



ROBERT M. BELL  
CHIEF JUDGE

COURT OF APPEALS OF MARYLAND  
ROBERT C. MURPHY COURTS OF APPEAL BUILDING  
361 ROWE BOULEVARD  
ANNAPOLIS, MARYLAND 21401-1699

November 1, 2008

Honorable Ulysses Currie, Chair  
Senate Budget and Taxation Committee  
3 West Miller Senate Building  
110 College Avenue  
Annapolis, Maryland 21401-1991

Honorable Norman H. Conway, Chair  
House Appropriations Committee  
121 House Office Building  
6 Bladen Street  
Annapolis, Maryland 21401-1991

Re: Study on the Impact of Alternative  
Dispute Resolution

Dear Chairman Currie and Chairman Conway:

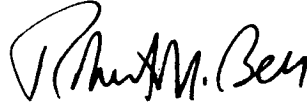
As directed in the 2008 Joint Chairmen's Report, the Judiciary herein submits its response on the impact of alternative dispute resolution programs on court caseloads.

The available data, although limited, indicate that these programs are an important resource in the management of what would otherwise be a debilitating judicial workload producing intractable delays and escalating litigation costs. While serving as a means to mitigate a court's workload, alternative dispute resolution cannot be a substitute for the need for additional judges who serve at the epicenter of the legal process.

Efforts are underway to establish a more comprehensive and reliable method for collecting data to determine more empirically the efficacy of alternative dispute resolution on judicial workload. This effort will culminate in its integration into the Judiciary's new statewide court management system.

If you have any questions, please contact Rachel Wohl at (410) 260-3540, or [rachel.wohl@mdcourts.gov](mailto:rachel.wohl@mdcourts.gov).

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert M. Bell". The signature is fluid and cursive, with the first name "Robert" and last name "Bell" being more prominent.

Robert M. Bell

cc: Judicial Cabinet  
Judicial Council  
Frank Broccolina  
Faye D. Gaskin  
Rachel Wohl  
Kelley O'Connor  
Flora Arabo, DLS

Report to the Joint Chairmen

**The Impact of the  
Mediation and Conflict Resolution Office's Work  
to Advance the Appropriate Use of  
Alternative Dispute Resolution in the Courts**

Submitted by:

The Honorable Robert M. Bell  
Chief Judge, Court of Appeals of Maryland

Rachel Wohl, Esq.  
Executive Director, MACRO

November 1, 2008

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## **Executive Summary**

The 2008 Joint Chairmen's Report asked the Judiciary to “study the impact of the Mediation and Conflict Resolution Office's [MACRO] Alternative Dispute Resolution Programs on the courts' overall caseload.” The study results show that MACRO's work over the past decade with Circuit Courts, the District Court, State's Attorneys' Offices, community mediation centers, and community conferencing centers statewide has:

- Exponentially increased the courts' use of alternative dispute resolution (ADR) processes, such as mediation, settlement conferences, and community conferences
- Mitigated individual court workloads
- Streamlined litigation through the partial resolution of cases
- Enabled more efficient use of judicial and prosecutorial resources
- Produced time and cost savings for litigants
- Generated high levels of satisfaction among ADR participants

The Judiciary depends on MACRO to help establish, expand, evaluate, and promote effective court ADR programs across the state. In addition to providing support and technical assistance to existing court ADR programs, MACRO promotes high quality mediation statewide by coordinating the Maryland Program for Mediator Excellence (MPME), which offers mediators a variety of ways to improve their skills and expand their knowledge. The MPME currently has enrolled more than 400 mediators, and membership is now mandatory for several court programs. Nationally, MACRO plays a leading role in developing evaluation tools for court ADR programs, and it is a model for other states. The conclusions of this report indicate that continued support is needed to sustain, expand, and improve high quality court ADR services throughout Maryland.

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# The Impact of the Mediation and Conflict Resolution Office's Work to Advance the Appropriate Use of Alternative Dispute Resolution in the Courts

## I. INTRODUCTION

In his farewell address to the nation, President George Washington, who resigned his military commission in the Maryland State House, admonished us to “Observe good faith and justice . . . ; cultivate peace and harmony with all.”<sup>1</sup> Maryland's Mediation and Conflict Resolution Office (MACRO) assists the Judiciary in upholding the principles of good faith and justice by helping thousands of Maryland's citizens cultivate and restore peace and harmony when disputes arise. Recognizing that courts should be a place of last resort for dispute resolution, the Judiciary depends on MACRO's work to advance the appropriate use of mediation and other dispute resolution processes statewide.

This report is written in response to the Chairmen of the Senate Budget and Taxation Committee and the House Committee on Appropriations' request contained in the Joint Chairmen's Report—Operating Budget, April 2008, which states:

Provided that the Judiciary shall study the impact of the Mediation and Conflict Resolution Office's Alternative Dispute Resolution Program on the courts' overall caseload. A report outlining the Judiciary's findings shall be submitted to the budget committees by November 1, 2008. The budget committees shall have 45 days to review and comment following the receipt of the report.

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<sup>1</sup>George Washington, “Washington's Farewell Address 1796,” made available online by The Avalon Project at Yale Law School, [http://avalon.law.yale.edu/18th\\_century/washing.asp](http://avalon.law.yale.edu/18th_century/washing.asp) (last accessed 10/16/2008).

As requested, the Judiciary has studied the effects of MACRO's efforts to advance Alternative Dispute Resolution (ADR) programs throughout the state.<sup>2</sup> The results, detailed herein, show that MACRO's work in the dispute resolution field reduces courts' caseloads and provides many other significant benefits to courts, litigants, and the public.

ADR programs have grown exponentially, although much room for expansion remains. While MACRO does not take credit for all of the growth of ADR programs since the Maryland ADR Commission began in 1998, it has supported and contributed to a great deal of the growth that is illustrated by the following two maps. The first map shows the locations of various ADR programs throughout the state in 1998. The second one indicates ADR programs in operation in 2008.

## **CONFLICT RESOLUTION TERMS & PROCESSES**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)**—Umbrella term denoting processes for resolving disputes without trial or violence, such as negotiation, conciliation, mediation, settlement conferences, community conferencing, arbitration, and consensus building. Generally, ADR is not appropriate for cases involving serious crime, for creating legal precedents, or for airing issues publicly.

**MEDIATION**—Neutral mediators, without providing legal advice, help the parties reach voluntary agreement on the resolution of the whole dispute or some issues within it. This confidential process helps people speak for themselves and, if possible, rebuild relationships and find lasting solutions to their disputes.

**SETTLEMENT CONFERENCE**—People in a dispute in court and/or their attorneys appear before an impartial person to try to settle their lawsuit. The conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend terms for an agreement. The facilitator is usually a judge or experienced lawyer who can give informed opinions about how the court might decide the case, discuss how similar cases have been settled, and provide advice. This process tends to focus on the lawsuit rather than on the relationships or underlying issues.

