

Massachusetts Office of Dispute Resolution

PROGRESS REPORT

Fiscal Years 1998 - 2000

The Massachusetts Office of Dispute Resolution (MODR)

An agency within the Executive Office for Administration and Finance
Commonwealth of Massachusetts

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II. Introduction

MODR is a state agency providing mediation, facilitation, arbitration, case evaluation, alternative dispute resolution (ADR) training and other ADR services. MODR provides these services to public agencies, municipalities, the courts and citizens of the Commonwealth using MODR staff and private sector neutrals. MODR's services benefit the Commonwealth by providing more efficient, less expensive and more satisfying means of resolving disputes, as well as high quality settlements and durable agreements. MODR's vision is to see ADR woven into the fabric of state government -- to see all agencies and state personnel turn to ADR in the normal course to achieve timely and efficient resolution and prevention of disputes, and to improve relationships inside and between agencies and with the public.

MODR began in 1985 as a pilot project with funding in part from the National Institute for Dispute Resolution (NIDR) and the Boston Foundation, and was one of the first four state ADR offices established in the country. After continued growth the agency was established by law in 1990 (M.G.L. Ch. 7, Section 51) and is charged by statute to aid the executive, legislative and judicial branches of government, including municipalities and other public institutions in the resolution of disputes.

MODR is organized into two main programs: the Government Program and the Court Program. A panel of 65 private sector MODR neutrals provides services for cases in both the Court and Government Programs. MODR used an open and competitive application process to recruit, select, train and mentor its panel of mediators beginning in 1987. In designing the application process, MODR recognized the need for rigorous qualification standards and developed and implemented a comprehensive performance-based evaluation process for selecting mediators. In recent years, MODR expanded the list of services the panel provides, by qualifying members to offer arbitration, and case evaluation in addition to other dispute resolution services.

MODR's Government Program provides mediation, facilitation, ADR training, and ADR process and systems design for state agencies, municipalities and others and operates on-going ADR programs for several state agencies, including: the Department of Environmental Protection; the Massachusetts Commission Against Discrimination; and the Department of Telecommunications and Energy. The Government Program is directed by MODR's Deputy Director and staffed by MODR Government Program Coordinators and Senior Training Specialist.

MODR's Court Program administers on-going ADR programs in the Massachusetts Superior Court and the Massachusetts Land Court in accordance with Rule 1:18, Uniform Rules on Dispute Resolution of the Supreme Judicial Court. MODR's Court Program provides mediation, case evaluation and arbitration services to hundreds of cases each year. The Court Program also promotes ADR education and awareness in the courts and conducts ADR Orientations for court personnel. The Court Program is directed by MODR's Director of Court Programs and staffed by MODR Court Program Coordinators.

In addition, MODR was involved in a variety of special projects during FY98-FY00, including Executive Order #416: Integrating Dispute Resolution Into State Government (see pages 24, 30 - 32). MODR participated in several other special projects, which are described on pages 25 - 26 of this report.

MODR receives an annual appropriation that does not cover its operating expenses. The agency therefore must charge fees for its services, as authorized in its enabling statute. MODR endeavors to keep its fees as low as possible to enable state agencies and others to use alternative dispute resolution.

III. Dispute Resolution Services

Brief descriptions of the dispute resolution services offered by MODR are below. Examples of cases or projects using these services are described in Sections V and VI.

Mediation

Mediation is the principal dispute resolution service provided by MODR. Mediation is a voluntary, confidential (MGL Ch. 233, Sect. 23C) and flexible process in which a neutral, third party mediator assists negotiations between two or more disputing parties. The mediator does not act as a judge or decision-maker, but rather helps the disputants negotiate and generate their own options for settlement. Mediation is a flexible process and can be structured to fit the needs of the parties. For instance, mediation is used for disputes involving any number of parties – from two to twenty and even more.

The benefits of mediation are numerous. Mediation gives parties control over the outcome of the dispute (vs. risks of trial). It provides an opportunity for creative, mutually beneficial settlements. Mediation allows disputants to explore underlying interests and future needs and enables them to gain a different perspective and to better understand each other's points of view. It addresses personal, emotional and relationship issues, is cost effective (saves litigation and discovery costs) and is time efficient (produces prompt effective resolutions). Mediated settlements typically provide more durable and satisfactory resolutions than do decisions rendered by the court system -- disputants have been found to more fully comply with an agreement that they have crafted themselves. In sum, disputants often find mediation offers an excellent process for resolving disputes as well as yielding very satisfying outcomes.

Case Evaluation

Case evaluation is a form of dispute resolution offered by MODR in which litigants meet informally and confidentially with an experienced, neutral evaluator. Each party is afforded the opportunity to meet alone and together with the evaluator, to candidly assess the strengths and weaknesses of each party's case, and to explore prospects for settlement. If parties are unable to reach agreement during the evaluation session, the case

evaluator offers an impartial opinion as to the settlement value of the case and/or a non-binding prediction of the likely outcome if the case were to go to trial. The evaluator's opinion may be advisory or may become binding at the option of the parties. Case evaluation, like mediation, has many benefits over traditional litigation. Case evaluation brings parties to the bargaining table and promotes the exchange of information. It helps narrow areas of disagreement and brings issues clearly into focus. Case evaluation highlights the strengths and weaknesses of each side's case and the risks of trial. Finally, it assists in managing client expectations and expedites settlement negotiations.

Arbitration

Arbitration is a dispute resolution process offered by MODR which is typically used by parties who want a speedy and final resolution to their dispute. Arbitration is a process in which a neutral renders a binding (or non-binding) decision after hearing arguments and reviewing evidence. Unlike mediation, where a neutral assists the disputants to achieve their own settlement of disputes, arbitration is an adjudicatory process. Arbitration provides disputants with an opportunity to resolve their case more quickly and less expensively than court proceedings, and is often used where privacy and/or an arbitrator's specialized knowledge are important to the parties. Binding arbitration enables the dispute to be efficiently and definitely resolved. Non-binding arbitration can act as a catalyst for negotiations between stalemated parties. At the request of the parties, MODR offers specialized services such as high/low, last best offer arbitration, and Arb/Med, which provides an arbitration hearing and an opportunity to mediate before the arbitrator renders his/her decision. Arbitration is primarily used in commercial, construction, contract, employment, insurance and tort cases.

Facilitation

Facilitation refers to a process that involves elements of mediation and is designed to assist groups both small and large. A facilitator can assist groups to resolve their differences and reach agreement where diverse interests or opinions exist. A facilitator is an impartial person who assists with structuring and managing a meeting, group of meetings, workshop or conference—sometimes in conjunction with assisting groups to reach agreement and sometimes strictly to facilitate a particular meeting or group of meetings. A facilitator can help the parties establish ground rules, design and follow an agenda, set-up the room and make other arrangements. All of these issues relate to creating a process and structure that will enhance the ability of the participants to communicate in an efficient, effective and productive manner.

