

**PCI
MAY 2000 NEWSLETTER**

New PCI Video Features State Sponsored Consensus Process

A new video titled "*Building Consensus: Transportation Rulemaking in Oregon*" is now available through PCI. This 14-minute production is an invaluable guide to the principles of consensus building, featuring an in-depth look at how one state resolved a complex public issue around transportation and development interests. Representatives of each key stakeholder in the Oregon process, including Oregon Gov. John Kitzhaber, are featured in the film. The videos are \$15 each plus shipping and handling.

The video is designed to be used in conjunction with The Trainer's Manual, *Getting the Most Out of Consensus Processes* and the accompanying *Practical Guide to Consensus*. Both the Trainer's Manual and the *Practical Guide* are written primarily for government sponsors of consensus building process, but they also are useful to anyone else interested in convening or participating in a collaborative problem solving process. The *Practical Guide* is \$15 and the Trainer's Manual is \$60.

A three-set package of each of these materials (the *Practical Guide*, Trainer's Manual, and video) are available at a discounted rate of \$75 plus shipping. To order the package or the individual materials, call the PCI offices in Santa Fe or Bismarck, or send e-mail to kate4pci@aol.com .

Breaking Through Barriers

A PCI Work Group addressing ways to overcome barriers to the use of dispute resolution (DR) in states uncovered a pattern of turf issues arising over how DR services will be provided in some states. In the past, these issues often arose between private and "in-house" providers. Now they are emerging among different provider groups *within* state governments. The Barriers Work Group, examining what it takes to develop a vibrant environment for DR within states, concluded that states need to engage practitioners—public and private—to work collaboratively to address their turf issues.

For those of us in the DR business, this may be a good time to start "walking the talk" by creating forums where all providers can develop a shared vision for the future as well as surface their differences. PCI will work with states interested in developing processes for bringing together the various members of the DR community. This could take the form of a joint assessment to examine the state's legal and regulatory framework for DR as well as funding mechanisms, incentive (or disincentive) structures, and service mechanisms (state office, administrative law judges, attorneys general, private sector, agency rosters, etc.) that exist within state government.

The Uniform Mediation Act (UMA) may be a vehicle for advancing a state's dispute resolution system and could serve as an impetus for making this kind of assessment. Such an assessment could help position a state to decide what approach to take toward the UMA if and when it comes along. In addition, an assessment could be used not only to measure the impacts of the UMA, but to determine what other provisions could be put in place at the same time to overcome barriers to use of dispute resolution.

Demonstrating Effectiveness

State dispute resolution programs are finding themselves in need of ways to assess their effectiveness and whether their services are a good investment of both public and private dollars.

A partnership among PCI, the US Institute for Environmental Conflict Resolution, the Massachusetts Office of Dispute Resolution, and the Oregon Commission on Dispute Resolution is working on designing a common approach or methodology to program evaluation. By using standardized approaches, information from similar programs can be compared and aggregated.

The partnership's intent is to develop a 'best practices' approach. This includes a set of useful principles for evaluating public policy dispute resolution programs that could be used by other federal and state programs to monitor and demonstrate the effects of their dispute resolution activities.

A second, shorter-term goal of the partnership is to develop and test a self-administered evaluation framework to enable the three programs to measure the effectiveness of their specific programs.

Because state dispute resolution programs have very few resources, this initiative takes into account the resource constraints under which states are operating. The first results are expected in the Summer of 2001.

USDOT Implements "Environmental Streamlining"

By W. Steve Lee

Periodically, Congress must reauthorize the legislative authority for the U.S. Department of Transportation (USDOT) to finance highway, transit, and other transportation projects. During deliberations on the bill, state and local governments, road builders, and others testified that there is an increasing number of projects that are behind schedule. Stakeholders attribute the problem in part to the lack of coordination among federal agencies during the environmental review of transportation projects.

To meet this mandate, as stated in the Transportation Equity Act for the Twenty-first Century (known as TEA-21), the USDOT will revise its National Environmental Policy Act (NEPA) implementation regulations and related policies to ensure early and full consideration of potential environmental impacts on transportation projects. This new process, called "environmental streamlining," is designed, among others goals, to identify conflicts between agencies earlier on in decision-making processes.

