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Maryland Program for Mediator Excellence Mediation Ombuds Program

Introduction

In late 1999, the Maryland ADR Commission, under the leadership of Chief Judge Robert M. Bell, published *Join the Resolution*, a consensus-based practical action plan to advance the appropriate use of mediation and conflict resolution statewide. There was only one major area in which consensus could not be reached; that was mediator quality assurance. The ADR Commission decided that further study and consensus building was needed on this topic and as a result, MACRO convened a quality assurance committee. The committee members were representatives of the four ADR practitioner groups; the MD Chapter of the Association for Conflict Resolution (ACR), the MD Council for Dispute Resolution (MCDR), Community Mediation Maryland (formerly the MD Association of Community Mediation Centers), the MD State Bar Association's ADR Section and MACRO. The committee, with the participation of hundreds of people from around the state and across the country, collaboratively designed a quality assistance system, called the ***Maryland Program for Mediator Excellence***. The Maryland Program for Mediator Excellence (MPME) is designed to offer all Maryland mediators opportunities to improve the quality of their practice.

The MPME is governed collaboratively by the Mediator Excellence Council comprised of the four (4) practitioners group listed above, MACRO, as well as representatives from the Maryland District and Circuit Courts, roster programs and a consumer Representative. The Performance Based Assessment & Certification Branch was established to address the issue of consumer complaints.

The Mission

The mission of the Mediation Ombuds Program is to seek a satisfactory resolution to issues, concerns and complaints received from both consumers of mediation services and mediators. The Ombuds provides a confidential, neutral and informal process, which aids the parties in reaching resolutions regarding concerns that arise, as early as possible. The hallmark of the Mediation Ombuds Program is confidentiality, independence, and impartiality.

In receiving complaints or questions, and examining problems, the Ombuds may use a variety of dispute resolution and other techniques. These processes include: developing, evaluating, and discussing the options which may be available for facilitating, negotiating, and mediating or referring to mediation; or making recommendations for the resolution of an individual complaint. As an upward feedback

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channel, the Ombuds has the ability to bring to the attention of the Mediator Excellence Council (MEC) systemic problems, identifying complaint patterns and trends, and recommending policy changes and training opportunities on relevant topics which have surfaced as important issues.

The Objectives

The Objectives of the Mediation Ombuds Program are to provide:

- A. A system of responsiveness to concerns and complaints about mediation services;
- B. A framework for building competency among mediators who are the subject of legitimate complaints;
- C. An opportunity to help people making complaints gain an understanding of mediation, its benefits and purpose; and
- D. A tangible service designed to help build public trust and confidence in the mediation field.

Structural Framework Of The Mediation Ombuds Program

The Mediation Ombuds Program consists of MPME Members, an Ombuds and an Advisory Group. MACRO, through the Quality Assistance Coordinator, will provide administrative support, where needed.

Mediators

Joining the MPME means making a commitment to cooperate, in good faith, with the Ombuds Program. Cooperation by the mediator is essential if the program is to accomplish the objectives listed above. Cooperation is defined by Webster as “to work or act together toward a common end or purpose.” In the context of the Ombuds program, this means both the Ombuds and the mediator are working together to provide a system of responsiveness to the concerns and complaints consumers might have about mediation services in general and the individual mediator’s service in particular.

In addition to cooperating with the Ombuds, mediators must commit to working in good faith with the Ombuds. Good faith is generally described as that state of mind denoting honesty of purpose, freedom from intention to deceive, and being faithful to one’s commitment. In the context of the Ombuds Program, the Ombuds could receive a complaint about a mediator and after discussion with the Ombuds; the mediator might agree to take some specific steps to correct/change the behavior. However, the

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Ombuds continues to receive calls regarding the mediator and learns that the mediator, in fact, did not complete the action agreed to. This may go on for a while with the mediator, each time, agreeing to take corrective measures but failing to do so. This would be an example of failing to work in good faith with the Ombuds.