Consensus Building

Consensus building is a term for a variety of collaborative processes that assist groups to reach agreement. Diverse opinion may exist within a group or among several groups, or a group may need to develop options for addressing issues of concern. Consensus building can help the parties sort through existing options and develop and create new ones. Ideally a consensus building process is introduced before a controversy

has escalated and the parties have become entrenched in their positions. Consensus building often enables the parties to both reach agreement and avoid damaging their relationships. However, even if the issues have become contentious, a consensus building process may help the parties both reach agreement and repair relationships. By using consensus building processes, which includes participation from representatives of differing viewpoints, the results usually enjoy a wide range of support, and the likelihood for on-going divisive community battles or legal challenges is significantly reduced.

Process Consultation

Process consultation is a service MODR offers to assist state agencies and municipalities determine the most appropriate and best dispute resolution, consensus building or public involvement process for the issues they are facing. This strategic planning involves careful analysis of project goals, participants, constituents and expectations in order to strengthen the likelihood of a successful process.

Regulatory Negotiation

Regulatory Negotiation (“Reg-Neg”) is a relatively new approach to the adoption of regulations by government entities. Reg-neg is a process that brings together regulators, those affected by a proposed regulation, and other interested parties to develop a regulation from the beginning through negotiation. Thus, outside parties are included before a draft regulation is developed or issued. It is usually managed by a mediator with strong facilitation skills, and may be used to develop new regulations or revise existing ones. By definition this makes the interaction between the agency and interested parties much more constructive and far less contentious. Further, once the regulations have been developed, they are then usually issued as the agency’s proposed rule for public comment and finalization. Having negotiated the contents of the regulation, this then marks the end rather than the beginning of the process and enables the process to conclude much more smoothly, quickly and efficiently. Reg-neg’s approach to regulation development is offered by MODR and is being used increasingly throughout the country.

Dispute Resolution Training

MODR provides dispute resolution trainings to state and municipal employees and officials to give them skills to resolve disputes before they escalate. MODR offers a broad variety of skill-building trainings, which include: Negotiation Skills; Mediation; Conflict Analysis and Settlement Strategies; Facilitation and Meeting Management; and Communication with the Public. MODR’s trainings range from half-day workshops to a complete 30-hour mediation training. The training process begins by identifying the specific needs of an organization through use of focus groups, surveys, and interviews with prospective trainees and their managers. Once this needs assessment is complete, MODR identifies a lead trainer, either from the staff or the panel of neutrals, whose background and expertise is well suited to the needs of a particular group. MODR staff, in collaboration with the lead trainer and the sponsoring agency, then custom design each training – often developing specialized training materials which mirror the types of

situations that employees face in their work. The training experience enables participants to prepare for real-life disputes by practicing skills in simulated conflicts.

Dispute Resolution System Design & Program Operation

MODR designs and implements dispute resolution systems and programs for state agencies, municipalities and the courts. MODR has worked with the Massachusetts Trial Court and executive branch agencies to design ADR programs and integrated conflict management systems. The goal has been to help these government entities better manage conflict both internally and externally with stakeholders. MODR consults with agencies and the courts as to how to: launch dispute resolution programs; deal with organizational resistance and constraints; make sure that the design fits the larger organizational culture; motivate people to use the system; and evaluate the system to determine if it works.

MODR implements a step by step approach to dispute resolution design. The design process involves: consulting the legislation, regulations and rules under which the dispute resolution system will operate; assessing organizational systems and goals; interviewing employees and stakeholders; facilitating collaborative and participatory design processes; preparing policies, procedures and forms; recruiting and training neutrals; and orienting and training agency or court staff on how to effectively use the dispute resolution program or system. For programs operated by MODR on an on-going basis, MODR provides a coordinator to administer the program, oversee operations and serve as a liaison to the sponsoring agency or court.

IV. Panel of Neutrals and Request for Responses (RFR)

MODR Neutrals

MODR has a panel of 65 qualified and experienced private-sector neutrals. The panel was initially created as a panel of mediators. MODR mediators were recruited through a rigorous careful selection, training and mentoring process provided by MODR. In the establishment of its panel, MODR pioneered the development and implementation of a comprehensive, performance-based evaluation process using rigorous qualification standards for mediators. In qualifying and training its mediators to provide other types of dispute resolution services such as arbitration and case evaluation, MODR drew on the extensive experience of its panel members in their own private practices. MODR's practical training and orientations for arbitrators and case evaluators focused on widely recognized and generally accepted policies, procedures and issues in the field of ADR.

MODR's Panel of Neutrals has been providing services through MODR for civil, environmental and public policy cases referred by the court and state agencies for close to 14 years. MODR neutrals have diverse backgrounds and expertise in a wide range of dispute resolution processes and subject matter areas. The excellence and diversity of its panel has enabled MODR to provide high quality services to a broad array of cases through MODR's Court and Government Programs. To ensure continued high quality

service, MODR uses participant evaluations to regularly monitor its panel of neutrals. MODR's panel consists of 57 mediators, 16 arbitrators, 38 case evaluators, and a dozen or so facilitators and trainers. MODR has neutrals on its panel who are proficient in Spanish, French, German, Portuguese and Chinese. There are 53 neutrals who are attorneys and 3 who are retired judges.

Professional Development for MODR Neutrals

In recent years, MODR has conducted a series of Brown Bag Lunches for its neutrals. The MODR Brown Bag Lunch Series is designed to establish an open forum for professional development, communication, networking, and peer support. Each lunch meeting focuses on a challenging practice issue that neutrals face and taps the collective wisdom of the panel for techniques and approaches for handling them.

During the period covered by this Progress Report, MODR conducted three brown bag lunches for mediators on the topics of: "Tactics for Moving Parties Toward Interest Based Negotiations," "When Things Fall Apart: Evaluative and Facilitative Techniques for Bringing About Resolution;" and "When Attorney's Fees Blow the Deal." A lunch for case evaluators on the topic of: "Illusions of Settlement Authority" was also held.

In order to orient MODR neutrals to the newly adopted Ethical Standards contained in the Uniform Rules on Dispute Resolution, MODR also conducted two Brown Bag Lunches on the topic of ethical standards. The format of these lunches was to highlight and revisit ethical standards through discussion of hypothetical ethical dilemmas, which could be faced by mediators and other ADR neutrals at various points in their practice. The ethical standard lunches focused in particular on ethical standards concerning confidentiality, conflict of interest, and informed consent.

In addition to Brown Bag Lunches, MODR also conducted two other professional development events for MODR neutrals during the reporting period. These were two orientations, one for Arbitrators and the other for Case Evaluators. The orientations were conducted as part of MODR's qualification process to increase the capacity and expertise of its panel to accommodate expansion of ADR processes in its Court Programs. Practice issues and procedures for arbitrators and case evaluators handling cases referred to MODR by the court were reviewed during the sessions. Highly experienced arbitrators and case evaluators on MODR's panel worked with MODR staff to present these educational events, lead the discussions and share their own experiences. Participants provided input to the development of policies and protocols for providing these processes. In addition to contributing to the professional development of MODR's panel of neutrals, these orientations, like the Brown Bag Lunches, contributed to the further refinement and improvement of MODR's ADR programs.

Request for Responses (RFR)

In FY 1998, MODR issued a Request for Responses (RFR) to enable dispute resolution providers not on MODR's Panel of Neutrals to provide services to Commonwealth entities through MODR in order to meet agency needs that cannot be met by MODR's Panel.

