

THE VMN LINK

Connecting the Virginia Mediation Community

March 2021



President's Message

Happy Mediation Month! I sincerely hope you have remained healthy through this trying time. Lives have been turned upside down and we all look forward to a more “normal” time. However, I suspect life will look very different going forward. I remain convinced our profession has much to offer our fellow humans as they try to navigate life after pandemic. Have you reached out to your community’s leadership to offer your expertise?

Governor Northam honored our profession with a Proclamation. It is nice to be noticed! VMN and the Board of Directors continue to work very hard to research and provide benefits for you, one of which is the new membership program Wild Apricot. After a few glitches, it is working well. You now can select your annual renewal date and can even set it up for auto renewal.

Please welcome our new Administrator, Christy Brimmer. She started March 1st and we are so lucky to have her. She has a vast skill set and will be a real asset. We also have two new faces joining the Board of Directors: Ron Williams and Andrew Pizzi. They both bring a wealth of knowledge and experience.

Wishing you a wonderful spring filled with your favorite things.

Peace be with you,

Pamela Struss
VMN President 2020-2021
pamelastruss@gmail.com

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Calling All VMN Members...

One of the ways you can get the most out of your VMN membership is to participate in a committee. By doing so you can help shape the future of VMN and the ADR field. Please be in contact with the person listed below to join a committee. Committees meet approximately once per month for one hour at a time most convenient to members.

| | | |
|-------------------------------|----------------------------|--|
| Membership Committee | Christine Poulson, Chair | info@resolutionvirginia.org |
| Conference Planning Committee | Vickie R. Williams-Cullins | vickierwilliams@opndoor.com |
| Legislation Committee | Kristen Kalina | kmk@novamediation.com |
| Bylaws Committee | Kristen Kalina | kmk@novamediation.com |
| Nominating Committee | Vickie R. Williams-Cullins | vickierwilliams@opndoor.com |
| Finance and Budget Committee | Bob Carpenter, Chair | bobcmmediation@outlook.com |

Welcome Back and Welcome Aboard!

We are so grateful to VMN members who have renewed their memberships and continue to make VMN a dynamic organization. Listed below are VMN's newest members who joined for the first time in 2021. **We look forward to connecting with past members and getting to know our newest members.**

Joined for the first time in 2021:

Sarah Ahmed Atif, Burke
Christopher Hill, Glen Allen
David McCaskey, Mount Sidney
Julianne Mueller, Falls Church
Tameka Nixon, Wilmington
Colonel Pratt, Hopewell
Corrie Sirkin, Manassas
Douglas Spoons, Virginia Beach
Elanna Weinstein, Reston
Henry Yampolsky, Blacksburg

If you have not yet renewed your VMN membership (or you know someone who would be a great addition to our network), please go to <https://www.vamediation.org/membership/become-a-member-today> or share this membership link.



Feeling Blue...or Red? Try a Braver Angels Workshop!

I was tired of animosity and division. I knew I must have more in common with the people in my country than the media was letting on. I needed to do something to work toward unity.

In February I participated in two workshops sponsored by Braver Angels (<https://braverangels.org/>), a non-profit organization dedicated to *restoring civic trust in the USA, healing the wounds between left and right and challenging institutions to be better, build community together, and discover what it means to be American in our time.*

I first participated in Braver Angels' *Depolarizing Within* workshop designed to help participants recognize their biases and the origins of those biases. The LAPP method was also introduced to help de-polarize conversations: Listen, Acknowledge, Pivot and Perspective.

Then I participated in a *Red-Blue Workshop*. This workshop includes six blue participants (people who lean Democratic) and six red participants (people who lean Republican). Through four safe and well-crafted exercises, over two half-days we discussed how each side is perceived and asked questions that helped us to better understand each other. We were able to bond a bit and recognize our similarities across political parties. We also recognized that within our red or blue groups there were differences. Perhaps we were not as divided as we thought.

Both these workshops were well worth the time. If you don't want to participate in a Red/Blue workshop you can log in as an observer. I encourage anyone who wants to play a role in bridging the divide in our country to peruse the Better Angels website and see what they have to offer.

*Written by Christine Poulson
VMN Board of Directors
Membership Committee Chair*



HAPPY 30TH ANNIVERSARY TO VIRGINIA MEDIATION NETWORK

Continuation of Happy 30th Anniversary

In celebration of VMN's 30th Anniversary in 2020, this article is the last installment of the look back at highlights and significant events in the organization's life. It can be instructive and enlighten members of how the organization developed. All the information included in this article are taken from the minutes.

