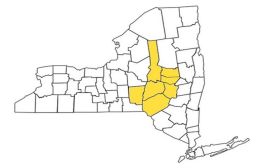


# The Back-and-Forth

Autumn 2020



**DISPUTE RESOLUTION CENTER** Newsletter



**CHENANGO | DELAWARE | FULTON | HERKIMER | MONTGOMERY | OTSEGO | SCHOHARIE**

## The DRC's Transition to Virtual Mediation by April Rando, Coordinator

It has been a little over six months since the COVID pandemic forced CDRCs into developing alternatives to in-person mediation. The Dispute Resolution Center quickly realized that we would need to utilize web-based technology in order to continue to provide mediation services to our communities. During the first few weeks of the shutdown, the DRC took a 3-stage approach to transitioning to virtual mediation.

The first stage was assessing what technology we had available, and researching web-based technologies. Although the DRC had a Zoom account, we had never used it for mediation. During this time, we became acquainted with Zoom video conferencing, learned about the importance of security settings to prevent "Zoom bombing," and played with the technology so that we could become more confident in our ability to manage virtual rooms.

We discussed how we could make the technology accessible to our clients who did not have access to the Internet, who lacked digital devices to support web-based platforms, or who had limited experience using technology. We simply could not assume that everyone had a smart phone or a strong Internet connection. As an alternative to video conferencing, we discovered that phone conferencing could work, despite not being able to see the parties.

The second stage was bringing our volunteer mediators on board to virtual mediation. We held a series of conversations to discuss why we needed to move in this direction, and to hear our mediators' concerns about virtual mediation. The DRC provided virtual in-services with mock mediations to help them become more confident in their ability to mediate in this virtual environment. Within two months, we were able to move to stage 3 in our transition plan- providing services to our communities.

DRC volunteers now have the opportunity to mediate cases throughout our 7-county service area. For our clients, virtual mediation has made it more convenient and accessible, especially for clients who may not have had a vehicle to drive to a mediation site. Although many of us hope for the day when we can have in-person mediation again, virtual mediation has shown that it can be just as effective in helping people connect and work through conflict.



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On the Bright Side by Patrick Legay, DRC Program Director

Charts, numbers, trends: when you see them these days, they generally aren't looking too good. But, if you look at the chart below, I am happy to report that you are looking at some good news, that we at the DRC have been able to spring into action since the beginning of the shutdown. We have developed a whole new (to us) method of delivering our services using online tools. And this new method is starting to be taken up in good numbers.

<u>June 1- August 10</u>	<u># Referrals</u>	<u># of Processes</u>	<u># Declined</u>	<u># Unable to Contact</u>	<u># Screened out</u>	<u># Pending</u>
<u>2019</u>	186	59	66	9	33	0
<u>2020</u>	206	19	33	40	19	86

The big takeaway from this chart is the number of new referrals. We are now surpassing the amount of new referrals received in the same period last year. This signifies that we were able to transition to a primarily remote video-conferencing model while maintaining the confidence of our referral partners. To put this in context, we used to be available in person in Court for Judges, Clerks, and other Court personnel to direct parties straight to us. Now we connect differently.

But, as you can see, although overall referrals are higher, we are lagging in the amount of processes (i.e. the amount of times we were able to 'bring the parties together'). This is due to the difficulties of the times. As you can see further to the right on the table, we have a much higher number of unable to contact than the same period last year. Again, no longer being there in person, we have to find other ways to connect, and we are, but the context is more difficult for the participants. In addition, as you can see furthest to the right, we have 86 cases (of the 206 referred) that we're still working on getting the parties together and don't know yet whether a process will happen or be declined etc. So we can expect we will be able to host processes for at least a portion of them.

In terms of the types of issues, we are actually seeing less related to custody/visitation (parenting) issues (69) than we did in the same period the previous year (100), and far more issues related to monetary claims (91) than we did in the previous year (13). It seems unsurprising that there are more monetary issues given the times, but at the same time, it does seem quite surprising that there aren't as many parenting issues coming forward. However, upon consideration, it's likely that, like many things, families are in a holding pattern right now, and we are likely to see a large volume of issues related to child custody and visitation come to the fore. It would be a great thing to report if we believed we aren't seeing as many of these issues because there just aren't as many of these issues out there. Our feeling is there's actually more, they just haven't gotten to us yet.

