

# Dispute Resolution Training Program

## **Welcome** **Probate and Family Court Staff!**

*(please note this training program is being recorded)*



# Welcome / Introductions

- Timothy M. Linnehan, Esq.
  - ADR Coordinator for the Trial Court
  - Executive Office of the Trial Court

## **Probate and Family Court**

- Honorable John D. Casey, Chief Justice
- Matthew Abraham, Senior Program Manager
- Diane Beswick, Managing Attorney
- Michelle Yee, Senior Program Manager



# Welcome / Introductions

Honorable John D. Casey, Chief Justice



John D. Casey



# Introductions – MWI Facilitators

- Josh Hoch – Lead Facilitator
- Nnena Odim – Facilitator
- Diana Chiang – Facilitator
- Alnoor Maherali – Facilitator



# Training Program Purpose

Increase awareness of:

- Court-connected dispute resolution services
  - as it relates to Pathways case management approach to:
    - resolving cases earlier
    - connecting court users with appropriate resources
    - simplifying processes, and
    - offering broader dispute resolution options



# Zoom Basics

- Check / Update Name
- Chat
- Raise Hand
- Video On
- Polls
- Breakout Rooms
- Recording
- Tech Problems - Contact Matt at 774-275-0181 or Keith Nalbandian at 774-406-6218
- *Doomsday, 712-775-8962, Conference Code: 681708*



# Housekeeping

- End at 3:30 PM
- Stay hydrated and comfortable
- Break – 1:00 PM to 1:15 PM
- Q/A
- Program Evaluation
  
- See [www.mwi.org/pathways](http://www.mwi.org/pathways)



# Program Topics

- Understanding Pathways
- Overview of Court-Connected Dispute Resolution Services
  - Advantages of the ADR
- Approved ADR Programs - Cost and Languages
- Role of the Neutral in each process
- Ethical Standards for Neutrals
- Confidentiality of court-connected dispute resolution services
- Self-determination and informed consent by the parties about selection of ADR and case outcome;
- Party control and role of attorneys in court-connected dispute resolution services



# Dispute Resolution Training Program

## Agenda

- Participant Introductions
- Pathways Presentation
- Overview of ADR
- Video about ADR
- Available Dispute Resolution Services
- Facilitated Breakout Session
- Resources
- Program Evaluation
- Q/A
- Wrap Up



# Zoom Poll - Introduction of Participants

- Division
- Years with Probate and Family Court
- Understanding of ADR
- Understanding of Pathways



# Pathway Presentation

- Overview
- How ADR plays a role in Pathways
- Basic Pathway Training
- What's Next?



# ADR in the Trial Court



ADR

# Use of ADR

“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”

– **Sandra Day O’Connor**



# Court-Connected ADR in Trial Court



# Uniform Rules on Dispute Resolution

**Court-Connected ADR** is governed by the Uniform Rules on Dispute Resolution, Supreme Judicial Court Rule 1:18, and is designed to offer litigants more options in resolving disputes.

There are seven ADR processes defined in the Uniform Rules: arbitration, conciliation, case evaluation, dispute intervention, mediation, mini-trial and summary jury trial.



# Uniform Rules on Dispute Resolution

## Guiding Principals:

- Quality
- Integrity
- Accessibility
- Informed Choice
- Self Determination



# Why ADR

Because it is an appropriate option to be considered for many case types. It can save time and money. ADR gives litigants a choice in how their dispute is resolved.

**Satisfaction.** ADR often promotes greater party satisfaction than trial. It is a flexible process that improves case management and helps parties understand the strengths and weaknesses of their case.

**Access to Justice.** ADR provides access to justice to pro se litigants. Most Conciliation Services provided by County Bar Associations in the Probate and Family Court are provided free of charge. Attorneys and litigants should consider ADR as a way to resolve disputes without trial.



# Why ADR?

**Case Management.** Introduce and offer ADR options as part of your case management initiative.



# Uniform Rules: Guiding Principles

- **Accessibility** - Dispute resolution services should be available to all members of the public regardless of their ability to pay.
- **Informed choice of process and provider** - Litigants should be given a choice of dispute resolution processes and providers and information upon which to base the choice.
- **Timely service** - Dispute resolution services, to be most effective, should be available early in the course of a dispute.