The streamlining initiative provides opportunities for state and local DR programs to build relationships with transportation agencies, to provide assistance to these agencies during all phases of the transportation planning and implementation process, and to bridge information or cooperation gaps between federal and state agencies.

The U.S. Institute for Environmental Conflict Resolution (an independent federal agency that assists parties in resolving environmental conflicts involving federal agencies or interests) will provide assistance in developing guidance which includes a national ADR policy and procedures that define an ADR system for transportation project-level issues. The system will focus only on disputes among federal agencies and disputes between federal and state agencies.

In addition to developing a national ADR policy and set of procedures, the Institute will establish a national network of neutrals with transportation and NEPA experience to support agencies as they implement and institutionalize streamlining. Finally, the Institute will develop an ADR training program for public officials who manage NEPA and transportation decision processes.

For more information on the project, contact W. Steve Lee, Project Manager, at (718) 384-4946 or wstevelee@earthlink.net . For general information on environmental streamlining, visit www.fhwa.dot.gov/environment/strmlng.htm .

W. Steve Lee was formerly State and National Program Director with the National Institute for Dispute Resolution (NIDR), where among other things he worked with state offices of dispute resolution.

PCI Update

New Web Site—PCI is overhauling its Web site and moving to a new URL. By mid-July, PCI will be online at www.policyconsensus.org . The new site will continue to offer information on developments in ADR legislation, executive orders, resolutions, and policy statements. It will also include updated and easier-to-access state program information; PCI's various publications, including current and back-issues of newsletters and workgroup reports; and useful links to other agencies and sites involved in public policy.

The Annual PCI Meeting for State Programs is scheduled for September 13 and 14 in Albuquerque, NM. Sessions will cover university-based state programs of DR, what states are doing legislatively, developments in ADR program evaluation and research design, implications of growing, marketing ADR programs, and other topics. For information on the meeting contact the PCI offices in Santa Fe.

PCI Co-Executive Director Dick Gross will speak June 2 at the First Annual Vermont ADR Conference at Woodbury College. The conference marks the culmination of Vermont Conflict Resolution Month, being celebrated throughout May. A Governor's Proclamation was issued at the kick-off event, which was also attended by legislators, the Lt. Governor, and Vermont's Speaker of the House.

State Programs Update

The Governor's State Agency ADR Task Force of **Alabama** is hosting a May luncheon for principals of state agencies, state universities and law schools, state employees, legislators, etc. The governor and the attorney general, who will speak at the luncheon, sent a joint letter encouraging attendance prior to the formal invitations being sent. At the luncheon, the Task Force will present a short program about the use of ADR in the state administrative setting with examples of some successes. Each person attending will be asked to appoint a representative from his or her agency to be part of a Fellows Program (a 'state ADR working group'). In the fall, a Fellows training will be held.

The **Alaska** Court System in February adopted an innovative way of resolving issues in Child In Need of Aid (CINA) cases. These two-year, federally funded pilot projects in Anchorage, Fairbanks, Kenai, Kotzebue, and Bethel will use mediation in referred CINA cases when a child has been placed out of home and there are disputes about various aspects of the case plan. The court-connected CINA mediation is a voluntary process designed to improve and increase the resolution of contested treatment, placement, support services, and visitation issues, and to encourage early development of a written case plan. There will be ongoing monitoring of the effectiveness of this program, which will also be evaluated at its conclusion. For information on the projects contact Karen Largent, Alaska Court System Dispute Resolution Coordinator, at 907-264-8236 or klargent@courts.state.ak.us .

The **Florida** Conflict Resolution consortium (FCRC) has released a final report on an 18-month State Agency Dispute Resolution Pilot Project. The project was aimed at demonstrating the value of administrative dispute resolution and encouraging state agency implementation of the ADR provisions in the Florida Administrative Procedure Act. Supported by the Florida Legislature, the project demonstrated millions of dollars saved through mediated and facilitated rulemaking initiatives. A copy of the report is available on the Consortium's website at <http://consensus.fsu.edu> .

Congratulations to the Consortium for its national "Significant Achievement" award from the Center for Public Resources (CPR) Institute for Dispute Resolution in New York City. The award recognizes the Florida program for "bringing ADR into the mainstream of government consensus building and conflict resolution." FCRC Director and PCI Board member Bob Jones accepted the award on behalf of the Consortium and Florida State University.