When MODR receives requests from state agencies or other entities to provide services, MODR first reviews the backgrounds of those on its ADR Panel of Neutrals to determine if a panel member has the appropriate background and expertise to provide the services sought and is available. Where no panel member has the appropriate expertise or is available or where an insufficient number of panel members with appropriate expertise are available, MODR considers other ADR providers (“Bidders”) who have submitted responses to its RFR. In those cases, the ADR Bidders must meet MODR’s minimum ADR qualifications as set forth in the RFR.

In order to be able to respond to these requests for ADR services in a timely manner, MODR encourages interested ADR Bidders to respond to the RFR. In the event that MODR receives a request for ADR services requiring a particular expertise that cannot be met by its ADR Panel, MODR will select a Bidder from the RFR responses based on the following criteria: Area of Expertise; ADR Qualifications; Interview with MODR; Presentations (when applicable); References; and Approval from the Client Agency. MODR evaluates RFR Responses on an “as needed” basis. Thus, responding to the RFR does not guarantee that a Bidder will be selected as a contractor with MODR.

MODR’s RFR is available on Comm-PASS, the Commonwealth’s Procurement Access and Solicitation System, which is an Internet-based tool that acts as a bulletin board for state procurement. To access MODR’s RFR on the Internet, first access the Commonwealth’s Web Site at: www.Comm-Pass.com, then select “Open Solicitation By Purchasing Entity,” select “Massachusetts Office of Dispute Resolution,” then select “Professional Services” and finally select “RFR Text.” Questions about accessing MODR’s RFR should be directed to MODR’s Office Administrator.

V. Government Program and Training

MODR’s Government Program provides mediation, arbitration, and case evaluation as well as ADR training, facilitation, and ADR process and systems design for state agencies, municipalities and others. Government Program work ranges from the operation of on-going programs for state agencies to dispute resolution consultation and interventions involving specific projects and discrete disputes. Services are provided by both MODR staff and neutrals on MODR’s Panel.

Environmental Program

MODR has provided mediation services for environmental disputes since 1985. During FY 1998-2000, the Government Program continued to have great success with its Environmental Dispute Resolution Program, which involves referrals from the **Department of Environmental Protection (DEP) Bureau of Waste Site Cleanup** and **DEP Office of General Counsel**.

In the early 1990’s MODR established an Environmental Mediator Panel of 14 skilled private sector mediators with backgrounds and expertise in environmental dispute resolution. These mediators were chosen from MODR’s

Panel of Neutrals and completed a series of additional training sessions to prepare them to mediate environmental cases, including environmental public policy disputes. As with MODR's full Panel of Neutrals, MODR regularly monitors its environmental mediators using participant evaluations.

MODR has handled over nearly 230 environmental disputes in Massachusetts involving municipalities and state and federal agencies. These cases have involved a diverse array of issues, including hazardous waste cleanup, cost allocation, wetland development, facility siting controversies, and other land use disputes. MODR also convenes and manages large-scale mediations involving multiple state and federal agencies, environmental groups, and the public. In MODR's Environmental Program, 83% of all cases referred have moved forward to mediation and 70-75% of those cases have settled – a very high settlement rate!

- **Environmental Mediations – Case Examples**

GE Pittsfield: An excellent example of a large multi-party case is the mediated multi-party agreement regarding hazardous waste in the Housatonic River, where the nearly thirty participants included: General Electric Corporation, the U.S. Environmental Protection Agency, the MA Department of Environmental Protection, the City of Pittsfield, the U.S. Justice Department and others. This landmark agreement prevented the area from being declared a Superfund Site, greatly increased the likely pace of the cleanup, and resulted in a Consent Decree which is now undergoing court review. Without the agreement, the issues would likely have been in litigation for at least ten years. (See Boston Globe editorial "Win Win in Pittsfield" page 33). MODR continues to assist with this project by facilitating monthly meetings of the Citizens Coordinating Council (see page 13).

Harborlights: Another example of the success of a multi-party mediation provided by MODR involved Harborlights, the waterfront summer entertainment facility now known as The Fleet Bank Pavilion. In that case, Harborlights had found a new home on the harbor, but the process of finalizing the agreement to use the new location included appeals for obtaining DEP approvals. This meant that Harborlights would not be able to open in time for the Spring/Summer season. Through a mediation set up by MODR, the issues were fully explored among the parties and they were able to reach agreement. Part of the agreement included consensus that if DEP issued its order of conditions essentially as agreed to by the parties, the parties would not appeal DEP's decision. The parties to this successful mediation were: the Boston Shipping Association, Conservation Law Foundation, City of Boston/Boston Redevelopment Authority, DEP, Don Law Corporation, Save the Harbor Save the Bay, and the Boston Harbor Association.

Sandy Neck: A further example of a mediated multi-party agreement MODR helped achieve involved the Sandy Neck Barrier Beach on Cape Cod. The issues included vehicular access to cottages, the protection of Piping Plovers and other endangered species, and the establishment of an outline for the process to create a long term Beach Management Plan. The parties to the mediation consisted of all interested and affected stakeholders including local, state, and federal governments, citizen groups, and private individuals. A tentative agreement was reached, and all parties are currently in the process of discussing the terms with their constituents.

• **Environmental Facilitations - Examples**

Emerald Necklace Citizens Advisory Committee

In September 1999, MODR began providing facilitation services for the Emerald Necklace Citizens Advisory Committee (CAC). The CAC was appointed by Secretary Robert Durand of the Executive Office of Environmental Affairs to enhance public participation in the Emerald Necklace Environmental Improvements Master Plan and Muddy River Flood Control, Water Quality, Landscape Restoration and Habitat Enhancement Project. The project proponents are the City of Boston and the Town of Brookline. MODR is facilitating a process involving monthly meetings of the CAC during which project proponents present the elements to be covered by their Environmental Impact Report that will be submitted to the Secretary. The CAC is an advisory review body whose task is to make sure that the project avoids, minimizes and mitigates environmental impacts by making comments and offering feedback to the proponents at the monthly CAC meetings. Ideally, the CAC and project proponents will reach agreement on the contents of the Environmental Impact Report submitted to the Secretary.

Fort Devens

MODR has provided facilitation and process consulting services to the Fort Devens Military Base Clean up Team (BCT) since 1994. The base was closed by the U.S. Army and it is in the process of being converted to other uses. The BCT is comprised of representatives from the United States Army, the Massachusetts Department of Environmental Protection, the United States Environmental Protection Agency and the Massachusetts Government Land Bank. The issues include clarifying the roles of the various agencies involved and the clean up of the environmental pollutants on the site, which will enable reuse plans to be implemented.

G.E.- Pittsfield Citizen Coordinating Council

MODR facilitates the monthly meetings of the Citizens Coordinating Council (CCC). The CCC serves as a vehicle for community involvement in the implementation of the settlement agreement regarding the clean-up of the PCB's in the Housatonic River (see page 11 above). The CCC includes representatives of diverse interests and stakeholders in the region including General Electric Corporation, state and federal government officials and representatives of environmental organizations, local government, business and community groups. The CCC also serves as a mechanism to ensure that all parties to the negotiated agreement are able to honor their commitment to listen to, learn from, and incorporate the ideas and concerns of the community to the greatest extent possible in implementing the settlement agreement.