# Local Dispute Resolution Coordinators

**APPOINTMENT** - The First Justice of each court or division within every Trial Court department shall designate one court staff member as the dispute resolution services coordinator for that court or division.

**ROLE** - The dispute resolution services coordinator shall maintain information about court-connected dispute resolution services and assist the public in making informed choices about the use of those services.

**DATA** - The coordinator, in collaboration with the program in which the court division refers cases, shall develop a system to record and compile data as required by Rule 6(g).



# Role of Departmental and EOTC Coordinator

## ADR Coordinator for the Trial Court

- Responsible for implementing and overseeing dispute resolution in Trial Court
- Advises the Chief Justice of the Trial Court
- Staff to Trial Court Standing Committee on Dispute Resolution
- Assist Trial Court Departments on dispute resolution services
- Oversees Uniform Application Process for Approved Programs
- Mediation trainer
- Conciliation trainer



# Role of Departmental and EOTC Coordinators

## **Probate & Family Court Dispute Resolution Coordinator**

- Responsible for implementing and overseeing dispute resolution services
- Advises Chief Justice Casey
- Representative to the Trial Court Standing Committee on Dispute Resolution
- Assist local dispute resolution coordinators on dispute resolution services
- Oversees and monitor approved programs



# “Let the Forum Fit the Fuss.” – Frank Sander



A modern justice system should offer a multi-door courthouse approach – an approach in which all legal matters come to court, but litigants are given many options (doors) to resolve their case.



# Referral of Cases to ADR

- No court may refer cases to a provider of dispute resolution services unless the provider is an approved program included on the list developed pursuant to Rule 4(a).
- In all cases, courts shall inform parties that they are free to choose any approved program on the list, subject to such reasonable limitations.



# Screening Cases for ADR

- Courts may require parties and/or their attorneys to attend a screening session or an early intervention event regarding court-connected dispute resolution services except for good cause shown.



# Conciliation is Expanding

## Modified Conciliation Training Guidelines – Spring 2013

The Guidelines now permit attorneys who are members of the Massachusetts Bar in good standing with the Board of Bar Overseers who have practiced law in Massachusetts for at least three years and who have completed an approved 30-hour mediation training program to serve as a conciliator in a court-approved program subject to the approval of the conciliation program and the completion of the necessary court orientation with the program.



# ADR Programs in the Probate & Family Court

29 Approved ADR Programs including the “in-house” dispute intervention services provided by Probation Officers in each of the 14 court divisions.

11 Programs are approved conciliation programs run by county bar associations.



# ADR Referrals

## **FY19: Total – 25,644**

24,029 Dispute Intervention

1,227 Conciliation

388 Mediation

## **FY20: Total – 19,515**

17,775 Dispute Intervention

936 Conciliation

461 Mediation

343 Mediation – DOR Pilot

## **FY21: Total – 12,461**

11,139 Dispute Intervention

1,135 Conciliation

187 Mediation



# FUTURE



- “If you don’t know where you’re going, you will end up somewhere else.” – Yogi Berra