Ansley Barton has resigned as director of the **Georgia** Office of Dispute Resolution. She has accepted a position as professor and director of a new degree program for a Master of Science in Conflict Management at Kennesaw State University. "I am very excited about the enormous challenge involved in this new undertaking," Ansley says. "At the same time, I feel a great deal of sadness in leaving my present position and in leaving the Georgia Supreme Court after 20 years. I am grateful to have had the opportunity to work with many colleagues in many states for the past 10 years." Congratulations and best wishes, Ansley!

Hulett Askew will serve as Georgia's interim director until a permanent director is named.

The **Kansas** Supreme Court's Advisory Council on Dispute Resolution is working with the University of Kansas to develop a research project investigating the effects of domestic mediation on state courts. According to DR coordinator Art Thompson, the goal is to review a number of files from courts which have mandated mediation in child custody/visitation cases for a number of years and compare that information with courts of similar demographics that do not mandate mediation in such cases. The Council hopes to compare the number of post divorce motions and measure potential hourly savings. A recent survey of state judges showed a perceived savings of one to nine hours for each mediated child custody/visitation case. The judges also believe that parties in mediated cases are more likely to pay their child support than those who were not involved in mediation. A similar study was recently completed in **North Carolina** (see below).

The **Maryland** ADR Commission has received substantial positive feedback on its recently released practical action plan titled “Join the Resolution.” The plan is the Commission’s strategy for advancing appropriate uses of mediation and other ADR processes in courts, communities, schools, government agencies, criminal and juvenile justice systems, and businesses. Maryland’s new commission represents one of the most comprehensive programs in the country.

In response to the plan, the state legislature “joined the resolution” by allocating \$1.29 million for the Commission’s ADR projects alone (not including operations) and by approving two additional hires in fiscal year 2001, which begins July 1. As a result, the Commission will be recruiting a public policy coordinator to head efforts to encourage the use of ADR by state and local government agencies, and an education/outreach coordinator to lead the Commission’s public awareness activities. The Commission also has helped create the Maryland Association of Community Mediation Centers (MACMC) to strengthen and support community mediation programs and to encourage the growth of community mediation statewide. MACMC’s board recently named Nick Beschen as its first Executive Director.

The **Massachusetts** Office of Dispute Resolution (MODR) has designed and implemented (or is in the process of creating) three new ADR programs with the following State Agencies:

- 1) Department of Telecommunication and Energy—A program to provide mediation, case evaluation and arbitration services for damage claims and consumer complaints in the electric industry.
- 2) Massachusetts Commission Against Discrimination (MCAD)—A program to provide mediation, case evaluation and arbitration services for cases in which a state agency is one of the parties. This program is now fully operational and receiving referrals from MCAD.
- 3) Massachusetts Rehabilitation Commission (MRC)—A mediation program to handle cases concerning the provision of vocational rehabilitation services to applicants or eligible individuals. MODR will provide program design, implementation and coordination of the program, as well as identify a subset of MODR’s panel of private sector neutrals who are qualified to mediate such cases.

A **New York** State Roundtable for Consensus on Tire Management, co-facilitated by Allen J. Zerkin and Jean-Ann McGrane, reached a full consensus on recommendations that are the basis for a bill soon to be submitted to the New York State legislature. The bill addresses longstanding problems regarding regulation and enforcement of disposal, financing remediation of existing “orphan” scrap tire piles, and development of new markets for scrap tire-derived materials that can absorb the on-going stream of scrap tires. Underlying the recommendations were the many lessons learned from failed, failing, or unsustainable expensive programs that have been tried throughout the country. Copies of the Roundtable’s report can be obtained from Michael Blumenthal at the Scrap Tire Management Council, 1400 K Street NW, Suite 900, Washington DC 10005; 202-682-4882; stmc_michael@rma.org .

The **North Carolina** Administrative Office of the Courts has published a 92-page evaluation of its custody mediation program. "The Child Custody and Visitation Mediation Program in North Carolina: An Evaluation of Its Implementation and Effects" was funded by a grant from the Governor's Crime Commission in North Carolina. To obtain copies of the evaluation report, contact Program Administrator Mark Van Der Puy at 919-733-7107.

