



From left, Sheila K. Sachs, Benjamin Rosenberg, Albert Matricciani Jr., Andrew Jay Graham and M. Natalie McSherry of ADR Maryland, which offers practicing litigators from a broad array of backgrounds as mediators. (Maximilian Franz/The Daily Record)

## 'Neutrals' in high gear

### ADR Maryland seeks to grow and expand as mediation evolves

By: Heather Cobun Daily Record Legal Affairs Writer August 24, 2015

Alternative dispute resolution was once thought of as a resource primarily for small claims and family law cases but is now gaining traction in more high-stakes lawsuits, including commercial litigation and business disputes. ADR also is often considered the purview of retired judges and litigators. Now, a group of actively practicing attorneys is renewing its efforts to change the perception of mediation.

ADR Maryland was formed almost 20 years ago by members of major Baltimore law firms who wanted to give clients the option to avoid the stressful and risky process of litigation.

"Businesses have become more risk averse," said ADR Maryland member Benjamin Rosenberg of Rosenberg Martin Greenberg LLP.

ADR Maryland sought to differentiate itself from other organizations by almost exclusively inviting practicing litigators to join their ranks and providing a broad array of backgrounds and areas of expertise.



Retired Judge Albert J. Matricciani

Jr., ADR Maryland's new president, says one of his groups biggest challenges is getting clients to accept that holding out is not the best tactic. (Maximilian Franz/The Daily Record)

After two decades of word-of-mouth recommendations, ADR Maryland is seeking to advertise itself more publically and add members under the leadership of its new president, retired Judge Albert J. Matricciani Jr.

Matricciani, now senior counsel at Whiteford Taylor Preston LLP, said he wants to begin keeping detailed records about cases ADR Maryland members handle, from how the client heard about the group to what practice area it involves.

The ADR Maryland website breaks down its 21 members by area of expertise and invites anyone interested in hiring them to reach out directly. Attorneys set their own fees currently, according to Matricciani, but he hopes to establish a uniform fee chart.

ADR Maryland has no overhead for administrative costs, according to Matricciani, but he hopes to eventually hire someone to assist in record keeping and marketing to boost visibility.

Part of the strategy for the group will be encouraging attorneys to advise their clients of alternatives to litigation early, according to Sheila K. Sachs.

"I don't think enough lawyers advising clients advise them to consider it from the start," said Sachs, a member of Gordon Feinblatt LLC.

With courts backlogged with cases, avoiding complex litigation can save clients a great deal of time as well as money.

"The wear and tear that we can save on them civil judicial system... is just remarkable," Rosenberg said.

## 'Fairly rich landscape'

Attorneys trained in ADR generally provide arbitration and mediation services or may just evaluate a case and tell the parties the probable outcome.

The ADR landscape in Maryland is "fairly rich," according to Toby Treem Guerin, managing director of the Center for Dispute Resolution at the University of Maryland School of Law.

"There are probably more trained mediators out there than there are cases to mediate," she said.

Guerin was the primary author for a study on the state of ADR in the Maryland court system, focusing on court-affiliated programs throughout the state. Researchers found that mediation and arbitration gained popularity after mediation began to be a required step in child access cases, and an office within the state Judiciary was formed to handle ADR in courts, according to Guerin. Court-affiliated ADR has since expanded to other civil cases including day-of-trial mediation opportunities to allow parties to negotiate settlements.

Mediation and arbitration are particularly suited for areas of law where the parties to the dispute may need to retain a relationship.

In family law, potential litigants will most likely need to interact after the dispute is resolved. Resolving issues early in a less adversarial setting can save relationships, according to Sachs. Mediation can also settle family law disputes more quickly than waiting for a judge.

"The court system does not resolve issues related to children quickly enough," she said.

Guerin said agreements negotiated and crafted by the parties to a divorce or custody matter are more likely to address the specifics of the family's situation than a solution designed by the court.

"Most judges I interacted with would much rather have people come up with their own agreement," she said.

The agreements can even include a clause that future disputes be mediated before returning to the judge.

"I think people see a natural fit with family law, but there really is a natural fit in so many other places as well," Guerin said.

Such as commercial litigation, according to Rosenberg, particularly if the parties will likely have future contracts together.

Rosenberg recounted a complex construction case he was asked to mediate where one of the attorneys said, "We are not going to settle this case, we're wasting our time."

A last-minute settlement was reached, and Rosenberg said the presiding judge was "ecstatic."

## A matter of timing

A major challenge in ADR, Matricciani said, is getting clients to accept that holding out is not the best tactic.

Andrew Radding, a veteran Baltimore lawyer and mediator not connected with ADR Maryland, said commercial disputes can be identified before the parties begin litigating, but clients don't always want to settle even knowing it will save time and money.

"Some clients just want their day in court," said Radding, a member of Adelberg, Rudow, Dorf & Hendler LLC.



Guerin said conflict resolution often turns on timing.

"It's not always an easy sell for people in conflict to say, "Hey, why don't you sit down and talk about it?" she said.

ADR Maryland recently began advertising early, neutral-case evaluation as an additional service.

Case evaluation is "almost like getting a second opinion from a doctor," according to Matricciani, and can allow litigators to have a fresh set of eyes look at a case and predict the time, money and likely outcome of a case before it goes to court or before appealing.

Neutral evaluators can also take a look at a potential settlement agreement and discuss it with the attorneys involved, he said.

M. Natalie McSherry, another ADR Maryland member, said someone can call before they even file a case to discuss the pros and cons of litigation and have a third party point out potential issues or weaknesses in the case.

"We think we're particularly suited to do that because we do it every day," said Andrew Jay Graham, who, like McSherry, is with Kramon & Graham P.A. in Baltimore.

  
'We're particularly suited' to point out the pros and cons of a case 'because we do it every day,' says Andrew Jay Graham of the mediators at ADR Maryland.  
(Maximilian Franz/The Daily Record)