Should the Ombuds experience repeated instances of non-cooperative, non-good faith participation on the part of a mediator and after the Ombuds has made reasonable attempts to gain the cooperation and good faith participation of the mediator, the following action would be taken:

1. The Ombuds would notify the mediator that the Ombuds is closing the case due to the mediator's failure to fulfill the membership commitment of cooperative, good faith participation.
2. The letter would list the instances in which the mediator failed to fulfill the membership commitment which resulted in the decision, without disclosing confidential details about the case.
3. The letter to the mediator would be delivered using a method which verifies delivery. A copy of the letter would also be sent to the Quality Assistance Coordinator at MACRO. Once notification is made, the case is closed within the Mediation Ombuds Program. This process is repeated with any consumer contact in which the mediator acts contrary to membership commitment.
4. The Quality Assistance Coordinator would make a recommendation to the Membership Retention and Support Committee regarding the disposition of the matter.

A mediator removed from the program can resubmit an application anytime after corrective action has been taken. The application would be submitted to the Membership Retention and Support Committee for disposition by the Quality Assistance Coordinator.

If a complaint is received regarding a mediator who does not participate in the MPME, the Ombuds will still attempt to resolve the matter as a public service and to increase consumer confidence in mediation, even though the mediator is not required to cooperate. The Ombuds will also explain the MOP to complainants and encourage them to work with MPME mediators while indicating to the mediator the advantages of joining the program.

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Ombuds

The mission of the Mediation Ombuds Program is to seek a satisfactory resolution to issues, concerns and complaints received from consumers of mediation services as well as mediators. The Ombuds provides a confidential, neutral and informal process, which aids the parties in reaching a resolution regarding concerns that arise at the earliest possible contact with the consumer. In performing this mission, the Ombuds serves as an information and communication resource, upward feedback channel, and advisor. As an upward feedback channel, the Ombuds has the ability to bring areas of concern to the Mediator Excellence Council (MEC) who can then develop the necessary tools to bring about improvement.

In receiving complaints or questions, and examining problems, the Ombuds may use a variety of dispute resolution and other techniques. These processes include: developing, evaluating, and discussing the options which may be available for facilitating, negotiating, and mediating or referring to mediation; making recommendations for the resolution of an individual complaint. The Ombuds determines whether to act on a particular complaint or question.

The Ombuds will:

- A. Act impartially and confidentially;
- B. Provide a mechanism for early problem resolution;
- C. Consider all sides of an issue in an informed, unbiased fashion;
- D. Promote better communication;
- E. Provide a safe place to share confidences;
- F. Answer questions regarding mediation and mediation services;
- G. Listen without criticizing;
- H. Refer individuals to appropriate services;
- I. Will bring to the attention of the Quality Assistance Coordinator mediators who are not abiding by their agreement to participate and cooperate in good faith with the MOP; and
- J. The Ombuds will abide by the Code of Ethics and the Standards of Practice as adopted by the International Ombuds Association.

The Ombuds will not:

- A. Advocate for any individual;
- B. Serve as part of any formal complaint process;
- C. Reveal the identity, explicitly or implicitly, of those who contact the Ombuds, without their expressed consent, unless required to do so by law;

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- D. Reveal the identity of contacts made by the Ombuds in resolving an issue;
- E. Testify or serve as a witness; and
- F. Keep case records on behalf of the MPME. If the Ombuds finds case notes necessary to manage the work, the Ombuds shall establish and follow a consistent and standard practice for the destruction of any such written notes.

Qualification of the Ombuds:

- A. Must have ten (10) years of mediation experience;
- B. Must have at least 5 years experience working as an ombuds, coach or have equivalent conflict resolution experience, including dealing with volatile situations. This can be in combination with the ten years of mediation experience. If experience other than ombuds is being used, must be able to demonstrate knowledge about the field of Ombudsing as well as the Ombuds Standards.
- C. Must be able to remain independent, neutral and impartial;
- D. Must be able to maintain the confidentiality of all participants;
- E. Must keep all notes, and other information that identifies participants, secure and follow a consistent and standard practice for the destruction of any such material;
- F. Must have outstanding communications skills with a diversity of people;
- G. Must have the ability to gather and analyze information;
- H. Must have excellent problem-solving and conflict resolution skills;
- I. Must have good computer skills;
- J. Must not be an advocate for any individual, but should be an advocate for good conflict resolution processes;
- K. Must be able to establish and maintain a reputation for fairness and integrity;
- L. Must abide by the Code of Ethics and the Standards of Practice as adopted by the International Ombuds Association; and
- M. Statistical data collection and analysis skills are preferred.