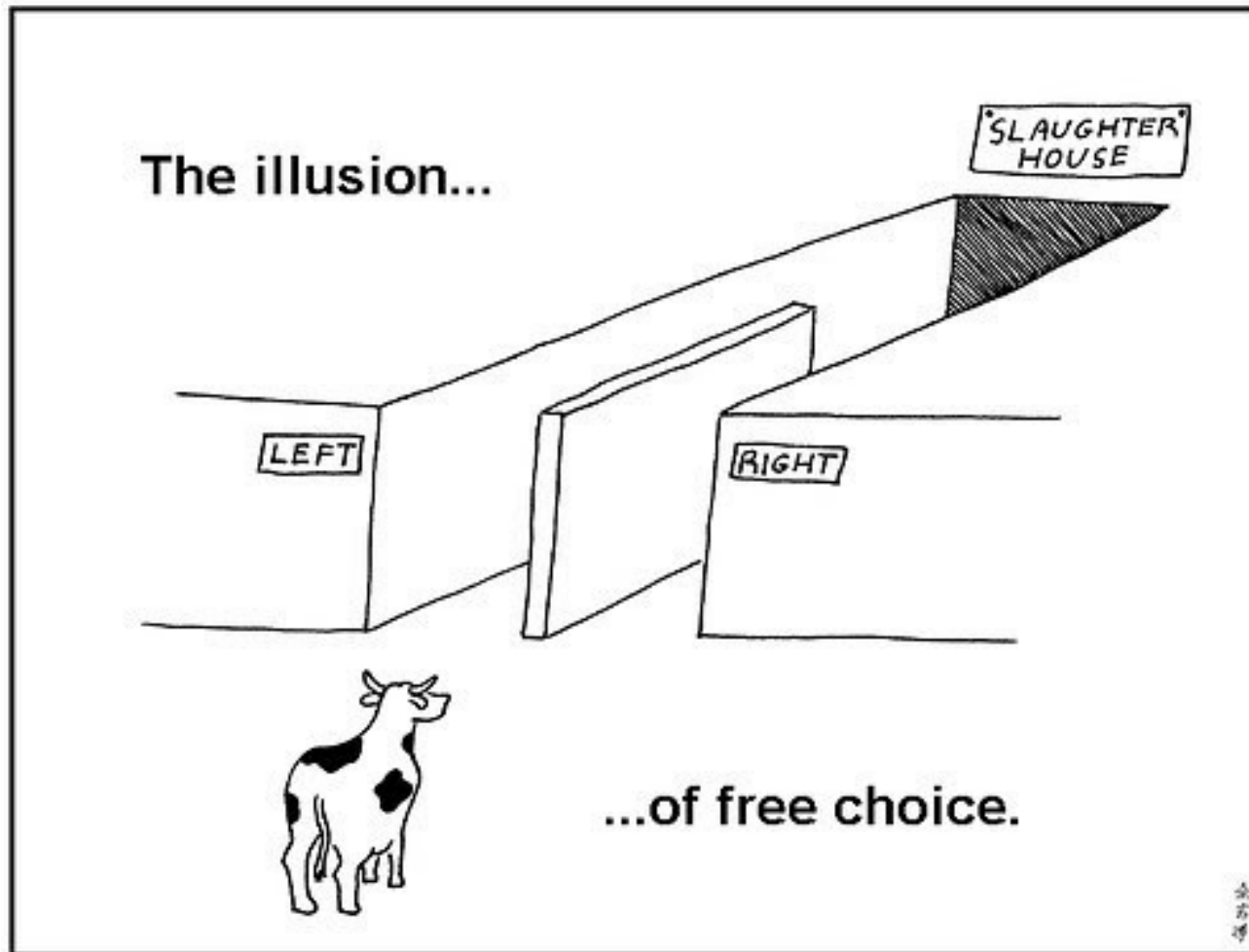
# REALITIES



- Majority of referrals are to free programs (BMC, District, Housing, dispute intervention and conciliation in Probate and Family, in-house providers in Superior)
- The use of conciliation is increasing.
- There is an increase in pro se litigants.
- On-site services are key to use of ADR.
- Awareness of ADR services is required to expand current use.



# ADR Paradox



# ADR Paradox

- ADR is successful in specific cases types, but, overall, there is no systematic use. The paradox is that while the use of ADR yields highly successful results in certain case types, it is rarely used in a systematic way by courts in other appropriate case types.
- Examples - Small claims cases in the BMC and District Courts, summary process cases in the Housing Court, the use of dispute intervention in the Probate and Family Court and the use of “in house mediation” in the Superior Court where the use of ADR is a success - but ADR is not utilized for other similar civil cases in those courts.