**COMMUNITY CONFERENCE**—All people affected by a behavior or a conflict that has caused them harm meet to talk about the situation. All participants have a chance to discuss what happened, how it affected them, and how best to repair the harm. This process may be used in conflicts involving large numbers of people and is often used as an alternative to juvenile court.

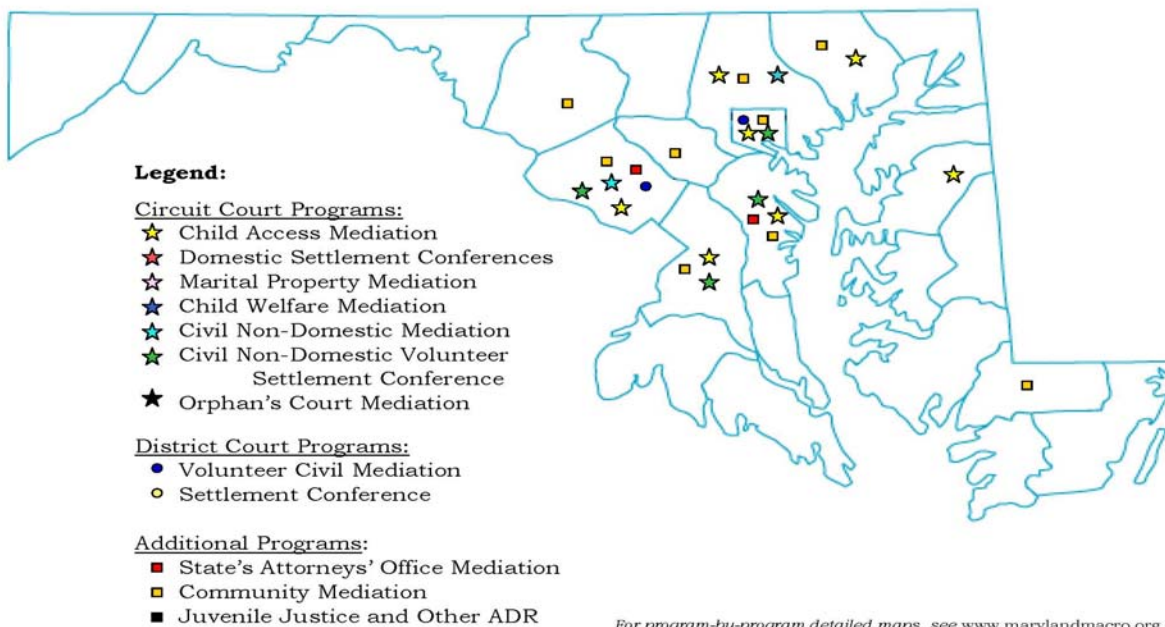
**ARBITRATION**—People in a dispute present their positions to a neutral arbitrator, who renders an arbitration award. Arbitration is generally binding and is only appealable on narrow grounds. The court can only order binding arbitration at the request of all parties.

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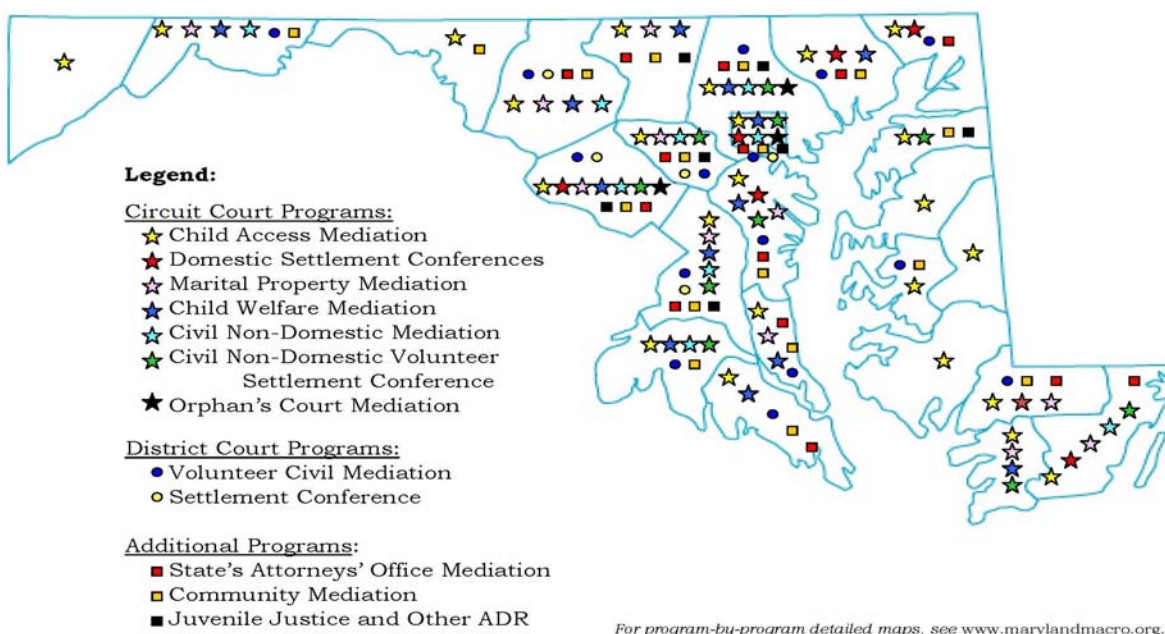
<sup>2</sup>In addition to information known to MACRO, this report includes data provided by civil non-domestic ADR coordinators in the Circuit Courts for 9 counties and Baltimore City, the District Court ADR Office, family services coordinators in every county and Baltimore City, the Administrative Office of the Court's Family Division, 15 State's Attorneys' Office mediation programs, 16 community mediation centers, the Community Conferencing Center, and exit survey information from litigants following ADR sessions.



## ADR Programs Available in 1998



## ADR Programs Available in 2008



## **II. THE MARYLAND JUDICIARY'S MEDIATION AND CONFLICT RESOLUTION OFFICE**

### **A. Background**

Recognizing the many benefits achievable through the use of ADR processes, as well as significant successes in other states, the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals, created and chaired the Maryland ADR Commission in 1998. He charged the commission with reaching consensus on a practical action plan to advance the appropriate use of mediation and other conflict resolution processes throughout Maryland. The ADR Commission's 40 members included legislators, the governor's chief of staff, chief judges, public officials, the president of the state bar association, ADR practitioners, community leaders, business representatives, educators, and others.

Working collaboratively with over 700 people around the state, the ADR Commission developed a consensus-based practical action plan, titled *Join the Resolution*.<sup>3</sup> To implement the plan, Chief Judge Bell created MACRO.

**M**ACRO's assistance was crucial to the establishment of our civil non-domestic mediation program. With ongoing support from MACRO, the program continues to grow and improve as a successful service for our litigants and helps us resolve a significant number of cases without the necessity for trials or hearings, greatly reducing docket congestion.

