

First Federal-State Mediation Skills Training Draws 200 Lawyers and Judges

Terry Shumaker, Esq. | January 16, 2009

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On October 30, 2008, the Warren Rudman Federal Courthouse in Concord hosted an event unprecedented in its kind. While the New Hampshire federal and state courts have both initiated mediation programs over the past decade and provided training to their mediators, never before have they done it together.

Making the occasion even more memorable were opening remarks by U.S. District Court Chief Judge Steven J. McAuliffe and New Hampshire Supreme Court Chief Justice John T. Broderick, both of whom stayed for the day-long program. The judges gave strong support to the value of mediation to the court systems by their words and presence. Also attending were Judges Paul Barbadoro and Joseph Laplante, Magistrate Judge James Muirhead of the U.S. District Court and Supreme Court Justices James Duggan and Linda Dalianis, as well as Probate Administrative Judge David King. Justice Dalianis chairs the Court's Mediation Steering Committee.

The program, subject of almost a year of planning, was eagerly anticipated by both bench and bar. Sign-ups were high weeks in advance. The strong attendance reflected the ever-growing interest in mediation by lawyers and their clients as well as support by both court systems. District Court Deputy Clerk Dan Lynch, who spearheaded the effort, along with Magistrate Judge Muirhead and a small planning committee, was clearly pleased with the turn out. As Lynch noted, "The Court's vision for these mediation CLEs is not only to provide our federal mediators with unique and thought-provoking speakers and topics, but also with a free quality mediation training session for the bar at large. By drawing over 210 attorneys to the courthouse for this event, the program indicates we're pretty close to hitting the mark."

Early in the planning process last winter, Lynch and his team decided to reach out to the state court system. Soon thereafter, Director of the Office of Mediation and Arbitration (OMA) Karen Borgstrom became a key player. Borgstrom was active in developing the program. As she noted, she did not do it alone: "The support that OMA received from the state judges for this project underscores the value they place upon alternative dispute resolution as an important option for New Hampshire citizens whose cases are pending in the state courts. The state court bench and OMA very much enjoyed the opportunity to work jointly with the federal court in bringing this workshop to attorneys and ADR professionals in our state."

The three-hour morning session was open to all bar members and was devoted to mediation advocacy skills. Attendees were first given an overview of mediation history and theories by renowned ADR professor and author, Len Riskin of the University of Florida Levin College of Law.

Professor Riskin was followed by two panels comprised of veteran New Hampshire mediators who discussed practical mediation skills and techniques. The first panel included Larry Vogelmann, Melinda Gehris and Charles Bauer and focused on what advocates should do before the mediation session, such as preparing the client and their mediation presentation, as well as the nuts and bolts of drafting the pre-mediation statement.

The second panel of Terry Shumaker, Russ Hilliard and Bill Mulvey was moderated by Ken Barnes. These experienced mediators shared advocacy tips for the mediation itself, including how to size up and play to opposing parties, make effective opening statements and handle caucuses. They also addressed ways to "close the deal" and what to do to maintain momentum even if the case does not settle at the mediation.

The afternoon session was designed for mediators on the state and federal court panels. Professor Riskin led participants through a role-playing mediation and discussed two of his well-known articles on mediation, "The New New Grid" and "Is That All There Is?: The Problem in Court-Oriented Mediation." The latter sparked lively exchanges about mediation theory with Judge Barbadoro and a productive back and forth with Supreme Court Justice Dalianis as to what changes might be made to court-oriented mediation rules.

Both sessions qualified for CLE credit and received very favorable comments from attendees. Magistrate Judge Muirhead expressed his desire that the state and federal courts continue to work together on future training sessions; he said, "Our interest in providing an efficient and fair system of resolving disputes is mutual and cross-training court mediators makes sense."

Terry Shumaker, a member of the program's planning committee, is a panel mediator for the state and federal courts and a shareholder with Bernstein Shur in Manchester.