The **Ohio** Commission on Dispute Resolution and Conflict Management recently evaluated the effectiveness of its Truancy Prevention Through Mediation Project. The evaluation was funded by a grant from Ohio's Office of Criminal Justice Services. During the 1998-99 school year, data was collected from 12 schools in three counties. Before mediation, the average number of absences in participating schools in Delaware county was 2.84 per student per month, and in Lucas county 2.39. In Stark county, the average was 2.7. Following mediation, the average number of absences in the participating Delaware county schools dropped to 1.17, to 1.57 in Lucas county, and in Stark county to 1.94, which is statistically significant. A significant decrease was also found in the average number of times students were tardy each month. Truancy is a significant problem for Ohio youth and youth nationwide. The Commission is working with the Supreme Court of Ohio to expand this project and its promising results. For information about the project or to order an evaluation report, contact Randy L. Fisher, Director of Community and Court Programs, at 614-752-9595.

A Special Projects Subcommittee of the Government Lawyers Committee of the **Pennsylvania** Bar Association is focusing on the creation of a mediation program for government agencies. The goal of the committee, which formed in December 1999, is to encourage the use of mediation by state, county, and local agencies in the Commonwealth of Pennsylvania, and to prepare model mediation policies for use by these agencies. One agency that has been using and actively promoting mediation in government is the Pennsylvania Public Utility Commission (PUC). In October, the Commission released a revised mediation policy that expanded the use of mediation in PUC proceedings. For information on the activities of the PUC or the Bar Association's Special Subcommittee, contact Herb Nurick, PUC Mediation Coordinator, at 717-783-5428 or nurick@puc.state.pa.us.

The Center for Public Policy Dispute Resolution at the University of Texas School of Law has been named administrative unit for the University's new interdisciplinary Graduate Portfolio Program in Dispute Resolution. Law students and students enrolled in master's or doctoral programs may participate by completing 12 credit hours of dispute resolution courses selected from participating academic departments and incorporating those courses as part of their primary degree plan. The program will convene a symposium each semester in which students from across the University will present papers. Participating schools and departments in the University include the LBJ School of Public Affairs, School of Architecture (Urban Studies and Land Planning), College of Engineering, School of Social Work, School of Nursing, and College of Communications. Program enrollment will begin in the 2000 Fall semester.

The Judicial Council of **Virginia** recently recommended legislation that would provide compensation to mediators providing court-connected services in custody, visitation, and

support cases. Senate Bill 127 requires that a \$100 fee be paid by the Commonwealth of Virginia to (court-certified) mediators appointed in any custody, visitation, or support case. The bill passed the 2000 General Assembly and was signed by the governor. It goes into effect July 1. The new legislation will allow courts to appoint a family certified mediator in all appropriate cases to conduct a dispute resolution orientation session and mediation at no cost to the parties. In addition to Senate Bill 127, the General Assembly approved a budget amendment for \$250,000 for contracts with mediation providers for fiscal year 2000-2001 and \$500,000 for fiscal year 2001-2002. This funding, added to the program's existing \$200,000, enables the Office of the Executive Secretary (OES) to support Community Mediation Centers and private mediation providers to a greater extent by allocating more funds for provision services to the courts. While Senate Bill 127 provides funding for family cases, this additional money allows OES to focus on the general district and circuit courts. For more information on the legislation, contact Geetha Ravindra by email at gravindra@courts.state.va.us.

New Mexico Gets DR Legislation, Executive Order

The New Mexico State Legislature in January passed the Government Dispute Resolution Act, which authorizes and encourages state and local governments to use ADR to address conflicts and make government more effective. While the bill did not authorize the appropriation of funds directly, it allows agencies to request authority to move money around in their budgets for ADR purposes. This budgetary clause may appear inconsequential, but it is an important step toward making resources available for ADR across the state. The New Mexico Consensus Council (NMCC), a newly emerging state program housed at the University of New Mexico, was responsible for getting the bill introduced and effectively lobbying it. Significant support came also from state agency leaders, the bar and trial lawyers, and the state's municipal league.

Borrowing from experience in other states, NMCC suggested the idea of an Executive Order to urge state agencies to act on the newly passed legislation. Leaders in state government, led by the Secretary of Energy, Minerals and Natural Resources and the Environment Department, put together a surprisingly far-reaching executive order that was signed by Governor Gary Johnson in mid-April.