*The Honorable Michel Pierson  
Judge in Charge of Civil Non-Domestic Mediation  
Circuit Court for Baltimore City*

### **B. MACRO's Work**

MACRO is a court-related agency, and its mission is to advance the appropriate use of ADR across the state. The office serves as an ADR resource for the state and provides information to the public about non-violent ways to resolve conflict without going to trial. MACRO collaborates with stakeholders to develop, advance, assist, evaluate, and support ADR services in courts, criminal and juvenile justice programs, family service programs, neighborhoods, schools, and state and local government agencies. The courts benefit from the greater use of ADR in all of these venues. Each successful resolution of a case filed in court removes one or more cases from the courts' dockets or, if partially settled, streamlines the case so it takes less of the court's time. Conflicts resolved before being filed in court prevent the disputes from escalating to the level of violence or litigation. MACRO increases access to justice, reduces court backlogs, and helps courts to be more user friendly and efficient.

MACRO also works on efforts to improve ADR programs. For example, MACRO has been working collaboratively on the issue of mediator quality assurance for several years. In

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<sup>3</sup>Report available at [www.marylandmacro.org](http://www.marylandmacro.org).

2006, it launched the Maryland Program for Mediator Excellence (MPME), which to date has more than 400 mediator members. The MPME provides a variety of ways for mediators to improve the quality of their practice, such as mentoring programs, continuing mediation education, performance-based assessments, peer learning and support groups, and an ombuds program to address complaints about mediators. MPME also provides consumers with a searchable online directory of mediators and provides mediators a web-based resource to connect and improve their skills. This comprehensive quality improvement system is being adapted for use in Colorado and is being considered as a model by several other states.

MACRO has also created an innovative project in the area of court ADR program evaluation, called the Practical Quality Improvement System (PQIS). This comprehensive web-based assessment, improvement, and evaluation tool will be the first system in the nation to link mediation performance indicators with judicial information system case flow data. The State Justice Institute has given MACRO a \$175,000 matching grant to fund the PQIS pilot program at four sites: three Circuit Courts—Baltimore County, Worcester County, and Baltimore City—and the District Court's ADR Office. Once the system is in place statewide, it will collect, analyze, and report comprehensive statistics for all court ADR programs.

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## MACRO

- Helps establish, expand, evaluate, and promote effective ADR programs statewide
  - Helps people and groups find the ADR resources they need and maintains the *Maryland Consumers' Guide to ADR Services*
  - Provides small grants to ADR programs and projects in the courts as well as in programs that serve the courts and the public
  - Coordinates the Maryland Program for Mediator Excellence, which offers all state mediators many ways to improve the quality of their practice and offers consumers a searchable directory of mediators
  - Is developing the Practical Quality Improvement System to help all court ADR
  - program coordinators understand, improve, and capture their court ADR programs' comprehensive statistics
  - Staffs the Roster Managers' Network for court ADR coordinators and others who manage rosters of mediators
  - Promotes public awareness of ADR
  - Sponsors ADR conferences and events
  - Provides national leadership in the conflict resolution field
  - Has won several national awards for its innovative methods and programs
  - Has developed model programs used in other states and countries
-

## INSIDE A BUSINESS MEDIATION

Two small business owners had worked together for many years as a contractor and subcontractor for cleaning services. They had a falling out over the amounts owed for change orders accumulated over a long time. They refused to work together any longer; the subcontractor retained an attorney and sued the contractor. The court ordered the case to mediation.

Towing several boxes of documents apiece to the mediation, the parties and their attorneys each claimed they were right, as evidenced by the thousands of pages of invoices and faxes. The mediator noticed that when the parties initially sat down at the table, one asked about the health of the other's mother, which signaled a potential opening for resolution.

Even though the attorneys were certain no settlement was possible, after the parties started talking to each other, they expressed regret at the loss of the business relationship and resolved to continue working together. They soon agreed on an amount to settle the dispute and dismiss the court case. The attorneys were quite shocked at the outcome; neither of them imagined that their clients had an interest in continuing to work together. The parties left the mediation very satisfied, with many unopened boxes of documents.

*From the Circuit Court for Baltimore City*

### **III. MACRO'S IMPACT ON ADR PROGRAMS THAT BENEFIT THE COURTS**

#### **A. Circuit Courts**

MACRO helps Circuit Courts across the state by providing technical assistance to enable them to create and expand a variety of ADR programs. It provides support for courts to hire the ADR coordinators needed to run court programs. It also helps courts obtain mediator and stakeholder ADR training. MACRO helps Circuit Court ADR program coordinators learn from one another by orchestrating a roster managers network, and it helps them improve the quality of the mediators on their rosters by facilitating the Maryland Program for Mediator Excellence. MACRO operates an email list-serve, sending court ADR coordinators the latest alternative dispute resolution information and notices of MACRO events designed to enhance ADR programs and to improve mediators' skills and knowledge on a continuing basis.

In the family arena, Circuit Courts in every Maryland jurisdiction have child access mediation programs for custody and visitation cases.

ADR, which can be opted out of in almost all cases, is mandated in child access cases, unless there are allegations of abuse. Various jurisdictions also have family ADR programs for marital property disputes as well as family settlement conference programs. The benefits of using ADR in family cases may extend beyond resolving a single dispute; in the words of one attorney whose clients participated in child access mediation in the Circuit Court for Baltimore County, "These parents now have hope of learning to reach compromises on their own."

**I** am pleased that our court has long had an outstanding program that makes it possible for disputants in contested custody and visitation cases to come to the mediation table and resolve their problems together, as parents, for the sake of their children. We promote the use of ADR, including settlement conferences, in all appropriate cases, and we have experienced a significant increase in its use.

MACRO is doing an outstanding job in assisting courts to expand their ADR programs, and I am particularly appreciative of its role in the growth of our Child In Need of Assistance dependency mediation program. Our ADR programs save the court valuable time and resources, but we do not want to forget that the real benefit is to the citizens of Prince George's County.

*The Honorable William D. Missouri  
Chief and Administrative Judge  
Seventh Judicial Circuit and the  
Circuit Court for Prince George's County*



**W**e really appreciate the support MACRO has provided to help us expand our ADR programs, which have been successful for a long time. Without referring cases to mediation, our court would have a huge unmanageable backlog of cases.

*Pamela Harris  
Court Administrator  
Circuit Court for Montgomery County*

Child welfare mediation programs have grown rapidly, and most have done so with support from MACRO. Eleven jurisdictions now have Child in Need of Assistance (CINA) mediation programs, and 10 of these counties also have Termination of Parental Rights (TPR) mediation programs in the Circuit Courts. According to participants, these programs can empower parents to make the best decisions for their children and give them a voice in developing plans to achieve family reunification.

In various jurisdictions, Circuit Courts send different kinds of civil non-domestic cases to ADR. These include contract, employment, worker's compensation, professional liability, business-technology, personal injury, and medical malpractice cases.<sup>4</sup> The Circuit Courts currently have civil non-domestic ADR programs in 10 jurisdictions and settlement conference programs in almost every jurisdiction. In jurisdictions without formal programs, cases are sent to ADR on an ad hoc basis.