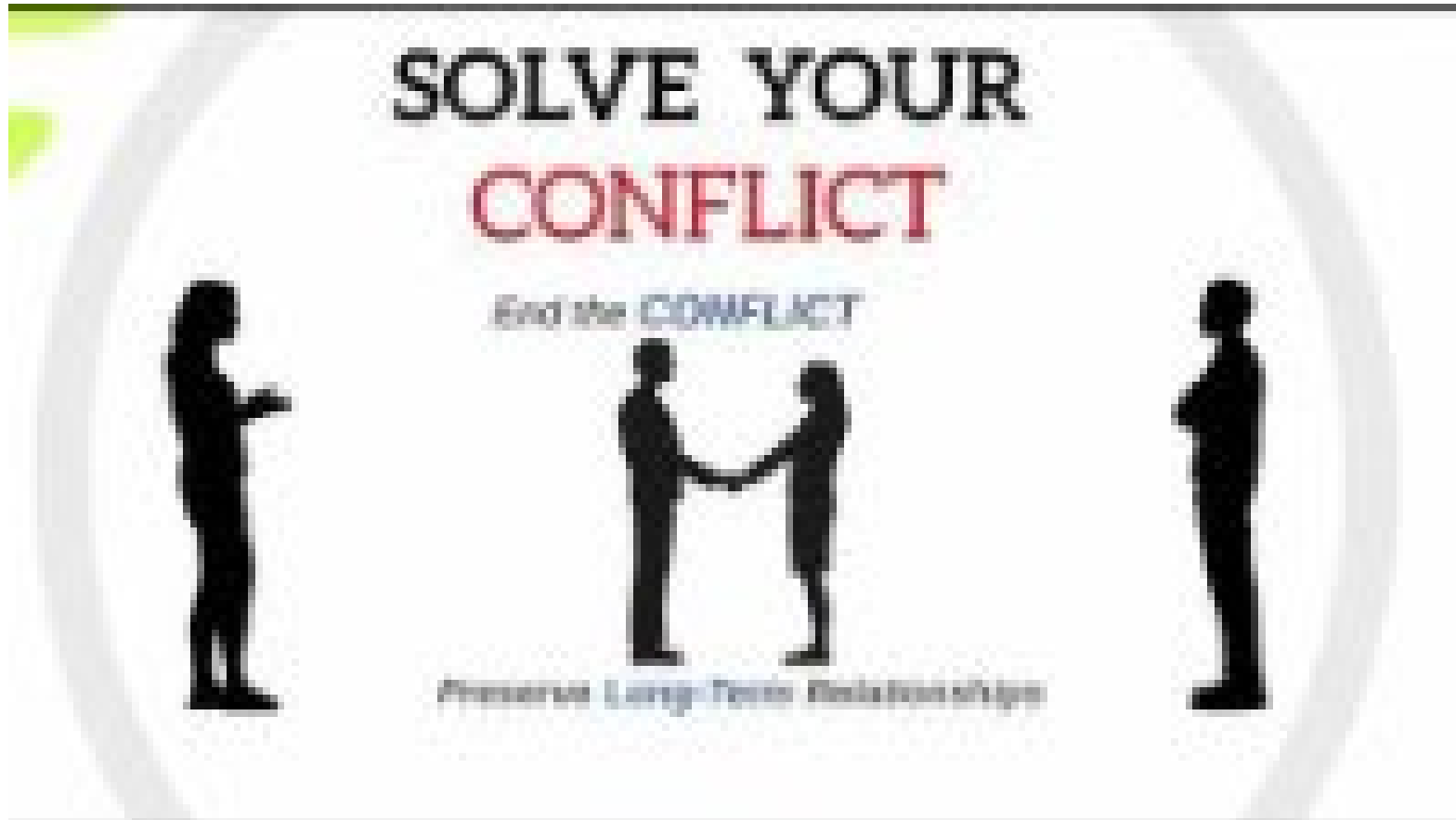
# Pathways & ADR

- Taking court-connected ADR to the next level.
- “institutionalizing ADR means that the Commonwealth’s courts must accelerate the incorporation of alternative dispute resolution into the justice system, even as adjudication is improved.”