Massachusetts Military Reservation – PAVE PAWS

MODR facilitated four public dialogue sessions regarding the National Environmental Policy Act Environmental Impact Statement submitted by US Air Force

Space Command for modernizing its PAVE PAWS radar facility on Cape Cod. These informal discussions preceded the formal Scoping Sessions (which by regulation provided for testimony only) and helped all sides to better understand the proposal and each other's views.

New Bedford Harbor Superfund Forum

For a number of years MODR has provided facilitation services for the New Bedford Harbor Superfund Forum comprised of the citizens of New Bedford and neighboring towns, the U.S. Environmental Protection Agency (EPA), and the MA Department of Environmental Protection (DEP). The Forum worked out an agreement for the clean-up of PCBs in the New Bedford Harbor and the choice of technology. It was most significant that through the Forum meetings, EPA agreed to change its initial decision to incinerate the PCBs on site, which was opposed by many in the neighboring communities and which was expected to result in years of continued litigation. The agreement provided that the Forum would continue to function into the period of the clean up work described in the agreement. MODR facilitates the meetings of the Forum, now quarterly, as the EPA continues to implement the agreement.

New Bedford Harbor Trustee Council: Natural Resources Damages Public Hearing

MODR facilitated a public hearing which was held to solicit input on the 35 Project Ideas that had been submitted for possible funding by the Natural Resources Damages (NRD) Trustees. The projects relate to restoring natural resources damaged by PCB's in New Bedford Harbor and is related to but not part of the Superfund cleanup discussed above.

Plainville Sanitary Landfill

During 1998, MODR facilitated discussions of citizens, the operator of a landfill in Plainville and the Department of Environmental Protection around issues concerning the closing and capping of the landfill and the study of whether any water or air pollution issues would impact local communities surrounding the landfill. Agreement was reached on closure and final capping of the landfill.

Restoration Advisory Board - South Weymouth Naval Air Station

Since August 1997, MODR has been facilitating meetings of the South Weymouth Naval Air Station Restoration Advisory Board (RAB). The purpose of the RAB is to promote community awareness and understanding of the hazardous waste cleanup efforts at the former Naval Air Station. The members were selected from five towns surrounding or involved in NAS SOWEY activities at the time (Quincy, Hingham, Weymouth, Abington, and Rockland). RAB members are asked to provide a time commitment to attend meetings, review documentation, communicate issues to other community members and provide comments and concerns to the DOD (Navy). This RAB has adopted a Charter that governs the mechanics of the RAB such as duties, membership and structure. The

RAB has been very successful at identifying the topical issues of concern within the communities in a timely fashion. Issues such as groundwater quality, completeness of cleanup, and more recently re-development impacts have been topics discussed at RAB meetings

W.R. Grace – Cambridge Neighbors

At the request of the Department of Environmental Protection and WR Grace, MODR provided facilitation services for public meetings on issues related to the removal of asbestos from the WR Grace Corporate site in Cambridge near the Alewife MBTA station. The asbestos issues needed to be addressed in order for the company to proceed with plans for development of the parcel.

- **Other Government Facilitations**

MODR also facilitated a public meeting to discuss the impacts of a proposed development near the **Beverly Airport**. The meeting included the developer, public officials, and a broad spectrum of other stakeholders. Also, at the request of the Department of Environmental Protection and the contractor for the City of Boston, MODR facilitated a public meeting dealing with studies conducted on the composition of reservoir soils and water of the **Neponset Reservoir**.

Government Projects

DMR Complaint Resolution System Design

During 1998 and 1999, MODR collaborated with the Department of Mental Retardation in the creation of a new Complaint Resolution System. Six members of MODR's staff facilitated meetings with all stakeholders, including: DMR staff, providers, families, advocates, and self-advocates. The groups worked out models that were used by DMR in creating the final design of the system. DMR is implementing this new system during 2000.

Massachusetts Housing Finance Authority – TAP Mediation Project

During 1998 and 1999 MODR consulted on the Massachusetts Housing Finance Agency (MHFA) – Tenant Assistance Mediation Project. This project was a collaboration between MODR, MHFA and Massachusetts Association of Mediation Programs (MAMPP) together with five Community Mediation Programs representing various regions of the Commonwealth. The goal of this project was to provide conflict resolution skills training and mediation services to management companies and tenants at MHFA housing sites. MODR's role in the project was to provide oversight and evaluation.

Construction Reform Task Force – Partnering Manual

During 1998 MODR participated in the Construction Reform Task Force convened by the Executive Office for Administration and Finance. MODR's Government Program Team wrote the first Construction Partnering Manual for all state agencies doing construction work in Massachusetts. MODR is also working to create a Construction ADR Panel of Neutrals to offer state agencies.

University of Massachusetts, Boston

MODR provided process consulting and facilitation services to assist faculty representatives from 2 departments of UMass, Boston interested in integrating their functions. The facilitation resulted in a work plan to be undertaken by representatives of both departments.

Other Government Programs

During the time period of this report MODR continued its ADR Program expansion to serve more state agencies. MODR's Government Program now includes four programs in addition to the Environmental Program discussed above.

Affordable Housing Appeal Mediation Program

The Housing Appeals Committee of the MA Department of Housing and Community Development encourages municipal officials, citizens, and developers to make use of professional mediation assistance to settle disputes over the construction of affordable housing arising under MGL Chapter 774. To facilitate this, the agency sponsors an Affordable Housing Mediation Program administered by MODR. Upon the invitation of the Housing Appeals Committee, MODR attends the pre-hearing "conferences of counsel" to familiarize the parties with mediation and explore its use. If the parties decide to pursue mediation, MODR invites all effected parties "to the table" and arranges the mediation. Parties consistently note the utility of the mediation process and the existence of the mediation program.

Department of Telecommunications and Energy

The Government Program worked closely with Department of Telecommunications and Energy (DTE) to create an ADR Program to provide mediation, case evaluation and arbitration services for damage claims and consumer complaints in the electric industry, as called for in the electric industry deregulation legislation in 1998. Instituting this program required designing new forms and procedures, and creating and orienting a panel of neutrals for DTE cases from MODR's main panel of neutrals. MODR trained DTE's Customer Service Staff in dispute resolution skills as part of this program with a lead trainer from MODR's Panel of Neutrals. MODR also collaborated with local Community

Mediation Programs to create a referral service for appropriate DTE cases to local mediation at a Community Mediation Program.

Massachusetts Commission Against Discrimination ADR Program

During 1999 MODR worked with the Massachusetts Commission Against Discrimination (MCAD) to design and implement an ADR Program to provide mediation, case evaluation and arbitration services for MCAD cases where a state agency is one of the parties. This program is now fully operational and receiving referrals from MCAD. It is expected that more and more MCAD parties will choose to use MODR's ADR services in the coming months and years.