On the one hand, it seems strange to claim 'look on the bright side, look how much legal and interpersonal conflict there is.' But, that's not really the bright side of it. The bright side is that where those conflicts happen - or are intensified by the difficult context of the pandemic - people have an avenue to address these conflicts in a way that honors their right to self-determination, and supports them in tending to their relationships. This is what we offer through our dispute resolution processes. And in doing so, we do a service to the Court system by making sure that those who do end up in Court, using the high value high demand time and resources of the Court, are only those who really need it.

So, the bright side is, even during these difficult times, we're still able to help people address serious issues and have productive conversations where there is conflict, and because we co-mediate with trained volunteer mediators who are members of the local community, we help build the capacity of the community to address conflict informally. And we teach a lot of people how to connect with each other through Zoom.

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*Since the killing of George Floyd on Memorial Day weekend, organizations across the country, including New York's network of Community Dispute Resolution Centers, have been working to study and understand what social justice means and what we, as dispute resolution practitioners, can do to address the injustices in our society. Here is a story about how one of our mediators participated in a local anti-racism effort long before Black Lives Matter became a rallying cry for those seeking positive change.*

"My Encounter with BLM...Before BLM" by Tom Pullyblank

Since it began in 2013, Black Lives Matter has become one of the most significant reform movements in American history, succeeding where so many other civil rights initiatives have thus far stalled. That ordinary people of all skin colors and ethnic backgrounds have organized and attended Black Lives Matter rallies in communities large and small throughout the world is one measure of its importance. One speaker at the recent BLM rally in Cooperstown was Wes Lippitt, a young man whose story demonstrates why the lessons of Black Lives Matter are so valuable for us all.

On the afternoon of April 2, 2010, Wes was shot in the arm by Anthony Pacherille, a classmate at Cooperstown Central School. Anthony later admitted that his motive for targeting Wes was racist. Anthony explained his racist ideology in a 29-page essay that the court released to the public after Anthony's sentencing. "I don't even want to live in this world," Pacherille wrote. "N—rs and Jews will bring this country down but no one seems to see it coming. All of these social parasites, N—rs, Jews, Mexicans, South Americans...I don't want to live in a world where there is no white majority...I can no longer sit here and watch the blacks and Jews taking over everything that white people created. The damn Jews and N—rs have won."

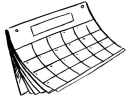
A few days after the shooting, Wes's mom asked me (I was then pastor at the Fly Creek United Methodist Church) and a few other community leaders for help, which we enthusiastically agreed to give. We hosted a candlelight vigil. We organized and facilitated the Cooperstown Circle of Caring. We wrote letters to the editor and posted on Facebook to increase awareness of racism in our community. We continued to love and support Wes, as we had since he first moved to town as a young child.

We received much support...but we also encountered much resistance. Initially, all other clergy leaders in Cooperstown remained silent or openly opposed our vigils and circles as "divisive." Anthony's priest blamed the shooting on Wes and called our gatherings "Circles of Revenge," despite the fact that Anthony's parents peacefully participated in several circle sessions. But then Mr. Pacherille distributed "Save Anthony" signs to his friends throughout the community, who displayed the signs in their front lawns. Worse yet, he and his brother started a website where they slandered and attacked several community leaders—doctors, judges, teachers, myself. All of these responses in support of the shooter were meant to blame the victim, to deny Anthony's—and his family's—responsibility and to minimize the hurt that Anthony's violence had brought into Wes's and his family's lives. Their tactics were identical to the tactics used by BLM's opponents today.