Research has shown that civil non-domestic ADR programs save courts resources and litigants time and money. For example, in 2002, the Maryland Institute for Policy Analysis and Research at the University of Maryland, Baltimore County (UMBC) worked with MACRO to evaluate the effect of mediation on the courts' caseload in worker's compensation cases in the Circuit Court for Baltimore City. Four hundred cases in one year were randomly assigned; half were ordered to mediation, and half (the control group) were not. The UMBC researchers then followed the cases as they progressed through the courts.

At every point along the time lines of the cases, more mediation cases settled than control group cases. Prior to the discovery deadline (4 months after the answer is filed), more than twice as many cases in the mediation group settled as compared to the control group. Between the discovery deadline and 30 days pretrial (another 3 months), almost twice as many cases settled in the mediation group as in the control group, and there was a statistically significant lower number of discovery motions in the mediation group (which may

**T**he Circuit Court ADR program is fully supported by the Judges of this Court. It saves valuable Court resources by settling more cases out-of-court and on a faster time frame.

*The Honorable G. Edward Dwyer  
Administrative Judge  
Circuit Court for Frederick County*

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<sup>4</sup>By statute in FY 2004, the General Assembly mandated the use of ADR in medical malpractice cases. Alternative Dispute Resolution, MD. CODE ANN., CTS. & JUD. PROC. § 3-2A-06C (2006).

lead to discovery dispute hearings in court).<sup>5</sup> Fewer cases and fewer discovery motions clearly translate into time and cost savings for litigants and resource conservation for the courts.

Orphan's Court Mediation Programs are available in three jurisdictions to address disputes that arise during the handling of wills, estates, and other probate matters. MACRO helped establish these programs and is encouraging creating them in more jurisdictions. Mediation in these cases can help preserve family relationships, decrease litigation, and maximize the Orphan's Courts' efficiency.

## **B. District Court**

Cases from the District Courts in 19 locations are being sent to ADR. With the support of the Honorable Ben C. Clyburn, Chief Judge of the District Court of Maryland, the District Court ADR Office works to educate all participants (including judges, clerks, court personnel, lawyers, litigants, and other ADR providers) on the uses and benefits of ADR programs. It helps the District Court establish and maintain high quality ADR programs

**T**he District Court's ADR programs provide excellent service to our litigants. They also benefit the court by taking cases off the docket and by strengthening the court's reputation as an institution that helps people solve difficult problems. In a random sample of 139 litigant surveys following their ADR sessions, 90 percent agreed that they would recommend using ADR to others. The District Court's ADR Office, which is doing a great job increasing the appropriate use of ADR in the District Court, appreciates the support it receives from MACRO and often partners with MACRO on efforts to improve ADR services across the state.

*The Honorable Ben C. Clyburn  
Chief Judge  
District Court of Maryland*

**D**uring the almost twenty years I have been sitting, the dockets have gotten progressively larger. Many more cases are now contested. . . . The mediation program in Charles County allows the court to complete the entire docket by trying contested cases while others are resolved by mediation.

*The Honorable Gary S. Gasparovic  
District Court of Maryland, Charles County*

that empower litigants, encourage the use of ADR options early and throughout the litigation process, and ensure that the ADR options are appropriate and accessible. MACRO serves as a resource to the District Court and supports its program expansion, improvement efforts, and work to increase accessibility of ADR services.

Some District Court cases are mediated before trial by community mediation centers. These include small claims, landlord-tenant, peace order, and other cases. Some community mediation centers also mediate cases in the District Court on the day of trial, as do the District Court's volunteer mediators. State's

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<sup>5</sup>Marvin B. Mandell and Andrea Marshall, "The Effects of Court-ordered Mediation in Workers' Compensation Cases Filed in Circuit Court: Results from an Experiment Conducted in the Circuit Court for Baltimore City" (June 2002). The full report is available at [www.courts.state.md.us/macro/mediationresearch.html](http://www.courts.state.md.us/macro/mediationresearch.html).

Attorneys' Offices also mediate certain District Court criminal misdemeanor cases and refer some such cases to community mediation centers. In referring to the *Charles County Community Mediation Center*, Judge W. Louis Hennessy wrote, "Their office has been instrumental in resolving countless matters in the District Court. Without their continued help the District Court would be totally overwhelmed." The District Court ADR Office also coordinates settlement conferences, using volunteer lawyers who have taken their training.

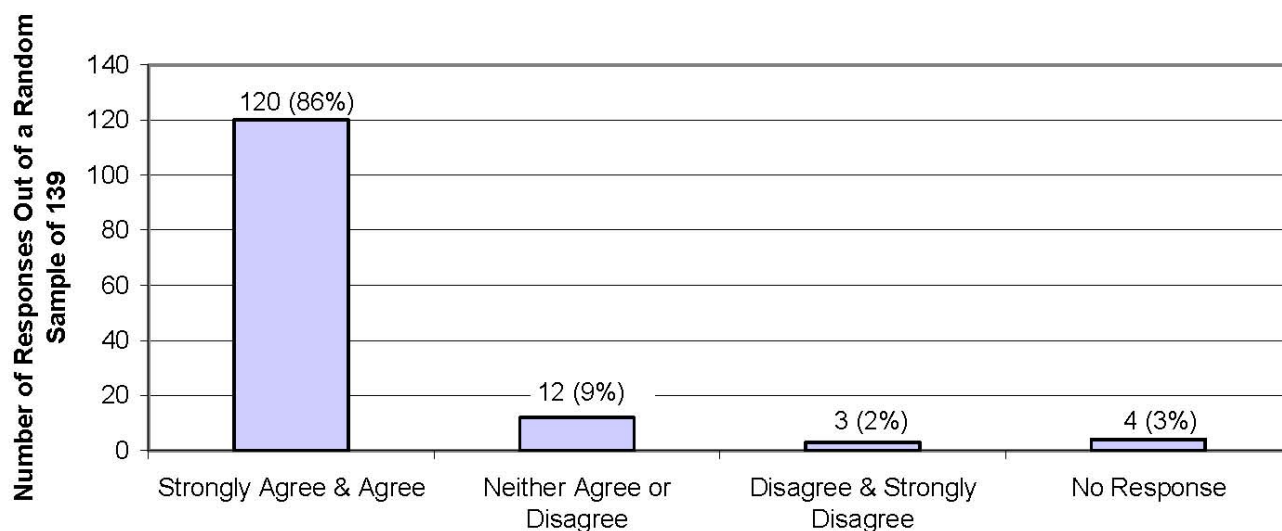
Judges are not the only ones who value the mediation programs in the District Court. Participants' comments on evaluation forms reflect high positive regard for the court's ADR programs. When asked what they liked best about the ADR process they used, participants noted such things as "the opportunity to discuss the issues," "a chance to talk to [the] Plaintiff," "less arguing in front of [the] judge," a "relaxed atmosphere," having a "personal session," and that the mediator "listened to both sides fairly."

Participants reported high levels of satisfaction with the ADR services they received, which offers another way to assess whether programs are successful. Exit surveys give

#### District Court Mediation and Settlement Conference Evaluations

"I was satisfied with the overall experience."