Massachusetts Rehabilitation Commission

MODR is in the final stages of establishing a mediation program with the Massachusetts Rehabilitation Commission (MRC). MODR is providing program design, implementation and coordination of the program. The program will handle cases concerning the provision of vocational rehabilitation services to applicants or eligible individuals. MODR has been meeting with the stakeholders and is developing the design of the program based on their needs. A subset of MODR's panel of private sector neutrals have been identified to mediate MRC cases based on their qualifications. MODR will hold an orientation for the roster of neutrals that will provide information about MRC vocational rehabilitation, policies, regulations and law. MODR will also be providing training to MRC staff to enhance and support the program. While it is expected that this program will start out slowly with only a handful of cases in FY 2001, it is hoped that the program will grow in successive years and perhaps expand to other agencies that serve disabled individuals.

Dispute Resolution Training

MODR's training program has continued to grow and develop in the past two and a half years. The number of agencies receiving dispute resolution skill-building trainings has significantly increased since 1998. Negotiation, mediation and facilitation skills training have consistently been the most requested of MODR's offerings. MODR custom-designs each training, starting with a thorough needs assessment prior to the training. The needs assessment helps MODR to ensure its goal of presenting skills which will be useful to each group being trained. Participant evaluations indicate a very high level of satisfaction with the trainings.

MODR's high quality training reflects its collaboration with its Panel of Neutrals and other consultants. In the period covered by the report MODR presented trainings with ten different MODR panel members and consultants who served as lead trainers. In addition every member of MODR's staff has contributed their time and energy to training by serving as lead trainers, assistant trainers and role-play coaches.

In July of 1997, MODR presented a half-day briefing on the benefits of mediation to senior managers of the **Central Artery Tunnel Project**. The workshop included an overview of the mediation process as well as an exploration of the role of the mediator and the roles of stakeholders. The workshop also covered competitive and collaborative negotiating and how to prepare for mediation. In February of 1999, MODR presented a one-day negotiation workshop to some of the field staff involved with the Central Artery Tunnel Project. The training focused on the negotiations that take place around claims and changes to the various construction projects and how they could occur more expediently.

In January of 1998, MODR staff presented a half-day workshop on alternative dispute resolution to officials of the newly incorporated **City of Amesbury**. The workshop focused on the question of what is mediation and when is it appropriate.

During the Spring of 1998, MODR conducted two trainings for attorneys and community mediators participating in a project known as the **Coastal Access Legal and Mediation Service (CALMS)**. The trainings focused on public policy mediation and legal issues regarding coastal access disputes and were held in Boston and on Cape Cod. MODR collaborated on this training with the sponsors of the CALMS project – the Department of Environmental Management and the Office of the Attorney General.

In February of 1998 and April of 1999, MODR presented one-day negotiation skills training to staff from the **Department of Environmental Protection (DEP)**. Participants included attorneys, environmental analysts and others charged with the enforcement of environmental regulations. MODR has been presenting dispute resolution training to DEP staff for the last decade.

Since 1994, MODR has been providing training and other services to the **Department of Mental Retardation (DMR)**. Since that time MODR has trained some 400 DMR employees in basic negotiation, mediation and facilitation skills. In 1998 and 1999, MODR presented 8 two-day mediation skills trainings to DMR service coordinators and other staff at various locations across the state. MODR also offered two one-day Introduction to Mediation and Conflict Resolution trainings to DMR's investigative staff in 1999. In the spring of 2000 MODR delivered an additional mediation skills training to DMR service coordinators and developed a new training in Facilitation Skills and Meeting Management for DMR's Office of Quality Enhancement. Current plans call for MODR to deliver four additional two-day mediation skills trainings for DMR in FY 2001.

In June of 2000, MODR presented a two-day negotiation skills training for **Department of Revenue (DOR)** personnel who negotiate settlements with taxpayers. Participants came from DOR's legal, dispute resolution and compliance divisions.

In December of 1999, MODR delivered two, one-day "Introduction to Mediation" Trainings to customer service staff from the **Department of Telecommunications and Energy (DTE)**. These trainings were in support of a program that was developed by MODR to offer consumers and electric utility companies ADR services for the resolution of customer complaints and damage claims in the utility industry.

In March of 1998, MODR presented a workshop to the **Executive Office of Environmental Affairs**. The workshop was on negotiation and conflict resolution at a retreat for newly designated Watershed Basin Team Leaders. These individuals are

responsible for coordinating activities to protect and improve natural resources within each of Massachusetts's 27 watershed areas.

In October of 1999, MODR gave a facilitation skills workshop to elected officials and volunteers of the town of **Hingham**.

In December of 1998, MODR provided a one-day Team Building workshop to the entire staff of the **Massachusetts Cultural Council**. This workshop used principles from the Myers-Briggs type indicator to help co-workers learn to understand and appreciate differences in work styles.

In November of 1999, MODR presented two workshops on negotiation at the **Massachusetts Health Officers Association** annual conference.

In 1998 and in 1999, MODR was selected to provide 3 two-day negotiation skills trainings to staff from all departments of the **Massachusetts Water Resources Authority** (MWRA). Also in the spring of 2000, MODR presented the first of a series of 3 one-day conflict resolution trainings to MWRA staff.

In June of 1998, MODR presented a workshop on "Using Mediation Effectively" to staff of the **Office of the Attorney General**. This workshop featured a panel of three experienced MODR mediators and three Assistant Attorneys General who discussed actual cases and mediation success stories to encourage the use of mediation for disputes in the public enforcement arena. MODR also presented a **Massachusetts Continuing Legal Education (MCLE)** workshop for private sector lawyers entitled "How to Negotiate and Mediate the Best Result for your Client."

In May of 1999, MODR held four workshops on negotiation skills at the **Operational Services Division's** STAR conference. The workshops were for procurement staff and other STAR Conference participants.

In April of 1999, MODR presented a workshop on "Public Participation in the New Millennium" at the **Society for Professionals in Dispute Resolution (SPIDR)** New England conference. MODR moderated a panel that focused on structuring a public participation process, advising the convening agency on the appropriateness of an issue for facilitation, selecting a facilitator, conducting a conflict assessment, and how technology and the internet has affected public disputes.

In June of 1998, MODR presented two days of training on organizational development and team building to the staff of the **State Library**. This training was in support of various changes that were occurring within the State Library organization

VI. Court Program

MODR administers alternative dispute resolution (ADR) programs in the Superior Court and Land Court. Since 1987, MODR has worked in concert with the Massachusetts Trial Court to design, implement, and administer a variety of court-connected dispute resolution programs and to train court personnel about dispute resolution processes and

procedures. The purpose of this collaboration has been to make dispute resolution services available to the court and to insure the integrity, impartiality, and quality of those services.

The MODR Court Program is thankful for the cooperation and enthusiasm with which the Superior and Land Court judges, clerks and personnel have embraced the concept of ADR. The support of the members of the local bars has also contributed to the overall success and popularity of ADR in the courts served by MODR.

Court Program Developments FY 1998-2000

During FY 1998-2000, MODR's work in the courts has evolved and expanded. There have also been several changes in MODR's Court Program in response to developments in the field of court-connected ADR in the Commonwealth of Massachusetts.

In May 1998, the Trial Court adopted *Rule 1:18: Uniform Rules on Dispute Resolution of the Supreme Judicial Court* to govern the provision of court-connected dispute resolution services in the Commonwealth. Prior to the adoption of the Uniform Rules, MODR had been operating three court programs: the Suffolk Superior Court Mediation Program, since 1987; the Norfolk Superior Court Mediation Program, since 1991; and the Suffolk Superior Court Motor Vehicle Tort Case Evaluation Program, since 1991 (which included the Suffolk Slip & Fall Tort Case Evaluation Pilot Project).