In 2012, the Board discussed revising the organization's committee structure and trying a new concept for the spring conference. Instead of having a multi-day conference, the conference committee proposed a one-day conference with a national speaker. The Board agreed and the Spring 2013 conference was held with national speaker Sharon Strand Ellison.

The Board also held a retreat in early 2013 and worked on many topics including the organization's Mission/Vision statements (which can be found on VMN's webpage under the "About Us" tab).

An ongoing concern in 2013 (and in ensuing years), was the decline in the number of certified mediators in the state; down to 500 at this time. Reasons mentioned were barriers to getting certified as well as Supreme Court requirements. The Board also looked to shift conferences from hotels to higher education sites in order to build relations with academia, help attract younger members, and be more cost effective. The Spring conference was held at the University of Richmond Alumni Center and the fall Conference was held at Eastern Mennonite University in Harrisonburg area. During 2013, VMN updated the organization's website to make it easier to use. The Legislative Committee was also busy and the organization supported legislation to eliminate a requirement in JDR child support cases to include the child support worksheet when no agreement was reached.

At the 2013 annual membership meeting, VMN member Bob Carpenter (now VMN Treasurer) proposed that the organization approach the Virginia General Assembly and request an increase in the compensation mediators are paid for court referred mediations. After much discussion among the membership present, a resolution was passed (with one vote in opposition) that stated "Now be it resolved, the Members of the Virginia Mediation Network have declared its Board of Directors, or any special task force the Board may appoint, launch a two step process to investigate, research and report back to membership on the decision to advocate the Virginia General Assembly for an increase in Mediator pay to a level consistent with the professional service that Mediators provide to the Commonwealth."

Work began on this proposal at the end of 2013 with an initial information meeting between VMN President Jennifer Phillips and Board members Karen Richards and Lawrie Parker with Mark Rubin of the Virginia Center for Consensus Building (VCCB) at VCU who has years of experience as a mediator, government official and lobbyist. He provided the group with thoughts and suggestions as to how to move forward regarding mediator compensation.

The Mediator Compensation Task Force (MCTF) was formed in early 2014 and included VMN members, VMN Board members, Dispute Resolution Services representatives and Christine Poulson of the Virginia Association of Community Conflict Resolution (now Resolution Virginia and Christine is now a current VMN Board member). The MCTF researched and developed a report on the history of mediator compensation in Virginia. It also developed a 17-question survey about mediator compensation that MCTF members used in discussions with state court coordinators in the southeastern US. The MCTF also created and developed a survey about mediator compensation that was sent to all Virginia Certified Mediators.

The MCTF reported its findings at the September 14, 2014 VMN Annual Member Meeting and concluded pursuing the General Assembly for an increase in mediator compensation would be a multi-year, multi-prong process and require significant effort by the VMN membership. The MCTF in November of 2014 recommended to the VMN Board and membership that the organization move forward in pursuing mediator compensation with the legislature but noted that timing would be important given the state's financial situation.

During 2014, VMN also worked on a joint venture with Mark Rubin of VCCB and VACCR on a training program for state legislators. The "Come to the Table" program would help state legislators convene stakeholders in a public policy mediation process to address and resolve complex public policy problems. This collaborative effort was seen as an important step in setting the stage for VMN's future engagement with the legislature on the compensation issue. Grant funding was sought for the project but, unfortunately, was unsuccessful.

Mediator compensation and legislative issues weren't the only items on the VMN Board's plate in 2014. For the 2015 spring conference, the Board decided to try a regional meeting concept with a 2-hour video workshop presentation with a live facilitator. Board member Brenda Waugh spearheaded the development of the project and worked with DRS for CME credit. There was discussion of eventually building a VMN video library.

At the end of 2014, VMN ended the relationship with its contract administrator. The Board met frequently throughout 2015 as it worked on the reorganization of VMN's business policies and procedures and the eventual hiring of Jeanne Mann as VMN's contract administrator.

The 2015 spring regional meetings were a great success and video showings were hosted by VMN Board members and VMN members throughout the state. And the 2015 Fall conference was held at the University of Richmond Law School with conference materials going "green". Attendees were provided digital copies of the conference manual or could pay an additional fee for a printed manual.