Some of the noteworthy provisions of the Executive Order include designation of a lead agency—the Risk Management Division of the General Services Department—to implement the Act and Executive Order, and creation of an ADR Advisory Council with representation from each agency that must report annually to the Governor.

The Act stipulates that each executive branch agency will designate an ADR coordinator who will report to the head of the agency. Both the coordinator and agency head must attend a training session by June 30. The agencies must develop plans for implementing ADR and training managers and staff.

For a copy of New Mexico's Government Dispute Resolution Act, or of the Executive Order, contact the Santa Fe PCI office.

DR's Appeal Growing At Local Government Level

The concept of using collaborative processes at the local government level is gaining momentum. A number of states recently have undertaken initiatives to provide consensus building processes or training forums for local government agencies.

At the University of Arkansas, for example, the Institute of Government sponsored a one-day conference for county judges, mayors, municipal attorneys, city council members, and other local elected officials. PCI's Chris Carlson, who addressed the conference, was impressed by the turnout of local officials.

"Local government officials find themselves on the firing line every day," she said. "They seemed to really appreciate learning about new tools for managing conflict."

In New Mexico, members of the New Mexico Consensus Council met with the director of the state's municipal league, who says he is eager to work with NMCC to develop programs for local elected officials. NMCC is an emerging state office that is beginning to sponsor consensus building projects around the state.

Multiple initiatives are well underway in North Carolina. John Stephens at the University of North Carolina's Institute of Government held workshops recently for local government finance officers on use of mediation for school budget disputes, and for a Greensboro task force on developing consensus around a tree preservation ordinance. Stephens also has facilitated numerous meetings involving local government entities, including water quality issues, school board planning, and priority setting for county commissioners.

The Natural Resources Leadership Institute at North Carolina State University convenes meetings with local, state, and federal governmental agencies, as well as private industry, community members, and environmental organizations to build consensus around the state's environmental policies. And the Mediation Network of North Carolina's Public Disputes Program involves local government agencies in facilitated processes aimed at HIV and AIDS service provision, domestic violence and low-income housing policies, and community visioning in Orange County.

The Ohio Commission on Dispute Resolution and Conflict Management is also involved in a local government initiative. A program titled "Conflict Resolution Services for Government Officials" assists local officials in managing conflicts that arise over budgets, personnel issues or other organizational matters. The Commission's most recent newsletter includes a feature article by Maggie Lewis on "Building Collaboration in County Government," with examples of past and current projects around the state.

With so much growing interest, state offices may find it worthwhile to meet with municipal leagues or county commissioner associations about cosponsoring similar kinds of projects. Contact the PCI Santa Fe office for names and numbers of the initiatives listed here or for more information on ways to involve locally elected officials.

Enlibra Online

The Enlibra Resource Guide, completed recently by the Western Governor's Association, is now available on the association's website at www.westgov.org. WGA compiled the resource guide with assistance from a broad-based advisory group that included government, academic, nonprofit, and environmental organizations.

DR Calendar of Events

JUNE 8-10 — The Summit of the States on Conflict Management and Dispute Resolution. Lexington, KY. Sponsored by the Council of State Governments and the University of Kentucky. For information contact Bert Harberson at (606) 244-8228 or bharberson@csg.org.

JUNE 19-10—Governor’s Forum on Environment and Natural Resources: Learning to Build Agreement for Wyoming’s Future. Riverton, WY. Sponsored by the University of Wyo. Institute for Environment and Natural Resources, and the Governor’s office. Co-sponsors include PCI, Bureau of Land Management, U.S. Forest Service, Western Governor’s Association, and others. For information contact IENR at 307-766-5058 or e-mail Katy Mays at kmays@uwyo.edu .

SEPTEMBER 12-13 — PCI’s Annual Meeting for State DR Programs, Santa Fe, NM. Topics will include university-based state programs of DR, what states are doing legislatively, developments in ADR program evaluation and research design, implications of growing, marketing ADR programs, and other topics. For information contact PCI in Santa Fe at (505) 984-8211 or kate4pci@aol.com .

SEPTEMBER 14-16 — 28th Annual SPIDR Conference, Albuquerque, NM. “Opening the Way to a Civil Society: Creating a Culture of Community and Dialogue.” For information write to Janice Robertson at spidr@spidr.org .