

FOREWORD

The Center for Public Dispute Resolution (Center) was established in 1984 by the New Jersey Department of the Public Advocate with support from the National Institute for Dispute Resolution and the State of New Jersey. The Center is located within the Department of the Public Advocate, Richard J. Hughes Justice Complex, 25 Market Street, CN 850, Trenton, NJ 08625, (609) 292-1773. Eric R. Max is Director of the Center.

The Center resolves public interest disputes, offers training in dispute resolution techniques, addresses issues relating to the field, and generally serves as a center for the practice of alternative dispute resolution (ADR) in the state. Public interest disputes are those which involve public entities, impact on public policy, or otherwise affect the public interest. Such disputes include, but are not limited to, environmental, planning, land use or regulatory issues. In the past, the Center has served as a master/mediator in cases involving: the Burlington County Board of Freeholders; the City of Camden; the Camden County Municipal Utilities Authority; the New Jersey Department of Transportation; and private corporations. Cases are referred to the Center by the courts, public agencies, disputants or concerned individuals.

The Center helps parties identify and select the dispute resolution process best suited for their dispute and provides the appropriate people and services needed to assist in the resolution of that dispute. Its services include dispute analysis, facilitation, policy dialogues, mediation, fact-finding, and arbitration. In addition to its staff, the Center has access to a pool of qualified mediators and other third-party neutrals who have expertise in many of the subjects involved in public interest disputes.

The Center provides training programs to the judiciary, the Bar, public agencies, community groups and others in negotiation, facilitation, mediation, and other dispute resolution techniques. Specific groups trained include administrative law judges, lawyers, law clerks, state agency personnel, planning officials, probation officers, and court mediators.

In addition to its dispute resolution and training services, the Center is also committed to addressing important issues in

the dispute resolution field. Thus, on December 7, 1987, the Center convened a select group of jurists, scholars, and mediators at Princeton University to participate in a Symposium on Critical Issues in Alternative Dispute Resolution (Symposium). James E. McGuire coordinated the Symposium.

The goals of the Symposium were to explore in depth the issues of mediation confidentiality, use of special masters as mediators, mediator standards, and to share the findings with the ADR field. The Center commissioned a discussion paper for each of these issues in order to focus and stimulate the Symposium panel discussions. Each panel was charged with developing a specific work product that would be of practical use to ADR programs facing similar issues. Finally, the Center commissioned three additional papers to provide a summary and analysis of the Symposium discussions for each of the three issues. The issues and participants are identified below.

PANEL I—MEDIATION CONFIDENTIALITY. This panel reached consensus on a model statute/rule on confidentiality. The panel considered the following issues:

- * Should there be a privilege for communications made within the context of a mediation?
- * Who qualifies as a mediator?
- * Should the privilege be absolute?
- * If not, what exceptions should be specified?
- * What happens if there is a conflict of duties?
- * And other issues which emerged from the discussion.

Michael L. Prigoff, Esq., member of the American Bar Association Standing Committee on ADR, prepared the discussion paper. Jonathan M. Hyman, Esq., Associate Professor of Law, Rutgers University Law School, moderated the panel discussion, drafted the model statute/rule, and prepared the summary analysis article. Panel participants included: Ralph Bean, Ph.D.; Daniel P. Dozier, Esq.; Samuel G. Forlenza; Eric D. Green, Esq.; Nancy H. Rogers, Esq.; and Honorable Eugene D. Serpentelli.

PANEL II—USE OF COURT-APPOINTED MEDIATORS AND SPECIAL MASTERS. This panel developed a bench manual offering guidance to judges, parties, and neutrals involved in a court-ordered mediation. The panel discussed the following issues:

- * *Ex parte* communications between the mediator and the judge.
- * *Ex parte* communications between the mediator and the parties.
- * What effect and force should be given to a master's or mediator's report?
- * What type of relationship should exist between the master or mediator and judge?
- * Due process rights where parties fail to agree.
- * For which cases is mediation appropriate?
- * At what stage should mediation be initiated?
- * Who should be the mediator?
- * What instructions should the mediator follow and what authority should the mediator be given?
- * What should happen if mediation is unsuccessful?

Michael K. Lewis, Esq., Senior Associate at the National Institute for Dispute Resolution, prepared the discussion paper. Paul L. Tractenberg, Esq., Professor of Law, Rutgers University Law School, served as moderator and prepared the summary analysis article and bench manual. Panel participants included: Honorable Martin L. Haines; Honorable John E. Keefe; Andrea Grundfest, Esq.; Sidney Reitman, Esq.; and Linda R. Singer, Esq..