2015 was also a busy time for the MCTF which worked to find a way to bring this issue to the attention of the state legislature. It was decided that focusing on an increase in JDR mediation compensation would be the best path forward as the fees were set by statute (20-124.4). It was also decided to ask that child support cases be paid separately and payment not be combined with custody/visitation cases. The MCTF learned that GDC/JDR judges were asked to submit legislative proposals for consideration by the Law Revision Committee. With the support of the VMN Executive Committee, MCTF members reached out to some JDR judges to ask them to support these two proposals. Two judges—one in Culpepper and one in Virginia Beach—did submit legislative proposals to the Law Revision Committee which unfortunately were unsuccessful.

Then, in the summer of 2015, with the support of the Joint ADR Committee of the Virginia Bar Association and the Virginia State Bar, a proposal regarding increased mediator compensation was submitted for consideration to the VBA to be included as part of that organization's 2016 Legislative Agenda. The proposal was endorsed by the VBA who assigned a pro bono lobbyist to advise and shepherd legislation through the 2016 General Assembly session. With the VBA's backing of the mediator compensation proposal, ongoing efforts to have then-Virginia Governor Terry McAuliffe include increased compensation in his 2016 biennial budget came to fruition. With that, and the bi-partisan backing of state delegates and senators, the stage was set for the 2016 General Assembly session.

The beginning of 2016 was a very busy period for the VMN Board and the membership. The state legislature went into session in early January and the mediator compensation bills – HB 287 sponsored by then-Delegates Gregory Habeeb and David Toscano and SB 606 sponsored by Senator Bryce Reeves – moved through various committees and floor votes. VMN President Karen Richards, VACCR Ex. Director Christine Poulson along with VMN Legislative Committee members Lawrie Parker and Betty Russo as well as community mediation center directors and other VMN members worked tirelessly either testifying before committees in Richmond or getting the word out to VMN and VACCR members to call/email their legislators to support the bills. And it worked.

While it took a lot of time with many twists and detours, the goal of increasing mediator compensation for JDR cases happened. The statute, 20-124.4, was clarified and JDR mediators would now be able to bill separately for a child support case. While the statute still says payment for JDR cases are \$100, an increase to \$120 was included in the state's department of justice annual budget (and remains today).

But 2016 wasn't only about mediator compensation. In the spring VMN offered another round of regional meetings with a newly produced video hosted by on-site facilitators. The organization also offered two successful webinars. VMN held another successful fall conference at the University of Richmond's School of Law.

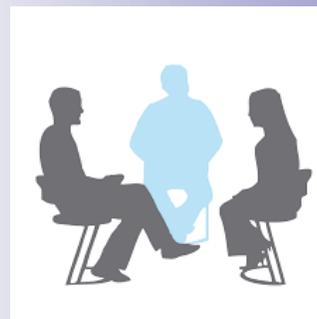
The VMN Board continued refining the business side of the organization developing new financial policies to keep the organization on solid financial footing; developing a communication policy regarding what member-driven programming information the organization would share on its website and with VMN members; and establishing a new Board member orientation to smooth transitions.

Membership numbers, an important part of VMN's financial health, have tended to fluctuate in recent years. Always a concern, VMN Board member and membership chair Sue Faulkner developed a member satisfaction survey that was sent to members in the fall and provided useful information.

With the dawn of 2017, the VMN Board and

members found themselves back in Richmond at the General Assembly. In collaboration with VACCR, the VMN Board and members participated in the first Legislative Day and the group was introduced on the House floor. Visits were made to legislators to thank them for supporting mediation in Virginia and providing information for their constituents. The March Mediation Month proclamation were handed out to all the Delegates and Senators. Buttons were also designed and handed out to some legislators. VACCR also invited VMN to join its advisory committee.

VMN also began to increase its presence on social media and discussions were held about which platforms to utilize-Facebook, LinkedIn and Twitter. The organization also looked at virtual ways to handle membership renewals instead of using printed materials being mailed through the post office. The Board also provided input to DRS about proposed CME requirement changes that the state's Judicial Council would need to approve. VMN also had a successful external audit of its financial records.



On the conference side, VMN offered two spring webinars which were well attended. The fall conference was again held at the University of Richmond law school and was very successful.

VMN again got off to a busy start in 2018 with the second "Virginia Mediation Education Day on the Hill" – a joint effort of VMN and VACCR. Bookmarks listing effective conflict resolution tips were printed jointly with VACCR, featuring both organizations' logos. The focus was to contact new legislators in the General Assembly. VMN submitted a Proclamation for Mediation Month to the Governor's office.