The Chief Justice’s Commission on the Future of the Courts, Reinventing Justice, 2022 (1992)



# Video



# Break at 1:00 PM

- 15-minute break



# Dispute Resolution Services in the Probate and Family Court Department

- Types of court-connected ADR services:
  - Mediation, Conciliation, Dispute Intervention
- Overview of each type
- When one type of ADR may be used versus the other
- Advantages of ADR in the Probate and Family Court
- Case Referral Process
- Screening



# Cost of court-connected dispute resolution services

- Mediation
- Conciliation
- Dispute Intervention



# Mediation – Zoom Poll



# Mediation

- Use the chat: What words do you use to describe mediation?

**“Mediation”** means a voluntary, confidential process in which a neutral assists parties in identifying and discussing issues of mutual concern, exploring various solutions, and developing a settlement mutually acceptable to the parties.

## Styles of Mediation

- Facilitative
- Transformative
- Evaluative / Directive



# Principles of Mediation

- Voluntary
- Confidential
- Impartial / Neutral
- Informed Consent
- Self-Determination



# Advantages of Mediation

- Time and Convenience
- Confidentiality
- Control
- Satisfaction
- Durability
- Voluntary
- Helps to preserve or restore a continuing relationship



# Divorce Mediation: 12 Year Study

[https://emeryondivorce.com/divorce\\_mediation\\_study.php](https://emeryondivorce.com/divorce_mediation_study.php)

- Used a high conflict group – families who had filed for contested custody hearing
- Flip of a coin determined whether families went to mediation or adversary settlement
- Young and low-income parents
- Mediation time averaged 5 hours
- Families were followed for 12 years



# Divorce Mediation: 12 Year Study

## Results:

- 5 hours of mediation caused nonresidential parents to see their children much more often 12 years later
  - 28% of nonresident parents who mediated saw their children weekly 12 years later compared to 9% who litigated and 11% in the national averages
- 52% of nonresident parents who mediated talked with their children weekly 12 years later
  - This compares with 14% of nonresident parents who went to court and 18% in the national averages



# Divorce Mediation: 12 Year Study

[https://emeryondivorce.com/divorce\\_mediation\\_study.php](https://emeryondivorce.com/divorce_mediation_study.php)

## Mediation Kept Most Families Out of Court

- If the coin came up tails and they stayed in the adversary system, 75% of families appeared before a judge
- But if the coin came up heads, less than 20% appeared before a judge
- Even when mediation failed, parents tended to settle out of court with the help of lawyers



# When to Encourage Mediation?

- Parties want control over the outcome
- Parties want a confidential process
- Parties willing to try to work out an agreement with assistance from a neutral
- Parties can be pro se or represented
- Parties have a child or children and need to work together in the future



# Approved Providers

<https://www.mass.gov/info-details/probate-and-family-court-approved-alternative-dispute-resolution-adr-programs>

Approved programs that offer mediation and other ADR services

- charge fees, and
- offer fee waivers or reduced fees for indigent or low-income litigants.
- A judge may require parties and/or their lawyers to attend a **"screening"**
  - to decide whether or not these services are appropriate for them
  - to give the parties a chance to learn about mediation and provider
  - Screening is free



# Mediation Providers by County

- <https://www.mass.gov/info-details/probate-and-family-court-approved-alternative-dispute-resolution-adr-programs>

## Suffolk:

- Fees range from \$0.00 (pro-bono) to \$650 per hour
- Languages include:
  - English
  - Spanish
  - French
  - Polish
  - Interpreting services



# Conciliation – Zoom Poll



# Conciliation

- Use the chat: What words do you use to describe conciliation?

**“Conciliation”** means a process a neutral (lawyer) performs to assist parties in settling a case by:

- clarifying the issues and
- assessing the strengths and weaknesses of each side of the case.
  
- Be a lawyer licensed to practice law in Massachusetts
- Be in good standing with the [Board of Bar Overseers](#)
- Have been practicing law in Massachusetts for at least 3 years
  - Fully understand the law
  - Have a good idea about what the Court normally does in this division



# Conciliation – Example

Child Support – Issues come up about both parties not wanting child support.

## How a mediator responds?

- Tell me more?
- What do you think the court might say?
- If you both agree to this . . .

## How a conciliator responds?

- This issue is up to the Court and from what I have seen, the Court may not approve no child support given the circumstances of your case.