PANEL III—MEDIATOR QUALIFICATIONS. This panel developed guidelines for selecting and training mediators working in public interest disputes. The panel considered the following issues:

- * What qualifications do mediators possess who work in the labor, family, environmental, consumer, commercial, and neighborhood dispute fields?
- * Should mediators be certified, if so, by whom?
- * What degree of expertise should the mediator have in the subject matter of the dispute?
- * What education, experience, training, and personal qualifications should mediators possess?
- * How do programs which provide mediation services assure quality service delivery?

Edward F. Hartfield, Executive Director, National Center for

Dispute Settlement, prepared the discussion paper. Margaret L. Shaw, Esq., Director of the Institute for Judicial Administration, served as moderator and prepared the summary analysis article. Panel participants included: Gail Bingham; Jeanne Mroczo; David L. O'Conner; Donald F. Phelan; Jeffrey B. Tener; and Lester B. Wolff.

The Center's second goal was to share the work of the Symposium with the ADR community. The Center hopes that programs which provide ADR services and which deal with these issues will find this publication useful. The cooperation of the Seton Hall Legislative Bureau in devoting this issue of the *Seton Hall Legislative Journal* to the Symposium proceedings is an important step toward this goal.

The Center gratefully acknowledges the thoughtful contributions of the above participants. In particular, the Center acknowledges the six authors whose significant efforts contributed to the success of the Symposium.

Finally, the Center invites further comment and discussion on these issues. The ADR field is dynamic and growing. There are no settled answers to these issues—they will be shaped by experience as the field further develops.

ACKNOWLEDGMENTS

The New Jersey Center for Public Dispute Resolution wishes to gratefully acknowledge the following whose support helped make the Symposium possible:

- Alfred A. Slocum, Commissioner, Department of the Public Advocate, who perceived the need for this Symposium
- The State of New Jersey, which provides direct funding to the Center
- The National Institute for Dispute Resolution, a private foundation in Washington, D.C., which provides partial funding to the Center—Madeleine Crohn, President and William Drake, Vice President
- The New Jersey Administrative Office of the Courts (AOC), which facilitated the participation of members of the Judiciary and AOC personnel—Robert D. Lipscher, Administrative Director
- The New Jersey Supreme Court Committee on Masters and Hearing Officers, which shared its research and personnel—Honorable Nicholas Scalera, Chairman
- Program on New Jersey Affairs, Woodrow Wilson School of Public and International Affairs, Princeton University, which hosted the Symposium—Richard Roper, Executive Director.

BIOGRAPHIES OF SYMPOSIUM PARTICIPANTS

- Ralph Bean, Ph.D.** — Founder and Executive Director, Atlantic County Community Justice Institute; Professor, Stockton State College; member, N.J. Supreme Court Task Force on Dispute Resolution.
- Gail Bingham** — Vice President and Director, Program on Environmental Dispute Resolution, Conservation Foundation; environmental mediator; author, *RESOLVING ENVIRONMENTAL DISPUTES: A DECADE OF EXPERIENCE*; member, Society of Professionals in Dispute Resolution (SPIDR), Commission on Qualifications.
- Daniel P. Dozier, Esq.** — Mediator, Clean Sites, Inc.; member, Society of Professionals in Dispute Resolution (SPIDR) Ethics Committee; member, Washington, D.C. Bar; former Director of Congressional Liaison, U.S. Department of Health, Education and Welfare; Mayor's staff, City of Detroit; attorney, United Auto Workers.
- Samuel G. Forlenza** — Project Director/Family Mediator, Family Mediation Program, Superior Court of N.J., Essex County; consultant, N.J. Bar Association Focus on the Family Committee; member, Academy of Family Mediation.
- Eric Green, Esq.** — Founder and Vice President, Endispute, Inc.; Professor of Law, Boston University; co-author, *DISPUTE RESOLUTION*; Special Master, Ohio Asbestos Litigation; inventor, mini-trial.
- Andrea R. Grundfest, Esq.** — Program Director, Rutgers Center for Negotiation and Conflict Resolution; mediator, Essex County Bar Association, Community Dispute Resolution Project; instructor, New York University Law School.
- Honorable Martin L. Haines** — Assignment Judge, Superior Court of N.J., Burlington County; founder, Burlington County Comprehensive Justice Center; member, N.J. Supreme Court Task Force on Dispute Resolution; member, N.J. Supreme Court Committee on Masters and Hearing Officers.
- Edward F. Hartfield** — Executive Director, National Center for Dispute Settlement; former Commissioner, Federal Media-

tion and Conciliation Service; former mediator, N.J. Office of Dispute Settlement; Adjunct Professor, Dispute Resolution, Wayne State University; President-Elect, Society of Professionals in Dispute Resolution (SPIDR); member, Society of Professionals in Dispute Resolution (SPIDR) Ethics Committee.