On the conference front, two webinars were planned for the spring -- one featuring mediation author John Winslade and the other with former VMN Board member Lawrie Parker. The fall conference, held at the University of Richmond Alumni Center, was again a great success.

Discussions were held with VACCR about the

declining number of mediators and the future of conflict resolution and mediation when the need for the skills are increasing.

In 2019, VMN decided to try an in-person spring conference in Richmond. Board member and Conference Committee Chair Dan Hand announced that Cinnie Noble, Cinergy Coaching, had agreed to be the featured speaker and present a workshop on Conflict Coaching. Then-VMN Board Member Dale Robinson also presented a workshop at the day-long conference.

At a Strategic Planning Day in May 2019, spearheaded by then-President Vickie R. Williams-Cullins, the Board renewed their commitment to serve all conflict resolution practitioners, increase the value of memberships to our members, invite ADR students to join and find an additional way to set our members apart from other mediators in the state. The day was facilitated by David Smith, a consultant, Maryland mediator, and adjunct professor at George Mason University. A number of initiatives were identified, and implementation began. Some of the initiatives identified were establishing a student rate, looking at a way to enhance our members professionalism through credentialing, expanding our umbrella beyond mediation practice to include other practitioners of conflict resolution tools, and many more.

In 2020, COVID-19 hit and VMN, along with all its members, faced both challenges and opportunities. By June 2020, the Board became convinced an in-person fall conference was not going to be possible. Numerous options were discussed from not having a conference to hosting a virtual conference. It was decided to offer an inaugural virtual conference. Under Dan Hand's leadership, it was a resounding success. It presented opportunities to offer sessions from presenters from around the United States. It also afforded the opportunity to attend all sessions, no tough choices of which session to attend were needed. The presentations were recorded for viewing at another time and were available until the end of October.

After a long search, current VMN President, Pam Struss, found the MC3 Mediator Certification, a national certification, and it was presented during the conference. The VMN Board made lemonade out of the lemons of the Pandemic. The Executive Committee signed two MOUs with MC3 securing a \$50 rebate for VMN members who become MC3 mediators and will become a preferred Education Provider for all MC3 Certified Mediator with CME's educational webinars. Stay tuned for new initiatives to come.

The 2020-2021 VMN Board of Directors is excited and motivated to build on the success of past Boards and make membership in the VMN the professional organization highly valued.

Written by Karen Richards, Past VMN President



Be sure to follow VMN on Facebook and LinkedIn to stay updated on news and events:



Trends in Mediation

Curiosity got the best of me as I was wondering about trends in mediation. I found a few very interesting, and they are as follows:

(1) Herbert Smith Freehills and the London Chamber of Arbitration and Mediation (LCAM) have conducted a joint snapshot survey to delve into trends in mediation in arbitration, aiming to find out more about the current take-up of mediation in international arbitration. (Freehills, 2021) The survey results highlighted the following key trends:

The timing of mediation: The survey showed fairly overwhelmingly that mediations in arbitration usually happen at the pre-document production stage. In fact, only 6% of the mediators who had experience of mediation in arbitration had not done a mediation pre-document production in 2019 or 2020.

The value of disputes mediated: High value arbitration claims are being resolved in mediation. The majority of mediators surveyed who reported having some experience of mediation in arbitration said that they had carried out mediations in cases worth over £10M.

Mediator caseload: A quarter of the mediators had quite a significant mediation in arbitration practice, with around a third of their caseload made up of those cases. 10% of the survey sample had a lot of these cases and reported that the majority of their mediations were arbitration cases.

Settlement rates: The success rates which were reported by the majority of the mediators were pretty impressive. Just under half of the mediators who said they had mediated arbitration cases had settled at least 70% of these cases at the mediation across 2019 and 2020. Most of these mediators were reporting a success rate in the 80% plus bracket. (Freehills, 2021)

(2) The National Association of Realtors is advocating for mediation in disputes between sellers and buyers. It states:

“Mediation can be initiated through the use of a mediation clause in the association's standard forms. The clause can be included in the body of the sale contract or as an addendum to the contract... Similar clauses can be added to listing agreements and to buyer representation agreements.