The Mediation Ombuds Program Advisory Group

Recognizing that the MOP will deal with a diversity of consumers, issues, mediation styles, frameworks and the like, the ability to talk to experience mediators would increase the quality of the service being provided. To provide this resource, the Mediation Ombuds Program Advisory Group is created.

The MOP Advisory Group will consist of five (5) highly experienced mediators who would act as a resource for the Ombuds. The knowledge, skills, and abilities of the committee members will include substantial (at least 5 years and 50 cases) mediation

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experience, good judgment, emotional intelligence, thoughtfulness, and a willingness and ability to respond promptly to communication from the Ombuds. Members will be selected by the MEC.

Should a matter arise, the Ombuds, at his/her discretion, can consult with a member of the MOP Advisory Group. The information provided to the member would be sufficiently sanitized so that the identity of both the consumer and mediator is protected. The establishment of the Advisory Group does not limit the Ombuds ability to access other individuals who may be of assistance in resolving a complaint.

Selecting the Advisory Group

A. Interim Advisory Group

In an effort to provide the MEC with ample time to select the permanent Advisory Group, an Interim Advisory Group will be appointed by the MEC. The individuals of the Interim Advisory Group serve as the Acting Ombuds, on a 30 day rotation.

During each rotation, the "Acting Ombuds" would be compensated with a stipend in the amount of \$300.00 at the end of the 30 day rotation. The amount of the stipend will be reviewed at the end of the 30 day rotation to make sure that it is adequate compensation. It is only during the time the Advisory Group Member is serving in the capacity of the Interim Ombuds that they would be compensated. There would be no compensation for serving as a member of the Advisory Group .

B. Selection of the Permanent Advisory Group

The following process has been approved for the selection of the Advisory Group:

1. The Chair of the MEC will ask for MEC members to volunteer to serve on the Ombuds Advisory Group Selection Panel. A minimum of three (3) members are needed to serve on the selection panel.
2. A call would go out asking those interested in being considered for the Advisory Group to complete an application form. A date for the submission of the forms will be indicated.
3. The Advisory Group Selection Panel would review the applications with the goal of coming up with 5 candidates to present to the MEC for ratification. The panel may develop their own process for reviewing the applications and making a final determination. The selection panel must remember that the final make-up of

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the Advisory Group should be one that is diverse in terms of geography, mediation approach, race and age.

4. Once the Selection Panel has completed their process, they shall make a proposal to the MEC. This proposal shall include a list of all of the names of all the individuals who completed an application process along with an explanation of both the process used and the rationale for the individuals being proposed.
5. The members of the Ombuds Advisory Group shall serve three (3) year terms to be served on a staggered basis. When making their proposal, the Selection Panel will also indicate how the staggered terms will be implemented.
6. The MEC shall use Sociocracy to ratify the proposed names.
7. Once the Ombuds Advisory Group is established, the members of the Group shall choose one individual to represent the group on the MEC. The individual selected will serve as the successor to the Ombuds Grievance Task Group.
8. When it is time for a new member to be added to the Advisory Committee, selection would be done in the same manner.

The Mediation Ombuds Program

As outlined in the mission statement for the Mediation Ombuds Program, the program seeks to provide a fair and satisfactory resolution to issues, concerns, and complaints received from both consumers of mediation services and mediators. To accomplish this goal the program will be governed by confidentiality, independence, and impartiality.

Confidentiality

The Ombuds shall maintain the confidentiality of all information obtained by the Ombuds, unless agreed to by the parties and the Ombuds or required by applicable law or organizational standards of conduct. The Ombuds may share information that in no way identifies the parties or the mediator.

When receiving complaints, the Ombuds will explain to the complainant the confidential nature of their communications. The Ombuds will also explain any exceptions that may exist to confidentiality as a result of applicable law or organizational standards of conduct. If, for example, the complainant simply wants the Ombuds to be aware of a concern regarding a mediator, then the complainant's identity would be kept confidential. If, on the other hand, the complainant wants the Ombuds to begin a

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mediation or conciliation process, then the mediator would be contacted about the concerns and made aware of the complainant's identity.

The Ombuds would also explain that the mediator is allowed to disclose otherwise confidential information about mediation communications to the extent necessary to defend himself/herself against any complaint or claim. The Ombuds will inform the complainant of the option to contact a roster manager directly.