In February 1999, after an open application process required by the Uniform Rules, the Trial Court approved ADR programs to be eligible to receive court referrals. MODR's application for its restructured Superior Court Programs was approved. To simplify administration and accommodate expanded ADR services, MODR merged the Suffolk Mediation and Case Evaluation Programs to create the **Suffolk Superior Court ADR Program** and converted the Norfolk Mediation Program into the **Norfolk Superior Court ADR Program**. MODR also established an additional program in the Superior Court known as the **Plymouth Superior Court ADR Program**, which MODR had begun work on at the court's request prior to the adoption of the Uniform Rules. In addition to enhancing its services in the Superior Court, in FY99, MODR established a new program with the Massachusetts Land Court known as the **MODR Land Court ADR Program**. In designing and implementing this new Land Court ADR Program, MODR was pleased to build on its past work in the Land Court in 1991 and 1992 when MODR operated a Land Court Mediation Program.

As an element of its Court Program expansion, MODR added new processes – arbitration, mini-trials and summary jury trials--to the ADR services already offered to the court (mediation and case evaluation). To provide these new services, MODR qualified neutrals from its existing panel of mediators and designed protocols to suit each process. MODR also qualified additional case evaluators in order to provide case evaluation to a range of civil case types beyond tort cases. In planning and implementing these programmatic changes and compliance with the Uniform Rules, MODR refined and further developed its program policies and procedures regarding panel management, case management, data management and fees. In FY99, drawing on its success with automatic group screenings in its Suffolk ADR Program, MODR instituted automatic individualized screenings with pre-trial conferences in its Norfolk and Plymouth ADR Programs to

increase the number of Superior Court cases referred to MODR and the predictability and consistency of that number. *(See individual program descriptions below).*

Superior Court and Land Court ADR Programs

The Superior Court and Land Court approved MODR's new and expanded programs under the Uniform Rules on Dispute Resolution in February 1999. In the Superior Court, MODR's programs were approved as the exclusive ADR programs serving Suffolk, Norfolk and Plymouth Counties, while in the Land Court, MODR's Program was approved as one of three programs serving that court.¹ Since February 1999, MODR's Suffolk, Norfolk and Plymouth Superior Court ADR Programs have provided program coordinators on-site in the court, regular ADR screening integrated into case management events at the courts and a full-range of dispute resolution services provided through MODR's Panel of Neutrals. MODR's Land Court ADR Program has screened and provided dispute resolution services to cases referred by the Land Court.

During FY 1998-2000, MODR's Superior Court ADR Programs have together screened over 3000 civil cases for ADR potential, provided dispute resolution services to close to 700 cases that have completed the process, and have a combined settlement rate of 76%. MODR's Land Court ADR Program has screened 18 cases between February 1999 and June 2000 and has provided dispute resolution services to 5 cases. The types of cases handled in MODR's Superior Court ADR Programs have included accounting, banking, civil rights, commercial, contract, construction, corporate, discrimination, eminent domain, employment, environmental, insurance, malpractice, motor vehicle, partnership, personal injury, premises liability, product liability, real estate, wrongful death, and zoning disputes. Case type distribution has been roughly: 54% torts, 22% contracts, 8% equitable remedies, 4% real property, 10% miscellaneous, and 2% other. MODR's Case Evaluation program evaluated primarily motor vehicle tort cases (90%), and some slip and fall tort cases (10%). MODR's Land Court ADR Program has handled case types including boundary disputes, easements and prescriptive rights, zoning appeals, title disputes and land registrations. *(See individual program sections below.)*

Suffolk Superior Court ADR Program

Since its inception in 1987 the Suffolk Superior Court ADR Program (formerly the Suffolk Superior Court Mediation Program, now merged with the Suffolk Superior Court Case Evaluation Program) has assisted litigants and the court by providing an efficient and

¹ In May 2000, in an effort to obtain more funding, the Superior Court decided to restructure its ADR services to provide in-house ADR screening by court employees and to adopt a multiple ADR provider model rather than an exclusive ADR provider model. To implement these changes, the Superior Court canceled its exclusive contracts and instituted a Program Application Process and Request for Proposals. MODR was asked to provide input to the Superior Court on important elements to incorporate into a new plan for ADR services in order to insure the quality and accountability of those services. Pursuant to the proposed change in Superior Court ADR services, in June 2000 MODR submitted a Program Application and Response to the Superior Court's Request for Proposals. As a result, MODR has now been approved as a state-wide provider of dispute resolution services for the Superior Court, increasing the number of counties to be served by MODR in FY01 to all 14 counties of the Commonwealth. MODR is currently waiting to hear from the Superior Court regarding MODR's Response to the Superior Court's Request for Proposals for Providing ADR services to Indigent Litigants and Pro Se Prisoner Litigants.

cost-effective alternative to traditional adjudication. In addition to the long running mediation and case evaluation programs which have helped to resolve hundreds of Suffolk Superior Court cases over the years, in 1999 the Suffolk Program expanded its services to offer a full spectrum of ADR processes including arbitration, summary jury trials and mini-trials.

The primary means of referral to the Suffolk Superior ADR Program is through the mandatory group screening process. Docket sheets are individually reviewed and civil cases are selected approximately 10 to 11 months after an action is initiated or after the discovery deadline has passed. Counsel are required to attend a group ADR screening where they meet with opposing counsel and the MODR Program Coordinator to explore the appropriateness of ADR for their case. Typically more than 100 cases are screened per month. ADR screening conferences are scheduled on a regular basis and conducted in open court under the direction of the presiding session judge. The judge opens the screening conference with a brief presentation explaining the purpose of the session and highlighting the benefits of ADR. The Program Coordinator then describes MODR's panel, fees, and program operations. If both parties agree to pursue ADR, neutral selection and scheduling arrangements are made through program staff. Importantly, while the Screening Conference is a mandatory event, the decision whether to elect the ADR option is left entirely to the discretion of the parties. Those parties who choose not to use ADR are afforded the opportunity to speak directly with the session judge in order to schedule a final pre-trial conference, status conference, or trial date. Thus the screening conference serves both the parties and the court as an effective case management tool.

A significant number of cases at the Suffolk Superior Court also enter the ADR process directly by judge referral or party selection. The Suffolk ADR Program maintains an office at the court and there is a conference room and caucus room for parties wishing to hold the ADR sessions at the courthouse.

Norfolk Superior Court ADR Program

The Norfolk Superior Court ADR Program (formerly Norfolk Superior Court Mediation Program) was designed and implemented in 1991. The program was modeled after MODR's flagship program in the Suffolk Superior Court and was specifically tailored to meet the needs of the Norfolk Superior Court. For nine years, MODR has provided an on-site Program Coordinator with a daily presence in the Dedham courthouse to help parties determine whether ADR is appropriate for their case. Parties may request a referral to dispute resolution at any time, and are encouraged to consider ADR when appearing in court for preliminary hearings, motion hearings status calls or pre-trial conferences.