(n=139)



participants an opportunity to express their overall impressions of ADR, and, as the District Court data in the graph (above) shows, most ADR participants in the sample felt satisfied with the mediation or settlement conference process they used. This high satisfaction rate is noteworthy because the data collected here did not distinguish between cases that reached agreement and cases that did not.

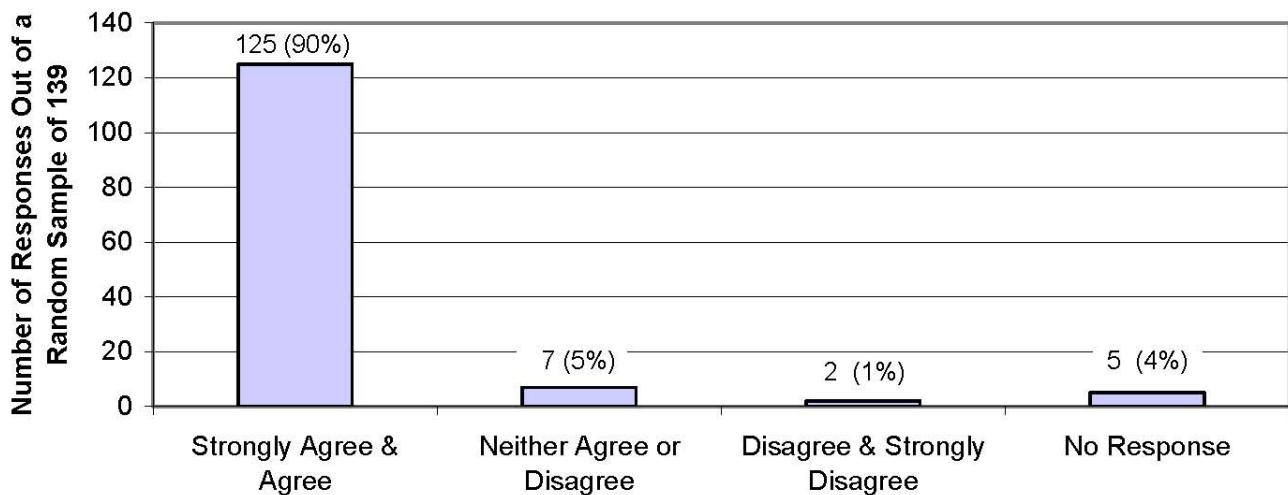
Evaluation forms also ask participants what they think could be done better. A common recommendation for improvement was to expand the program and offer mediation prior to the



trial date. One participant said, "It's the best way for common people to resolve [their] differences."

Another way to assess the value of ADR programs focuses on whether participants would recommend that their friends and family use ADR processes. The graph below indicates that 90 percent of a random sample of District Court ADR participants would recommend the ADR process they used to others. Once again, because this sample did not separate cases that reached agreement from cases that did not, this sentiment stands out.

**District Court Mediation and Settlement Conference Evaluations**  
**"I would recommend this process to others."**  
**(n=139)**



ADR processes provided by the courts not only serve the Judiciary's need to manage court caseloads efficiently, according to the evaluation data, they also satisfy the participants' need to be heard in a fair, non-threatening, timely, and cost effective forum.

### C. State's Attorneys' Offices

MACRO has helped create and expand State's Attorneys' Office mediation programs in several jurisdictions. There are currently 15 such programs. Several use in-house mediators; others refer cases to community mediation centers. These programs handle a variety of cases at the discretion of each State's Attorney, including minor assaults, trespass, malicious destruction of property, harassment, and other criminal misdemeanors. State's Attorneys' Offices that do not have formal ADR programs

refer cases to mediation on an ad hoc basis. *The Honorable Joel J. Todd, State's Attorney for Worcester County*, said, "Our Mediation Program continues to exceed our expectations as it provides expert assistance in consensus building, resulting in agreements that negate the need to involve the judicial process."

Criminal misdemeanor mediation programs generally focus on diverting citizens' complaint docket cases into mediation, with special emphasis on cases with cross-filed charges that involve ongoing relationships. In such a case, a single mediation can remove multiple cases from the court's docket. MACRO also coordinates a statewide network of State's Attorney's Office mediation program coordinators and is creating videos with them to educate

**T**he Mediation Program utilized in our office has proven to be an invaluable resource in conjunction with our mission. Mediation allows our staff to review and evaluate existing criminal cases for potential mediation in lieu of formal court prosecution. Our local law enforcement agencies are familiar with our program and routinely refer appropriate complainants to our office for potential mediation. Utilization of mediation conserves valuable court time. . . . In conclusion, successful mediation resolves many situations that could conceivably evolve or escalate into more serious criminal conduct.

*The Honorable Jerry F. Barnes  
State's Attorney for Carroll County*

**A** defendant in an assault case in Worcester County would consider going to mediation again in the future, stating:

*[Mediation] is less costly. There was less paper work and less time off work. I think this is much more personal and more effective.*

Similarly, a complainant in a burglary case in the same county wrote:

*I felt this was much more personal and less intimidating than a large courtroom filled with strangers. I felt my side was heard fairly and the outcome was great for both parties.*

**W**e have the oldest State's Attorney's Office-based mediation program in the state, and it has been a great benefit to the citizens of our county. It is especially helpful in resolving long-standing neighborhood disputes that keep coming back to court over and over for escalating misdemeanors. The criminal court is not particularly well designed to . . . resolve the underlying conflicts that unfortunately all too often exist between people. MACRO is doing a great job expanding the use of mediation, and it has helped initiate mediation programs for the State's Attorneys in other jurisdictions. My office and the District Court are happy to see these cases drop off the dockets, and we are very pleased when we can make a big difference in the lives of the people who use our mediation unit.

*The Honorable Frank R. Weathersbee  
State's Attorney for Anne Arundel County*

attorneys and clients about the value of mediating appropriate criminal complaints.

When law enforcement officers can direct citizens to community mediation and community conferences, they are more likely to be seen as responsive to the public's needs and to conserve resources by reducing the number of repeat calls for gradually escalating disputes. Fewer complaints may be filed, which also conserves the resources of the prosecutorial and judicial systems. This adds up to better service to the communities of Maryland at less cost.

#### **D. Community Mediation**

Likewise, MACRO supports and assists community mediation centers (CMCs), which are local government and non-profit organizations that assure free access to mediation services at the neighborhood level. CMCs mediate pretrial civil cases directly from the District Court as well as District Court criminal misdemeanor cases referred to them by State's Attorneys' Offices.