Independence

To be effective, the Ombuds must be free from interference while performing his/her duties. To that end communication from the MEC to the Ombuds will be through the Chair of the MEC, however, the Ombuds may consult with anyone on the MEC as necessary. The Ombuds will provide regular reports as outlined in the section titled "Reporting." MACRO will provide the administrative support, and for the purposes of Maryland Procurement Regulations, will manage the contract.

Impartiality

The Ombuds functions as a neutral third party not as an advocate for either the consumer or the mediator. The Ombuds will not favor any side, position or person in a misunderstanding or dispute. The Ombuds will work without prejudice or bias.

The Process

Initial Contact:

The Ombuds will receive telephone calls, emails, letters and other direct communications from consumers and mediators. It will be important during the initial contact for the Ombuds to explain the purpose of the office, the neutrality of the ombuds, as well as the confidential nature of the communication with the office. The Ombuds, after identifying the issues, will make a determination as whether the matter is appropriate for the Ombuds Program.

Information Gathering and Sharing

Based on the issue, the Ombuds may determine that a better understanding of the mediation process is needed to resolve the issue. In this instance, the Ombuds would provide information about mediation. For example, if the complaint is that the mediator refused to make a decision in the case, the Ombuds would explain that mediation is a process in which people make their own decisions and that the mediator does not decide the matter for them. Some complaints may be resolved at this information sharing stage. The Ombuds will take an educational and impartial manner to both the complainant and the mediator to facilitate a dialogue that allows them to choose an appropriate outcome or resolution.

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Contacting The Mediator

If the Ombuds believes that information from or a discussion with the mediator is necessary to the successful resolution of the issue, the Ombuds will obtain the express consent of the consumer before proceeding. In seeking consent, both the Ombuds and the consumer should clearly understand exactly what information can be shared with the mediator. It is imperative that the Ombuds stay within the scope of the consumer's consent.

If the consumer does not give consent, the Ombuds will provide the consumer with other options consistent with the issue(s) raised which could include contacting the program providing the mediation services or the consumer contacting the mediator directly.

If the consumer gives their consent, the Ombuds will contact the mediator seeking to understand the mediator's perspective. Based on the discussion with the mediator, the Ombuds may determine that (1) no further action is required and would notify the consumer of that decision, or (2) that further action is necessary. If further action is needed, several options are available to the Ombuds including functioning as a conciliator, mediator or facilitator; encouraging the parties to participate in mediation or other dispute resolution processes on their own; and/or encouraging the mediator to participate in one of the branches of the MPME.

If the mediator and the Ombuds cannot agree on a resolution or a course of action, the matter is closed. The Ombuds will notify the consumer and may discuss other options available to the consumer.

At any point during this process, the Ombuds may contact any member of the Ombuds Advisory Group, or anyone else, for consultation. Information shared with the Advisory Group, or anyone else, shall not include the identify of the consumer or the mediator, or any information that may lead to the discovery of their identities.

Reporting

The Ombuds will publish regular reports to the Mediator Excellence Council, MACRO and MPME members. Such reports shall also be available to the general public, upon request. The reports will be statistical in nature and include information such as how the consumer learned of the program, how contact was made with the program, the types and number of issues presented, at what point in the process was the issue(s) resolved, and any other statistical information which may be viewed as helpful in evaluating the effectiveness of the program. The reports may also include recommendations for policy changes, trainings other changes/improvements to the program.

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Public Awareness

Information about the Mediation Ombuds Program shall be disseminated in the form of a positive ad campaign as part of the campaign announcing the MPME. Information will be disseminated to the public in a variety of ways including listing on MACRO's website, Maryland Mediator's Directory, both online and hard copy; permission will be sought from mediation practitioners groups, and other web based mediation sites to provide a link to the Mediation Ombuds Program; printed materials will be provided to program administrators, roster managers, community mediation programs and private practitioners for dissemination to clients. Information about the program will be incorporated into the mediation trainings, workshops, seminars, forums, etc. sponsored by MACRO and trainers will be asked to disseminate information to trainees.

Review of Mediation Ombuds Program

The MEC shall review the Mediation Ombuds Program at six and twelve month intervals after the program begins, and annually thereafter. The MEC can request a review at anytime it deems necessary.