Since the adoption of the Uniform Rules on Dispute Resolution in 1998, MODR expanded the range of dispute resolution processes offered to the Superior Court to include: arbitration, case evaluation, mini-trial and summary jury trial and changed its name to the Norfolk ADR Program. Cases are screened for ADR potential in the Norfolk Program on an individual basis. When counsel appear at court for a pre-trial conference, they are required to meet with the program coordinator to discuss the appropriateness of ADR for their case. Cases are also referred to dispute resolution by judges, clerks and other court personnel. Since the Norfolk program began accepting referrals in 1991, both the number of cases referred and those choosing to pursue ADR have greatly increased.

The ADR program enjoys an excellent reputation, with the result that a large percentage of cases are referred directly by attorneys.

Plymouth Superior Court ADR Program

The Plymouth Superior Court ADR Program was established in February 1999 and became present on site at the Brockton Superior Courthouse in March 1999. The Plymouth ADR Program is unique among MODR's Court Programs in that it serves two courts in the same county-- Brockton Superior Court and Plymouth Superior Court.

Since April 1999, the Plymouth ADR Program has implemented highly effective screening and referral systems. There are three methods of referral to the Plymouth ADR Program: 1) Cases which are scheduled for pre-trial conference at the Brockton Superior Court are simultaneously given Notice of ADR Screening with Pre-Trial Conference Notices, and are therefore screened at the time of the pre-trial conference; 2) Cases which are scheduled for pre-trial conference at the Plymouth Superior Court may be referred directly to the Program by the clerk conducting the pre-trial conference; and 3) Cases which are considered suitable for ADR may be referred directly to the Program by the Regional Administrative Justice (RAJ), the Clerk of Courts, the civil judges, assistant clerks in the civil sessions or by the parties themselves in both Brockton and Plymouth. Referrals may be made in connection with a particular event in the life of the case, such as a motion, a status conference or the pre-trial conference; or at any other time that litigation is pending or anticipated in the Plymouth Superior Court.

The success of the Plymouth ADR Program is the result of a collaborative effort between the Plymouth Superior Court and MODR. The initial RAJ who supervised the program sent a letter to the Plymouth Bar Association introducing the Program and since then many others at both the Brockton and Plymouth courthouses have assisted MODR in working to integrate a user-friendly ADR Program into the court process. The Plymouth ADR Program is meeting initial expectations for cases participating in the program.

Land Court ADR Program

The MODR Land Court Program was established in February 1999. MODR is one of three approved dispute resolution providers in the Land Court. The Land Court has incorporated ADR into its case management functions by holding a weekly ADR event with a presiding judge and clerk. In the Land Court, cases are required to attend an ADR Conference with a judge when the case is 75 days old. At the conference, the judge discusses the benefits of ADR and informs the parties of ADR services available through the Land Court. The Land Court then refers cases for mandatory ADR screening to one of the approved programs based on party choice or rotation. For cases referred to MODR by the Land Court, MODR sets up individual ADR screening sessions with both counsel and clients in attendance. The screening is an orientation session in which parties are given information about ADR services and have an opportunity to discuss ADR options that may be appropriate for their case. There is no charge for the screening. If all parties are interested in going forward with ADR, the program coordinator helps them select an appropriate process and neutral and schedule the ADR session. The Land Court ADR Program has handled a variety of cases including adverse possession, boundary disputes, title disputes, condo disputes, contested easements, contested land registrations, land use

and zoning cases. The strong support of ADR among Land Court personnel and the Land Court bar has helped to make this program a success.

Consultation on Boston Municipal Court ADR Programs

In addition to working with the Superior Court and Land Court, over the past several years MODR has also worked with the Boston Municipal Court (BMC) through membership on the Boston Bar Association BMC Task Force. MODR's work with the BMC Task Force has focused on the establishment of two ADR Programs for civil cases: the Case Conference Program, established in 1997 and the Mediation Program, established in 1998. MODR's Director of Court Programs has assisted with the design, implementation and oversight of these programs, the training neutrals and the provision of case conference and mediation services.

ADR Education and Training for Court Personnel

In FY 1998 MODR conducted an ADR Orientation Session for Suffolk Superior Court judges and clerks, based on a similar program that MODR conducted in the Norfolk Superior Court in FY 1997. The orientation was a half-day workshop which acquainted Suffolk personnel with the mediation and case evaluation processes and provided them with tools to use when talking about ADR with parties at court events and when making referrals to the Suffolk Mediation and Case Evaluation Programs. MODR collaborated on this training with the Suffolk Regional Administrative Justice, Superior Court Department Regional Coordinator and the Suffolk Superior Court Mediation Coordinator. MODR was assisted at the orientation by two neutrals from its Panel of Neutrals.

In FY 1998 MODR presented a mediation simulation of an employment dispute during the lunch hour at the Norfolk Superior Court. Judges, clerks and other court personnel were invited to attend this interactive demonstration. Two of MODR's mediators participated in this demonstration – one as the mediator and one as the discussion facilitator. Members of the Norfolk Bar role-played counsel in the mediation and MODR staff role-played the disputing parties. This educational event helped give court personnel a sound understanding of the role of the mediator and the dynamics of the mediation process when applied to a Superior Court case.

In FY1998 and FY1999 MODR distributed a quarterly newsletter "MODR News" to provide judges and clerks in the Superior Court with up-to-date practical information on ADR. In the newsletter, MODR featured case studies of actual Superior Court mediations while disguising the identity of the cases and parties. The newsletter also recognized judges who had shown significant support and commitment to ADR. MODR also highlighted achievements of the Suffolk and Norfolk ADR Programs as well as the backgrounds of individual program staff to increase visibility of these programs and awareness of ADR as case management tools.

In FY 1999, following the adoption of the Uniform Rules on Dispute Resolution and at the request of the court, MODR staff conducted an orientation on the Uniform Rules for Norfolk Superior Court judges and court personnel and participated in a continuing education seminar for the Norfolk County Bar Association on court-connected ADR and the Uniform Rules.

VII. Special Projects

Executive Order #416: Integrating Dispute Resolution Into State Government

In recognition of the significant benefits to state agencies of using ADR and to encourage state agencies to increase their use of ADR, Governor Argeo Paul Cellucci and Lt. Governor Jane Swift issued **Executive Order #416: Integrating Dispute Resolution Into State Government** in November 1999. Governor Cellucci and Lt. Governor Swift recognized that ADR has been used to successfully resolve a number of important public disputes involving state agencies as discussed above. The Governor and Lt. Governor also realized that state agencies -- like private institutions -- have yet to make considerable and consistent use of ADR. The Executive Order identifies the benefits of ADR and orders state agencies to "work diligently to fully utilize, wherever appropriate, alternative dispute resolution to resolve disputes..." (The full text of the Executive Order is attached, see pages 30-32.)

The Executive Order provides that the Secretary of each Executive Office, the Director of each Department, and the Head of each Agency is to designate an ADR Coordinator to encourage and facilitate the use of ADR in his or her secretariat, department or agency. Thus approximately 110 ADR Coordinators will be selected, and they will participate in an ADR Orientation and Training conducted by MODR in FY01. The training will include: background information about ADR with a review of the various types of ADR processes; examples of the types of situations and disputes that usually benefit from ADR and those that do not; and illustrations of and ideas for using ADR in their particular subject area of state government; and other related topics.