When MACRO was founded, only 9 CMC programs existed, and most of them suffered from a lack of funding and stability for a variety of reasons. Today, with annual performance-based support from MACRO, 16 robust programs serve 22 counties and Baltimore City. These programs train community members—who reflect the community's diverse age, race, gender, ethnicity, income, and education—to serve as board members and volunteer mediators. They also train police officers in conflict de-escalation techniques. CMC volunteers hold mediations in the neighborhoods where disputes occur, at a time and place convenient for the participants. Some centers also provide bilingual mediators who speak Spanish. An article published in the Spanish-language paper *El Tiempo Latino* emphasized the growth in mediation services to the

Hispanic community. The number of bilingual cases mediated in Montgomery County, for example, has grown 400 percent in the last two years.<sup>6</sup>

In FY 2008, CMC volunteers gave nearly 35,000 hours of time to conduct mediations throughout Maryland; mediation was available in more than 680 locations, such as libraries, recreation centers, health clinics, etc.<sup>7</sup> Over 1,800 community mediations were held in FY 2008. In addition to conducting mediations, CMCs also provided almost 27,600 hours of community education about mediation and conflict resolution as well as training 228 volunteer mediators in basic mediation and 58 in advanced mediation.<sup>8</sup> The need for their services seems likely to rise, as noted by *Peter Taillie, the director of the Mid Shore Community Mediation Center*, who said, “The worse the economy, the more the stress and the more disputes there are to mediate.”

*I* feel like this mediation process has been a bit of a miracle in my life. I am very grateful for the program and the great, well trained folks who volunteer their time to help resolve conflicts in a healthy manner.

*A Community Mediation Participant*

Research shows that police departments save time and money when neighbors and families who live in houses that have been the subject of repeated police calls are sent to mediation.<sup>9</sup> Many of these non-court mediations prevent cases from reaching the courts and prevent disputes from escalating into violence. Without intervention, neighbor-*rage* cases can result in violence and even murder. It is possible to infer from this that community mediations also saves lives.<sup>10</sup>

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<sup>6</sup>Milagros Melendez-Vela. (June 6, 2008). “Mediadores en Montgomery” (Mediators in Montgomery), *El Tiempo Latino*, last accessed 10/10/08 at [www.eltiempolatino.com/edic\\_Ant./08/jun/1/locales/mediadores.html](http://www.eltiempolatino.com/edic_Ant./08/jun/1/locales/mediadores.html).

<sup>7</sup>Lorig Charkoudian, Ph.D. (2008). “The Status of Community Mediation in Maryland,” *Annual Report*.

<sup>8</sup>*Ibid.*

<sup>9</sup>Lorig Charkoudian, Ph.D. (2001). *Cost of Conflict and Potential Cost Savings through Mediation*. Unpublished Ph.D. Dissertation, Johns Hopkins University, Baltimore, MD, on file with MACRO.

<sup>10</sup>*Ibid.*

### E. Community Conferences

Courts, the Department of Juvenile Services, schools, police, and residents refer disputes to community conferencing programs, which often serve as community-based diversion programs for eligible juvenile misdemeanor offenses, certain first-time felony crimes, and as an alternative to school suspension and school arrest. Community conferencing is a circle process that holds offenders accountable for their actions to the people they have harmed. Together, all participants discuss the incident and how each person has been affected, including the victims' families as well as the offenders' families. Then, they collaboratively develop a plan to allow the juvenile offender to make restitution and get back into the community on the right path.

The message juvenile offenders receive from a community conference is, "Your behavior is unacceptable; you must be directly accountable to the people it has affected; we care about you; and community members will spend time helping you get back on track."

MACRO supported the creation of the Community Conferencing Center in Baltimore City, which was the first such center in both Maryland and the United States. (The process is used extensively in New Zealand, Australia, Canada, and elsewhere.) MACRO continues to provide annual support for this center as well as for several of the other seven conferencing

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### BENEFITS OF THE APPROPRIATE USE OF ADR TO THE COURTS & LITIGANTS

ADR mitigates the caseload on the courts' dockets.

ADR saves court resources, which they can devote to the cases that need the courts' attention.

ADR makes courts more user-friendly and expands the public's access to justice.

ADR saves litigants (including businesses) time and money.

ADR addresses relationship and other underlying issues that may be the source of conflict.

ADR heals rifts in some cases and often restores relationships between litigants.

ADR keeps litigants' communications confidential.

ADR promotes more creative, customized

solutions than are achievable at trial.

ADR raises levels of compliance because parties honor mediated agreements more often than judicial decrees, according to the vast majority of studies on compliance.\*

ADR reduces the volume of repeat cases in the District Court, especially those involving ongoing neighbor conflicts.

ADR teaches some participants how to resolve future disputes without court intervention.

ADR prevents many disputes from reaching the courts and also prevents some agency interventions (e.g., by police and social services).

\*Jennifer E. Shack, *Bibliographic Summary of Cost, Pace, and Satisfaction Studies of Court-Related Mediation Programs*, 2nd Ed. (Chicago, IL: Resolution Systems Institute and Center for Conflict Resolution, 2007).

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programs that have been established around the state.

In sum, MACRO's funding support for and technical assistance to Circuit Courts, the District Court, State's Attorneys' Offices, community mediation centers, and community conferencing programs have helped create, sustain, and multiply the numerous benefits that the courts and litigants receive from using ADR in appropriate cases. Without MACRO's continued support, many of these programs would be weakened, and some would probably cease to exist.

## **INSIDE A CONSENSUS-BUILDING PROCESS**

A law firm requested a community forum regarding a large-scale commercial development. The community was very unhappy, especially because there were two malls being planned by two different developers on both sides of the same road. Citizens were opposing the plans and worried about things like changes in the look and feel of the community, traffic patterns, flooding, the tax burden for improving the sewer system, and the protection of wetlands, among others.

Through the use of a public facilitation process, the stakeholders agreed to form a committee of community members, developers' experts, and city leaders. Committee members planned to work together to address pressing issues while attempting to meet everyone's needs.

This was a surprising outcome because the facilitation originally was set up only for the purpose of sharing information. The community forum shows how alternative dispute resolution brings people together and facilitates collaborative decision making.

*From the Washington County Community Mediation Center*

MACRO supports many programs and projects that use an ADR process called consensus building. This process brings together stakeholders to solve public policy problems collaboratively. MACRO is working to increase the use of consensus building, especially in state and local government agencies.

#### **IV. MEASUREMENTS AND EVALUATION BASED ON AVAILABLE DATA**

The numbers gathered for this report present snapshots of some of the ADR work undertaken by some of Maryland's courts, State's Attorneys Offices, and community mediation centers. The word "some" is critical here. Some courts do not have the resources to keep ADR statistics, and many that do keep track acknowledge that substantially less than all ADR cases are counted. For example, in the District Court only about 75 percent of the forms used to count ADR cases were returned last year, which is high given the return rates in other courts.

Accordingly, the statistics used in the following pie charts represent less than the total amount of ADR activity that actually has occurred. They reflect only the ADR program data MACRO was able to obtain.

The undercounting of ADR exists in part because mediations are not recorded in the Uniform Court System (UCS), which tracks the flow of cases through the judicial process. Court ADR coordinators must keep statistics by hand or create their own databases.

