Should PCI be formulating recommendations for the UMA on these issues? Do you have any comments?

 **USIECR's Confidentiality Policy: Do You Have One?**  
Speaking of confidentiality, you may want to take a look at the draft confidentiality policy the US Institute for Environmental Conflict Resolution has developed. It will be issued as a federal rule later this summer. In the meantime, they are soliciting comments from all quarters. We think state public policy dispute resolution programs may want to look at their policy. Do you have a confidentiality policy governing matters your office handles? For more information, visit their new website at [www.ecr.gov](http://www.ecr.gov).

 **Heartland Mediator's Association Conference**  
In April, Chris and Dick gave one of the Keynote speeches at the Heartland Mediator's Association meeting in Lawrence, Kansas. This regional conference hosted 160 attendees from 14 states. Next year's meeting will be held in Nebraska. For more information about next year's conference, contact the Association at (913) 381-4458.

### **Resources on the Web . . .**

Jerry Neugarten of New York has put together some stats on cost savings. They can be found at [www.capital.net/~jerryn/costsavings.htm](http://www.capital.net/~jerryn/costsavings.htm).

**Headwaters.org** contains relevant news of the Rocky Mountain west and beyond. They also feature a section called, "Practicing Democracy" with hot links to legislatures in all Rocky Mountain states and provinces.

**Navy ADR Site** contains some useful information on government ADR:  
[www.ogc.secnav.hq.navy.mil/adr/](http://www.ogc.secnav.hq.navy.mil/adr/).

### **News from the states**

#### **Maine Passes ADR-related Legislation**

Two interesting pieces of legislation were enacted by the Maine legislature this session. One was a new dispute resolution program for property damage disputes arising from the construction of an interstate natural gas pipeline. The other relates to guidelines for "best practices" for agencies using collaborative, consensus-based processes.

#### **Maryland ADR Commission Releases Practical Action Plan**

The Maryland ADR Commission recently held four regional public forums around the state, as part of a statewide consensus-building process, to discuss the first draft of their Practical Action Plan. The Plan, which was developed through a multi-disciplinary collaborative process, contains projects to advance the use of ADR in Maryland's courts, neighborhoods, schools, state and local governments, criminal and juvenile justice arena and business community. Input on the first draft is very welcome, especially from other states, and will be accepted until the beginning of July. It can be found at [www.courts.state.md.us/adr3.htm](http://www.courts.state.md.us/adr3.htm). The Plan is slated to be finalized in late Summer and implementation will begin in the Fall.

#### **Michigan Proposes New Court Rules Including ADR**

In May, the Michigan Supreme Court invited public comment on proposed new court rules designed to advance the use of ADR in Michigan trial courts. The court rule proposals were included in the Michigan Supreme Court Dispute Resolution Task Force Report, released in January 1999.

The proposed rules:

- Authorize courts to require parties in general civil and domestic relations actions to attempt resolution of their dispute through a non-binding dispute resolution process
- Allow parties to “opt out” of using a non-binding process for good cause shown
- Encourage parties to select their own dispute resolution process and provider
- Establish minimal qualifications and ethics provisions for persons serving as mediators

Copies of the task force’s full report may be obtained from the State Court Administrative Office, P.O. Box 30048, Lansing, Michigan 48909.

### **North Carolina Hosts Workshop and Develops Guidebook**

The Institute of Government at UNC is planning to host the workshop, "Getting the Most Out of Collaboration," for 40 top administrators in the NC Department of Environment and Natural Resources. Chris Carlson will join John Stephens in leading the workshop that is an outgrowth of the Best Practices guidelines.

IOG is also developing a *Guidebook on Public Dispute Resolution in North Carolina* outlining the potential benefits of using an impartial third party on public disputes. The Guidebook will summarize six cases of mediation/facilitation in public disputes.

### **Ohio**

The Supreme Court of Ohio has approved grant funding for ten new civil division court mediation programs. Grants will provide for mediator and support staff salary. Grants are part of Supreme Court of Ohio Chief Justice Tom Moyer's commitment to have a staff mediator available in each of Ohio's 88 counties by 2005.

### **Texas: Evaluation Study Reports**

The Center for Public Policy Dispute Resolution in Texas recently completed an evaluation of five pilot projects in Texas which use mediation to help resolve Child Protective Services cases. Although the study relied primarily on qualitative research and the quantitative component suffered from a small sample size, the final report concludes that mediation appears to be an effective alternative to the traditional case management process. Participants in the study commented favorably on the mediation process’ capacity for better managing highly emotional issues, and reported that mediation helped to resolve cases more quickly than the traditional process.

### **Federal**

The recent Supreme Court decision of *West v. Gibson* held that the EEOC possesses the legal authority to require federal agencies to pay compensatory damages when they discriminate in employment in violation of Title VII. Written by Justice Breyer, the decision provides strong encouragement for early, informal resolution of EEO disputes. The entire decision can be found at <http://supct.law.cornell.edu/supct/html/98-238.ZS.html>.