The ADR Coordinators for each Secretariat and Department are given several responsibilities in the Executive Order including: becoming familiar with ADR, determining where and how ADR might be used and regularly exploring, encouraging and facilitating the use of ADR for and in their secretariats, departments and agencies. The secretariat and department ADR Coordinators are to meet four times a year with their agency ADR Coordinators to explore potential uses of ADR in their agencies.

The Executive Order includes two reporting requirements for the Secretariat and Department ADR Coordinators. The first requirement is to submit a plan outlining how cases and matters not in litigation will be reviewed to determine whether ADR might be helpful. MODR will be available to assist the Secretary and Department ADR Coordinators develop their ADR Plans. Second, Annual Reports are due to the Secretary for the Executive Office for Administration and Finance (A&F) from each Secretariat and Department ADR Coordinator to update the Secretary on the status of the Secretariat's/Department's ADR Program and indicating the goals for improving the ADR Program in the next fiscal year.

Finally, an Annual Award will be presented by A&F and MODR to a person in Massachusetts state government who has played a significant role in the promotion, use or identification of appropriate uses of dispute resolution or played a significant role in the resolution of a dispute in the Commonwealth.

This Executive Order sends a clear message that the Governor and Lt. Governor support and encourage the use of ADR -- and now Secretaries, Department Directors and Agency Heads have a framework and timeline for developing ADR Programs.

Policy Consensus Initiative Evaluation Project

The Policy Consensus Initiative (PCI), a non-profit corporation, is working with MODR, the Oregon Dispute Resolution Commission (ODRC) and the United States Institute for Environmental Conflict Resolution (USIECR) to develop a framework for evaluating ADR Programs. The project will provide Massachusetts specifically as well as other state and federal government dispute resolution programs, with ways to assess their performance and demonstrate their value as investments of both public and private dollars.

This project will develop measures for evaluating public policy alternative dispute resolution programs and provide critical information and feedback to MODR about the strengths and weaknesses of its public policy and environmental dispute resolution services. There will also be significant information from the study which will be important and helpful to other states developing or enhancing dispute resolution programs in the public policy arena.

There are two primary goals for this project. One goal is to develop and test a self-administered evaluation instrument to enable MODR to measure the effectiveness of its dispute resolution program. State dispute resolution programs including Massachusetts have very small budgets, and so the goal is to develop an instrument that will be self-administered. This will help keep the costs of the study low for Massachusetts and other participating state and federal dispute resolution programs.

The other goal is to work toward producing a common approach or methodology that could be used by other federal and state programs to monitor and demonstrate the effectiveness and effects of their dispute resolution programs. By employing a common approach or methodology, information from similar programs will be able to be compared and aggregated. The intent is to develop a "best practices" approach or set of useful principles for evaluating public policy dispute resolution programs.

MODR is very pleased to have been selected to participate in this project, which is now underway. PCI has provided a consultant specializing in program evaluation to assist MODR on this project. The planning phase is nearly complete and the instruments for collecting information are being drafted. These will be finalized in the coming months, at which time MODR will begin using the instruments to collect information and data.

Supreme Judicial Court Standing Committee on Dispute Resolution

MODR's Executive Director has served on the Supreme Judicial Court (SJC) Standing Committee on Dispute Resolution since its inception in 1994. The SJC Standing Committee on Dispute Resolution was created by the Justices of the Supreme Judicial Court and the Chief Justice for the Administration and Management of the Trial Court to

establish “consistent, system-wide standards to govern dispute resolution services provided by the Trial Court.” To carry out its mission, the Standing Committee--which is comprised of judges, attorneys, members of the public, academics and dispute resolution professionals—has worked to create the Uniform Rules on Dispute Resolution which were adopted by the SJC in 1998. The Uniform Rules contain a structure for establishing dispute resolution programs in the courts and ethical standards for neutrals providing court-connected dispute resolution services. Through membership on the SJC Standing Committee, MODR has assisted with the development of the Uniform Rules, and over the past two years in particular on the development of Qualification Standards. The draft Qualification Standards were recently submitted to the SJC and the SJC has published the draft for comment.

MODR’s Director of Court Programs has served on the Education and Implementation Subcommittees of Standing Committee on Dispute Resolution since 1998. Through membership on these subcommittees, MODR has assisted the Trial Court with designing procedures, forms and systems to implement the Uniform Rules on Dispute Resolution and educate court personnel about ADR and how to use court-connected ADR services in their courts. In addition, MODR’s Director of Court Programs has served as a member of the training team that designed and provided trainings for court personnel and ADR program staff on the Uniform Rules during FY 1999 and FY 2000. These trainings consisted of three regional conferences for court personnel on the Uniform Rules Ethical Standards and three state-wide conferences for court personnel and ADR program staff on implementation of the Uniform Rules.

Mediation Week

MODR was very pleased to sponsor the Mediation Week ’99 Kick-off Event in Nurses Hall at the State House on November 16, 1999. During this event, Governor Argeo Paul Cellucci presented a Mediation Week Proclamation and announced Executive Order #416: Integrating Dispute Resolution into State Government. Other speakers included Kathleen Grant of the Massachusetts Office of the Attorney General, Muhammed Muhammed of Lynn English High School and Ray Magliozzi of National Public Radio’s Car Talk. The theme during Mediation Week was “The Many Faces of Mediation.” During Mediation Week, the 38 sponsoring organizations held a variety of public events and activities to promote awareness of mediation. A Mediation Week Dinner was held on November 18 at Brandeis University and The Mediation Recognition Award recipients were Jean Williams, John Fiske, and Scott Harshbarger for their outstanding contributions to the field of mediation.

Web Page

During 1998 MODR created a comprehensive Web page to make information about the agency and its Court and Government Programs more accessible. The web page can be found at <http://www.state.ma.us/modr>. MODR looks forward to updating its Web Page in the coming year.

IX. MODR STAFF

The Massachusetts Office of Dispute Resolution Staff: *Summer 2000*

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Recognition of **Government Agencies & Entities** served by MODR during FY 1998-2000, which include the following:

Boston Municipal Court
Central Artery Tunnel Project
City of Amesbury
City of Beverly
City of Boston
City of Cambridge
City of New Bedford
City of Pittsfield
Department of Environmental Management
Department of Environmental Protection
Department of Mental Retardation
Department of Revenue
Department of Telecommunications and Energy
Division of Administrative Law Appeals
Executive Office for Administration and Finance
Executive Office of Environmental Affairs
Massachusetts Commission Against Discrimination
Massachusetts Cultural Council
Massachusetts Department of Housing and Community Development
Massachusetts District Commission
Massachusetts Housing Finance Agency
Massachusetts Health Officers Association
Massachusetts Land Court
Massachusetts Military Reservation
Massachusetts Superior Court
Massachusetts Supreme Judicial Court
Massachusetts Trial Court
Massachusetts Water Resources Authority
New Bedford Harbor Trustee Council
Office of the Attorney General
Operational Services Division
State Library
Stone Zoo
Town of Hingham
Town of Plainville
Town of Stoneham
United States Environmental Protection Agency
University of Massachusetts