To solve this problem, as described in the prior section on MACRO's work, MACRO has procured a grant from the State Justice Institute to pilot a new data collection, analysis, and reporting system for all court ADR programs. Once it has been tested in the four-court pilot program, the Practical Quality Improvement System (PQIS) will make it possible for all court ADR programs to keep and produce comprehensive, accurate statistics and analytical reports.

Because community mediation centers mediate District Court cases that come directly from the District Court and also from State's Attorneys' Offices, those cases are shown in the charts as part of the District Court's case totals. So as not to double count any cases, the community mediation numbers show only non-court case mediations conducted by the centers.

In looking at the data, one question that arises is why are there so many fewer mediations than referrals? This occurs for several reasons. Participants often report that they resolve their cases before going to mediation as the result of receiving a mediation referral or talking with someone in a community mediation center during the intake process. Parties or their attorneys may opt out of going to mediation, perhaps because they feel a need to have their day in court or assess the merits of their case in a particular way. ADR coordinators also screen out inappropriate cases, such as those involving allegations of spousal abuse. Finally, cases may be dismissed by the courts prior to mediation for a range of reasons, possibly eliminating the parties' need or desire to follow through with ADR.

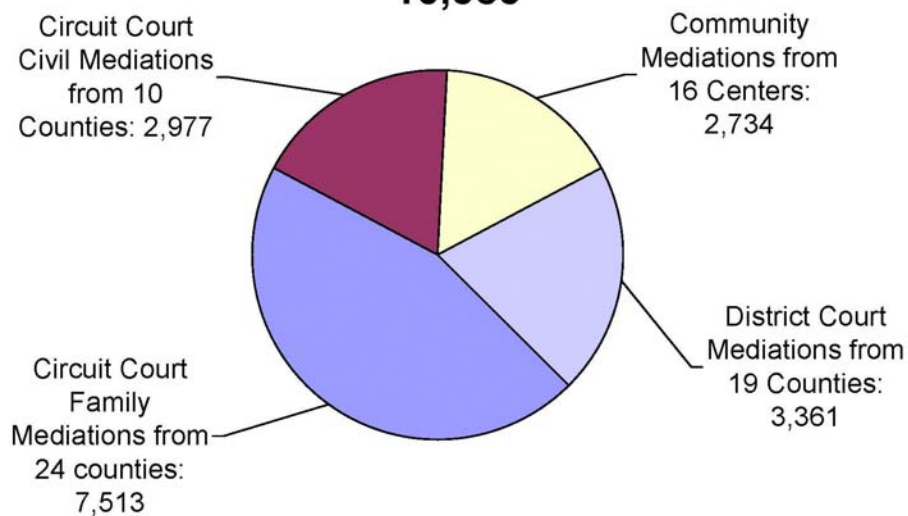
Figures used in this report reflect the data provided to MACRO for activity occurring in the most recent 12-month period for which information was available. The majority of the data is from FY 2008, as noted on the charts. However, some programs provided other 12-month data, such as FY 2007.

The following pie charts show the data MACRO obtained for cases referred to mediation, cases actually mediated, mediations that reached agreement, and mediated cases removed from the court's dockets.



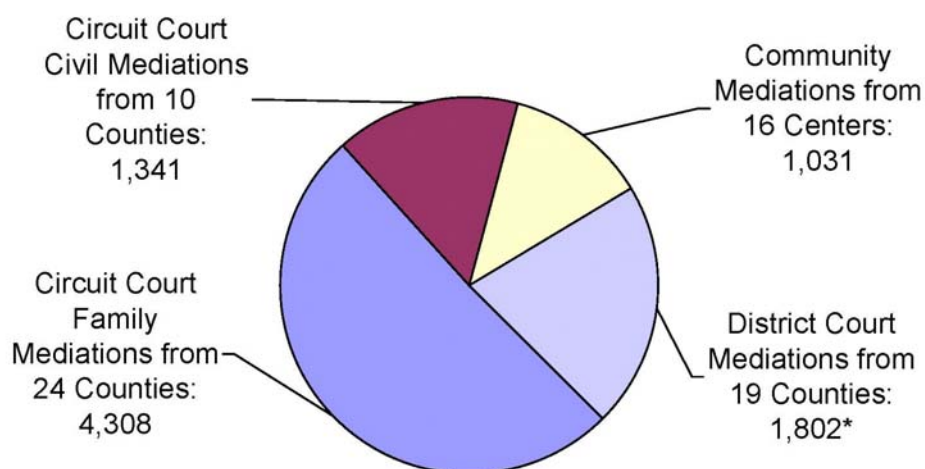
### Cases Referred to Mediation:

**16,585**



FY 2008

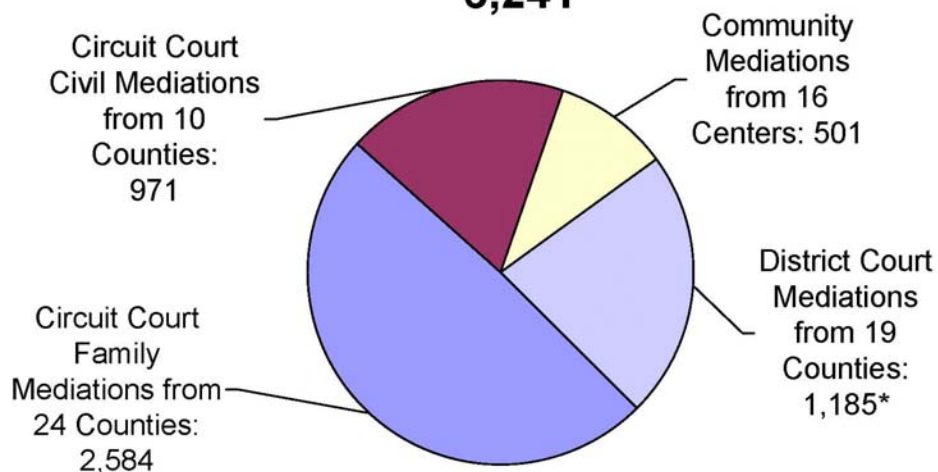
### Cases Mediated: 8,482



FY 2008

\*The District Court civil and criminal misdemeanor mediation count of 1,802 includes mediations conducted by District Court volunteers (566), State's Attorneys' in-house mediators (376), and community mediators for State's Attorneys' cases (262), for District Court pre-trial cases (105), and for District Court day-of-trial cases (493).