Jonathan M. Hyman, Esq. — Associate Professor, Rutgers Law School; member, Center for Public Dispute Resolution Advisory Board; member, N.J. Supreme Court Task Force on Dispute Resolution, Subcommittee on Mediation Confidentiality; Administrative Director, Constitutional Litigation Clinic, Rutgers University Law School.

Honorable John E. Keefe — Judge, Superior Court of N.J., Middlesex County; utilizes a special master for asbestos litigation; member, N.J. Supreme Court Task Force on Dispute Resolution.

Michael K. Lewis, Esq. — Senior Associate, National Institute for Dispute Resolution; Mediator, private practice; Adjunct Professor of Law, George Washington University and Georgetown University.

Jeanne Mroczo — Director, Office of Public Participation, N.J. Department of Environmental Protection; former Director of Training, N.J. Office of Dispute Settlement; consultant, N.J. Supreme Court Committee on Alternative Dispute Resolution (ADR).

David L. O'Conner — Executive Director, Massachusetts Mediation Service; mediator, environmental and public policy disputes; Adjunct Professor, Tufts University.

Donald F. Phelan — Deputy Assistant Director, Technical Assistance Unit, Administrative Office of the Courts; staff to N.J. Supreme Court Task Force on Dispute Resolution; member, Center for Public Dispute Resolution Advisory Board.

Michael L. Prigoff, Esq. — Member, ABA Standing Committee on Dispute Resolution; Chair, ABA Subcommittee on Mediation Confidentiality; member, N.J. Supreme Court Task Force on Dispute Resolution; member, N.J. State Bar Association Dispute Resolution Committee; founder and Project Director, Essex County Bar Association, Community Dispute Resolution Project.

Sidney Reitman, Esq. — Partner, Reitman, Parsonnet, Maisel and

Duggan; practicing attorney for fifty years; special master in numerous disputes.

Nancy H. Rogers, Esq. — Assistant Professor of Law, Ohio State University; Faculty Advisor, OHIO STATE JOURNAL ON DISPUTE RESOLUTION; co-author, A STUDENT'S GUIDE TO MEDIATION AND THE LAW; member, Society of Professionals in Dispute Resolution (SPIDR) Ethics Committee.

Honorable Eugene D. Serpentelli — Assignment Judge, Superior Court of N.J., Ocean County; chaired Supreme Court Committee on Family Mediation; member, N.J. Supreme Court Task Force on Dispute Resolution; member, Subcommittee on Mediation Confidentiality.

Margaret L. Shaw, Esq. — Director, Institute of Judicial Administration; former Vice President, Conflict Management Resources, Inc.; teacher, Alternative Dispute Resolution (ADR) courses, New York University Law School and New York University Graduate School of Public Administration; co-author, *Use of Alternate Dispute Resolution Techniques in the N.J. Court System*.

Linda R. Singer, Esq. — Mediator, lawyer, teacher, author, and active contributor to the dispute resolution field; as Executive Director of the Center for Dispute Settlement, she has maintained an active mediation practice while guiding the Center's expansion into a full service dispute resolution organization.

Jeffrey B. Tener — Full time labor arbitrator; Executive Director, Association of Labor Relations Agencies; former Chairman and Executive Director, New Jersey Public Employment Relations Commission; mediator and Hearing Officer, New Jersey Public Employment Relations Commission; member, Center for Public Dispute Resolution Advisory Board.

Paul L. Tractenberg, Esq. — Professor, Rutgers Law School; Chairman, Advisory Board for Center for Public Dispute Resolution; teacher, Client Counseling, Negotiation and Alternative Dispute Resolution (ADR) courses; member, Academic Policy Committee, Rutgers Center for Negotiation and Conflict Resolution; Parson Scholar, University of Sydney (1987); teacher, Settlement Techniques, National Judicial College.

Lester B. Wolff — President, National Academy of Conciliators; former Vice President of Dispute Settlement for the Home Owners Warranty Corporation; Vice President, American Arbitration Association; mediator and arbitrator, housing and labor/management disputes; worked with Federal Mediation and Conciliation Service (FMCS) to develop conciliator orientation seminars and skills development workshops.

NEW JERSEY DEPARTMENT OF THE PUBLIC ADVOCATE CENTER FOR
PUBLIC DISPUTE RESOLUTION

Alfred A. Slocum, *Commissioner, N.J. Public Advocate Department*
John W. Gleeson, *Director, Division of Citizen Complaints and Dispute
Settlement*

Eric R. Max, *Director, Center for Public Dispute Resolution*
James E. McGuire, *Symposium Coordinator, Center for Public Dispute
Resolution*