Then something extraordinary happened. Wes's mom and a group of concerned citizens organized a demonstration, a peaceful march from one end of the village to the other. Almost 200 people participated in the march, most of us wearing "Cooperstown Stands Up to the Hate" t-shirts that had been specially made for the occasion. There were teachers, police officers, political leaders and clergy and lay leaders from several village churches, including Anthony's. We didn't chant, we didn't sing. We simply walked, hand in hand, arm in arm, neighbors who refused to be complicit in racist violence or silenced by its apologists, people committed to the proposition that would, in a few years, become the name of one of the most significant reform movements in American history.

We learned a very important lesson that day, a lesson that BLM advocates have been trying to teach us since the movement began. We learned that in the aftermath of a shooting motivated by racist hate, the only way to truly heal is to explicitly and specifically state that

**BLACK** lives, the target of that racist hate, are the ones that matter most.



SAVE THE DATE! COMING SOON! November (Dates TBD): Mock Mediations– We will have a few dates where volunteer mediators can practice virtual mediation.

**Eviction Moratoria and Mediation by April Rando, DRC Coordinator**

On September 9th, the CDC issued an Agency Order titled, “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19,” in response to evictions occurring throughout the country. The CDC Order does not replace state and local moratoria that provide greater public-health protections.

Under the CDC eviction ban, tenants may not be evicted for non-payment of rent. Tenants, however, must present in writing to the landlord a declaration stating that: 1. They made efforts to obtain government housing assistance; 2. They have an annual income less than \$99,000, (or less than \$198,000 for joint tax filers), were not required to file taxes, or received stimulus check under the CARES Act; 3. They were unable to pay the rent due to substantial loss of income, i.e. job loss or reduced work hours; 4. They made efforts to pay the rent (i.e. partial payment); and 5. Eviction will put them at greater risk of catching COVID if they need to move into congregate or shared housing. Finally, tenants must include that they understand that they may be required to pay any back rent owed in full upon the Order’s expiration on December 31st.

In New York State, the eviction moratorium for non-payment of rent has been extended to January 1, 2021. Tenants must be able to prove that they suffered financial hardship during the COVID-19 state disaster emergency (E.O. 202.66). In addition, Chief Administrative Judge Marks’ most recent Administrative Order (A.O./231/20) issued on October 9th, allows the resumption of residential eviction matters commenced prior to March 17th, unless tenants can demonstrate that they are protected under the Tenant Safe Harbor Act. In Judge Marks’ memorandum, he refers to the CDC

Order, which allows evictions for criminal activity, damage to the residence, threats to the health and safety of others, or building code violations.

Finally, although landlords and tenants are encouraged to use ADR, it may not be appropriate when only one person is represented. The A.O. 231/20 states, “Mediation and other forms of alternative dispute resolution are encouraged, particularly in matters where (1) all parties are represented by counsel, or (2) all parties are unrepresented by counsel.” (To see Judge Marks’ Administrative Order, Memorandum and the CDC Order, go to this link:

<https://www.nycourts.gov/whatsnew/pdf/EvictionsMemo-10-09-20.pdf>

While there is overlap between the CDC’s Order and New York State’s eviction moratorium, evictions are likely to proceed when the tenant is unable to prove COVID-19- related financial hardship. This crisis has exposed the systemic weaknesses in our social safety net, and the lack of affordable housing in a market economy. Our work as mediators will definitely become more challenging as we begin to receive a flood of eviction cases coming our way.

How do we as mediators navigate the power imbalance between landlords and tenants knowing that eviction will be the most likely outcome? We can listen empathetically about the emotional and financial toll this crisis taken on both sides. We can ask questions, help people brainstorm solutions, and, frankly, do some reality checking when discussing the huge amounts of back rent tenants will owe to landlords. The mediation process just might make it possible for landlords and tenants, and our Court system, to envision an alternative to eviction.



The DRC is building a video library of in-services on Vimeo. We currently have three in-services available: “DV Training for Mediators,” “What Happens Next? Case Management Following the Mediation,” and soon, “Small Claims Mediation.” If you missed the “live” version of these in-services, you can now watch them at your convenience. Contact April Rando to get access to the video link at arando@charitiesccdo.org.



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