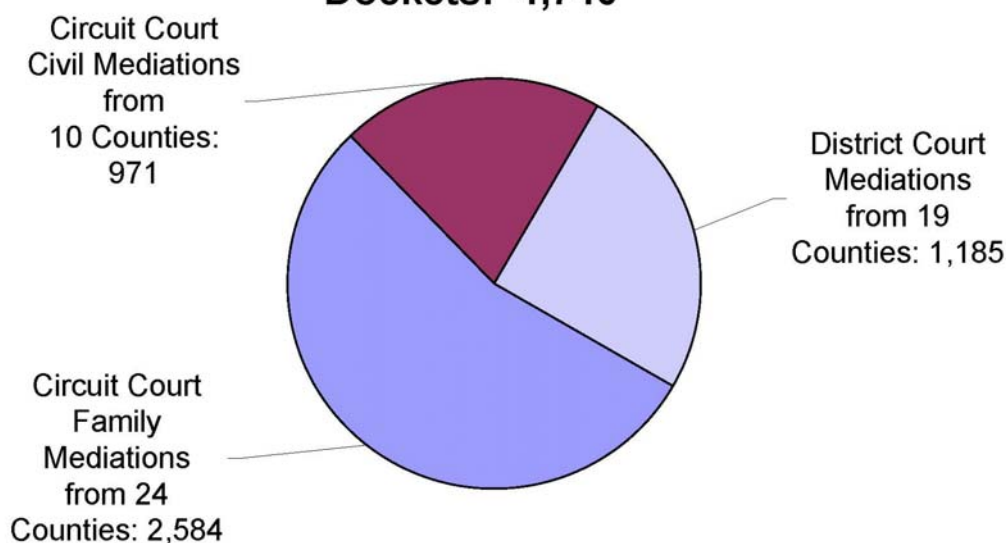
## Mediations that Reached Agreement: 5,241



FY 2008

\*This number includes District Court civil and criminal misdemeanor case mediations conducted by District Court volunteers, State's Attorneys' in-house mediators, and community mediators for State's Attorneys' cases, for pre-trial cases, and for day-of-trial cases. The 501 community mediations shown above are disputes not filed in court. Many of these mediations prevent cases from getting into court, and some prevent violence and even murder (see report).

## Mediated Cases Removed from the Courts' Dockets: 4,740



FY 2008

The agreement rate for the mediated Circuit and District Court cases in this pie chart is 64%. This pie chart does not reflect the 501 mediated agreements reached in Community Mediation Center conflicts that were not filed in courts.

The District Court ADR Office coordinates both mediation and settlement conference programs for District Court cases. Settlement conferences are conducted by presiding District Court judges and volunteer attorneys. Settlement conference numbers are not included in the pie charts. In 2007, 416 District Court civil cases went to settlement conferences. Of those cases, 200 were removed from the court's docket as a result of agreements reached in settlement conferences. This represents an agreement rate of 48 percent for these conferences.

Community conferencing is not represented in the pie charts because it is a different kind of ADR program. In FY 2008, 146 community conferences were held, involving 1,193 participants. The conferences dealt with the behavior of 473 youth (314 girls, 159 boys). In only three cases were the parties unable to reach an agreement, generating an agreement rate of 98 percent. Of the 143 cases that ended with an agreement, follow-up interviews showed non-compliance in only 4 cases, resulting in a compliance rate of 97 percent. A review of recidivism data obtained from the Department of Juvenile Services (DJS) for cases between 2002 and 2004 showed that re-offending rates are 60 percent lower for youth who participated in a community conference compared to a matched sample of youth who went through DJS and the juvenile courts.<sup>11</sup> This very effective dispute resolution process addresses underlying conflicts, prevents disputes from escalating and recurring, and provides young people with alternative ways to solve their problems.

**T**he mission of the Calvert County Sheriff's Office is to provide the highest quality of law enforcement service possible. Mediation is part of this high quality service and allows deputies to exercise discretion and give people in disagreement with one another the ability to resolve their issues before they escalate to criminal or civil matters.

*Lieutenant Dave McDowell  
Patrol Bureau Commander  
Calvert County Sheriff's Office*

MACRO also provides support to criminal and juvenile justice programs offering such services as mediation for detained juveniles, pre-release family mediation for inmates with children, and ongoing conflict resolution skills training for incarcerated men, women, and children.

## **V. LOOKING AHEAD: CONTINUING TO GROW & IMPROVE ADR SERVICES**

MACRO plans to continue offering technical assistance, grant support, and other needed resources to Maryland's Circuit Courts and the District Court ADR Office. Considering the increasing levels of workload in the trial courts, MACRO plans to help courts expand and improve ADR programs as needed. MACRO will also continue to help State's Attorneys' Office mediation programs, community mediation programs, and community conferencing

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<sup>11</sup>Community Conferencing Center, "Community Conferencing in Baltimore and Maryland: Year-end Report, July 1, 2007-June 30, 2008."

programs. These ADR programs need continuing support from MACRO to maintain and expand their services.

MACRO will implement the Practical Quality Improvement System. This web-based data collection, analysis, and reporting system will give court ADR coordinators the unprecedented ability to use accurate and comprehensive computer-generated statistics to improve their programs.

MACRO will also focus on enlarging the Maryland Program for Mediator Excellence. As ADR programs proliferate, mediators must have support to improve the quality of their mediation practice. This is necessary both for the protection of the public and for the sound reputation of alternative dispute resolution.

MACRO will keep seeking innovative ways to disseminate useful information to court ADR practitioners and coordinators, judges, lawyers, potential litigants, and the general public. Despite 10 years of growth, mediation still is not a household word. Through web-based discussion boards, presentations, ADR posters in English and Spanish, educational videos, and other available means, MACRO will continue to spread the word about the power of using alternative dispute resolution processes in appropriate cases.

## **INSIDE A NEIGHBOR MEDIATION**

*N*eighbors had been in conflict for more than a year. The police were called, which led to a complaint of a hate crime and harassment. The police requested a mediation, and both families agreed.

The mediation convened, but the case seemed intractable for several sessions. The Office of Human Rights became involved. There was a room full of people, but little headway was being made even though the participants wanted to continue.

Finally, it was revealed that one of the families had lost a child. This news formed an emotional turning point for the parties. By the time the mediation concluded, one family had invited the other one over for a holiday party.

*From the Mediation & Conflict Resolution Center  
at Howard Community College*

## **VI. CONCLUSION**

ADR processes provide proven benefits to the courts throughout Maryland by reducing caseloads, streamlining case flow, and resolving disputes before they come to court. They improve the courts' problem-solving capabilities and demonstrate techniques that litigants can use to resolve future conflicts without court intervention. ADR programs also save litigants time and money and produce lasting agreements. ADR programs supported by MACRO help Maryland's residents, business owners, employees, government representatives, students, and families reduce stress, resolve disturbing conflicts, and restore valued relationships. Some even save lives. Yet, many programs remain underfunded.

While this report presents only a partial picture of the dynamic ADR work occurring across the state, MACRO is developing PQIS as a means to provide a complete and detailed picture in the future. It is foreseeable that in these troubled economic times, the courts' caseloads will increase, and the demand for ADR will also rise. While ADR is not a panacea to be used in all circumstances, where its use is appropriate, it offers a powerful and effective tool that can profoundly affect many individuals, families, and communities.

For all of the reasons contained in this report, continued support is needed to sustain, expand, and improve high quality ADR services throughout Maryland.

**W**ithout ADR, this court, like Noah's Ark, would require two more judges, clerks, bailiffs, secretaries, law clerks, courtrooms, court reporters and many more jurors. None of these are inexpensive.

*The Honorable Thomas P. Smith  
Circuit Court for Prince George's County*