# When to Encourage Conciliation

- Parties are firmly set on a **legal position**
- Parties have unrealistic expectations on what a court might do.

Parties want a neutral to:

- Be more directive and evaluative
- Help clarify the issues in a dispute
- Discuss the relative strengths and weaknesses of the parties' case
- Provide options about potential outcomes
- Explore all relevant settlement options
- If no settlement is reached, the court will impose one. A conciliator informs parties on likely outcomes.



# Conciliation Providers by County

- <https://www.mass.gov/info-details/probate-and-family-court-approved-alternative-dispute-resolution-adr-programs>
- 11 conciliation bar sponsored programs for free
- 2 conciliation programs charge an admin fee
- 1 program (SEMA) offers conciliation for a fee
- Languages include:
  - English
  - Spanish
  - Portuguese



# Dispute Intervention

Use the chat:

- What words do you use to describe dispute intervention?
- **Dispute intervention** is a process approved in the Probate and Family Court in which a neutral identifies the areas of dispute between the parties, and assists in the resolution of differences.
- A court employee trained in dispute intervention meets with parties and their attorneys to identify the issues in dispute to explore resolution. Provides information and recommendations to court as requested by the court.
- Information may be reported to the Court
- Conducted by Probation Officers in each of the 14 court divisions



# Dispute Intervention – Zoom Poll



# Dispute Intervention

- No cost
- Happens at court
- May be mandatory
- Parties do not control the recommendation to the court, but do control whether to accept a negotiated agreement.
- The court controls whether any resolution reached by the parties is acceptable.
- Any issues unresolved by the parties will be resolved by the court, including possible imposition of the court employee's recommendations.



# Pathways Practice - Scenario 1

The circumstance in which the salary of one parent increases but fails to disclose his/her financial statements to the co-parent, who once they find out, demand retroactive child support payment.

Mediation  
or  
Conciliation

Why?



# Pathways Practice - Scenario 2

The custodial parent is aware of the increase in income of the non-custodial parent and requests an increase in child support. The child's needs are well met and the standards of living of both households are the same.

Mediation  
or  
Conciliation

Why?



# Pathways Practice - Scenario 3

A dispute between co-parents about their contribution to college costs for their children.

Mediation  
or  
Conciliation

Why?



# Pathways Practice - Scenario 4

A contentious dispute between divorcing parents and counsel regarding who should have physical custody of their 11-year-old twins due to the past behavior of the parents.

Mediation  
or  
Conciliation

Why?



# Pathways Practice - Scenario 5

Husband and wife disagree on the length of the marriage and moment of irretrievable breakdown, which affects the alimony obligation.

Mediation  
or  
Conciliation

Why?



# Pathways Practice - Scenario 6

The former wife filed a nondisparagement order that prohibits the former husband from posting disparaging remarks about her on social media.

Mediation  
or  
Conciliation

Why?



# Screening and Pathways

The role of the Court - sending parties to screening:

Screening is an orientation session:

- Parties / attorneys receive information about dispute resolution services.
- Courts may require parties / attorneys to attend a screening session.
- May set deadlines for ADR processes.
- Parties shall not be charged a fee for attendance at a mandatory screening session.



# Zoom Poll - Screening and Pathways



# Facilitated Break Out Sessions

ADR and Pathways Smaller Group Discussions

Groups facilitated by MWI Facilitators:

- Josh Hoch
- Nnena Odim
- Alnoor Maherali
- Diana Chiang

Please join your breakout room.



# Resources

[www.mwi.org/pathways](http://www.mwi.org/pathways)

- Approved Programs
- ADR Video
- Guide to Court-Connected ADR
- Uniform Rules on Dispute Resolution
- Glossary of ADR Processes
- Overcoming Resistance to Using ADR
- Conciliation Information
- And more!



# Questions



# Wrap Up

## Resources

[www.mwi.org/pathways](http://www.mwi.org/pathways)

## Program Evaluation

[www.mwi.org/pathways-evaluation](http://www.mwi.org/pathways-evaluation)

## Optional Q/A with Matthew Abraham

<https://www.zoomgov.com/j/1608024224>

Zoom Meeting ID: 160 802 4224



CLOSURE