When signing a contract or addendum containing a mediation clause, the parties to the transaction commit to submit any dispute that arises from the transaction to mediation. Where parties do not commit to mediation in advance of a dispute developing, an agreement to mediate can be entered into by the parties after a dispute arises... In either situation, while the agreement to submit disputes to mediation is binding when signed, the parties retain their right to pursue other legal remedies if mediation is unsuccessful. Parties are not bound to agreements reached during the mediation conference unless they sign a written mediation settlement agreement. Once parties have signed a written mediation settlement agreement, they are legally bound by its terms and cannot subsequently arbitrate or litigate the now-resolved dispute.



With few exceptions, almost any real estate dispute can be mediated under the program. Exceptions include disputes involving complex legal issues, alleged criminal conduct, alleged violations of state license laws or regulations, and alleged violations of the Code of Ethics and Standards of Practice of the National Association of REALTORS®.

The mediation component includes forms, materials, and information associations need to implement to conduct buyer-seller mediation.

Recommended Minimum Qualification Criteria

To help associations qualify and select capable mediators, NAR developed the following minimum qualification criteria. NAR recommends that associations consider adopting these criteria as minimum standards for qualifying mediators.

To serve as a mediator, individuals should meet the following qualifications:

Mediators can be:

- REALTORS® with tact, diplomacy, and a sense of equity who have a familiarity with state real estate rules and practice, five years of real estate experience, and who have completed a recognized course of instruction on mediation; or*
- Professional mediators with recognized mediation credentials who are members in good standing with an established public or private dispute resolution organization and who possesses a fundamental knowledge of real estate satisfactory to the association; or*
- Real estate professionals including title officers, real estate attorneys, appraisers, association staff, etc., who are trained in mediation by and possess real estate satisfactory to the association.*

Prospective mediators must agree to follow the program's procedures and requirements.

Prospective mediators must be willing to provide mediation services on terms and for fees acceptable to the association.

Potential mediators' experience in mediating cas-

es involving the following may help demonstrate their ability to conduct successful mediations under the program:

- Mediation involving other professionals (e.g., architects, engineers, lawyers, accountants, building contractors, home-builders, etc.),*
- Mediation involving contracts for professional services*
- Mediation of disputes involving more than two parties*

Associations should verify the credentials and qualifications of individuals and the companies the individuals are affiliated with prior to the individuals being considered as potential mediators. The association should ask for and check references." (National Association of Realtors, 2021)

(3) And the last trend of interest is from Boston Mediation:

"The Pandemic seemed to awaken in couples the need for action, particularly action that they had been delaying. In this way, separated couples now decided to divorce; couples living together and thinking of separation, now decided to separate or divorce. Perhaps, life suddenly seemed too short or too tenuous to delay unrealized plans or ambitions.

From Our Family Mediation Clients:

An increased number of siblings entering mediation to resolve lack of clarity in the wills of deceased parents;

An increased number of siblings struggling to resolve what they view as inequities in the will provisions of deceased parents;

An increased number of siblings having difficulty sharing vacation homes left to them by deceased parents; and

An increased number of families having difficulty with overseeing aging parents during the Pandemic.

In summary, some of the same issues that we have witnessed over the years continued to persist: will provisions that provided increased pro-

tection for one child were met with confusion, disappointment, and even anger of siblings; inheritances that required collaborative usage or decision making engendered disagreements and tension; and the care of aging parents raised questions of inequities in responsibility and “payment.” The Pandemic may have exacerbated disagreement and/or imposed new restrictions on movement and ability to pay, but the core issues remained essentially unchanged.

Whether in person or remotely, mediation offers all participants the opportunity to express their needs, concerns, and priorities in a safe and confidential environment. Working together to listen to each other and to think creatively and rationally of ways to solve old issues and prevent new ones from developing lies at the core of the process. With the facilitation of a skilled and knowledgeable mediator, the end result should be fair and workable for all involved parties.” (Boston Mediation, 2021)

Written by Pamela Struss
VMN President

Fairfax County ADR Month Proclamation Ceremony



On March 26, VMN President, Pamela Struss, received the Proclamation for 2021 at the Fairfax County ADR Month Proclamation Ceremony. The ceremony recognizes professional practitioners in the field of promoting, teaching, and practicing the conflict resolution tools of mediation, facilitation, negotiation, and restorative justice. Fairfax County Board Supervisor Storck presided over this year’s ceremony. During her brief comments, Pamela recognized groups that work tirelessly to champion ADR, such as Carter School for Peace and Conflict Resolution and its students, NOVA Southeastern University, the Virginia Mediation Network and its membership, the Virginia Court System’s Judges and Court Clerks, community mediation centers, and MC3 Certification. Congratulations, Pam!