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## Roger Williams University School of Law Mediation Clinic, Bristol, Rhode Island, USA

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# Roger Williams University School of Law Mediation Clinic, Bristol, Rhode Island, USA

Gail Winson, Associate Dean for Library and Information Services, Professor of Law

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Roger Williams University School of Law offers low or no-cost conflict resolution services for individuals and groups through its Mediation Clinic located on the Bristol, Rhode Island<sup>1</sup> campus. Upper level law students, under the supervision of an experienced law professor/mediator<sup>2</sup>, serve as mediators in a wide range of disputes and community-based problems.

The School of Law has been training students for at least ten years, providing them with basic ADR skills training. Such training is essential in today's legal practice where many different types of cases, from workmen's compensation to child custody, end up in mediation.

United States Federal District Courts (trial courts) require parties to go through ADR before trial. A federal statute passed in 1988 requires each U.S. district court to authorize the use of alternative dispute resolution processes in all civil actions and to devise and implement its own ADR program.<sup>3</sup> Under the local rule for the District of Rhode Island, an ADR program has been developed giving parties several options including using an ADR Administrator employed by the court, asking a federal magistrate to settle an issue, or agreeing to choose a private mediator at their own

cost.<sup>4</sup> Some state courts have adopted a similar scheme. In Rhode Island there is no comprehensive mandatory mediation program comparable to the federal one, but there is mandatory mediation under Rhode Island Supreme Court rules.<sup>5</sup> There is also a Family Law Court program which is described below.

The genesis of the Mediation Clinic at Roger Williams was a pilot program sponsored by the Washington County Rhode Island Family Law Court. Student mediators assisted families involved in domestic disputes involving child visitation issues. Funding for the program was renewed by the School of Law and the new Mediation Clinic opened its doors in January of 2007.

Rhode Island General Laws governing child custody and visitation authorise the Family Law Court to direct parties in a divorce proceeding to participate in mediation to resolve their differences in a program established by the Court.<sup>6</sup> The Court, at its discretion, may order mediation prior to trial, during the trial of other issues, or upon the conclusion of a trial and entry of a temporary decree. Communications made by or to a mediator or between parties in the presence of the mediator under this law are privileged and are

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- 1 Rhode Island is the smallest state in the U.S., with a population of a little over one million. It is often used as a unit of measurement, as in 'an iceberg roughly twice the size of Rhode Island is adrift off Antarctica,' or 'an Australian sheep farm [or Texas Ranch] the size of Rhode Island.' Rhode Island covers an area of 1,545 square miles (500 of which is water) and has nearly 400 miles of shoreline.
  - 2 Professor Bruce Kogan directs the clinic and serves as the principle mediator in complex cases. He generously gave his time to provide much of the information in this article through an interview with the author.
  - 3 *Judicial Improvements and Access to Justice Act*, Pub.L. No. 100-702, Title IX, § 901(a), 102 Stat. 4659 (1988), and amended Pub.L. No.105-315, § 3 112 Stat. 2993 (1998) (codified at 28 U.S.C. §§ 651-658 (2000)).
  - 4 Local Rules of the United States District Court for the District of Rhode Island, Alternative Dispute Resolution Plan (Amended March 1, 2006)
  - 5 R.I. Sup. Ct. R., Appendix, Provisional Rule A, Mediation Session Procedures (2008)
  - 6 R.I. GEN. LAWS § 15-5-29 (2003).

not admissible as evidence in any civil or criminal proceeding. The Family Court is also authorised to establish a voluntary mediation program for termination of parental rights in an adoption proceeding,<sup>7</sup> and for child protection matters in cases involving abused and neglected children.<sup>8</sup>

The Family Court employs four full time mediators and supplements that roster with mediators from the School of Law Mediation Clinic. The Rhode Island District Court also has a mediation rule under which it supplies mediators. To fulfill its obligation, the Court contracts with the Community Mediation Center of Rhode Island in Providence, and the Roger Williams University School of Law Mediation Clinic. The Clinic covers Newport County for the District Court in civil matters such as landlord-tenant disputes and small claims. These are the two court-based mediation programs that refer mediation cases to the Clinic.

Aside from mandatory mediation, Rhode Island provides Voluntary Court Based Mediation to all parties involved in divorce complaints on issues ranging from division of marital assets to child support and custody. For this purpose the court employs two mediators who are available upon request by either party and referral by the presiding judge. Private mediation is always available to all litigants who can afford to pay for the services of a certified court mediator.

Since the initial Family Law Court program, the Mediation Clinic has expanded its scope and now offers its services in a variety of settings,

working with local governments, school districts, employers, and individuals. Cases are referred to the Clinic by town councils, local police, lawyers, non-profit organisations, educational institutions, or private parties. Topics mediated have included disputes between neighbours, probate and estate contests, business dissolution, same-sex couple separation, real estate transaction issues, contract negotiations and disputes, and conflict between two non-profit organisations on a joint project. Handling or observing such mediation sessions gives law students a broad range of experience and at the same time teaches them a great deal about interpersonal dynamics that will be useful in dealing with clients in their future practices. They also learn that the real issues, or the full range of issues, is often not apparent on the surface, but comes to light during the mediation process.

Training and certification for mediators varies from one state to another in the U.S. since there is no nationally recognized certifying body.<sup>9</sup> In Rhode Island, if individuals complete a certified mediation program, they are generally deemed qualified and placed on a list of approved mediators. There are no specific statutory mandates for mediators, continuing education courses are not required, and the mediation programs themselves differ depending on the learning institution providing the training. Generally, thirty to forty hours is required course time for certification of a mediator.<sup>10</sup>

To qualify for the Clinic, all students must complete a basic mediation skills certification

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7 R.I. GEN. LAWS § 15-7-7.2 (2003)

8 R.I. GEN. LAWS § 40-11-7.3 (2006)

9 Hoenig, James K, 'Divorce Mediation Basics', (July 1997) 43 *Practical Lawyer*, at 39, 43.

10 D'Ambra, Laureen & D'Ambra, Christine, 'Is Mediation a Solution to the Family Court's Burgeoning Domestic Caseload?' (Jan/Feb 2008) 56 R.I. Bar J, at 15, 18.

course. Once enrolled in the Clinic they receive an additional twenty hours of advanced training,<sup>11</sup> focusing primarily on family court issues. There is an additional layer of training throughout the semester that students spend in the Clinic. In the first week, a student will observe two mediations done by experienced mediators. In the second week, he or she will work as a co-mediator along with a more experienced mediator. In the third or fourth week the student works on his or her own or with another student, but no more experienced mediator is in the room. In the case of an issue in a divorce case, two students appear together, one male, one female so that there is no appearance of gender bias. The progression of training just described applies to family law cases. In less complex cases in the District Court, students start

out as co-mediators. In very complex matters, a student is assigned to work with the professor in charge of the Clinic. There are also additional professional development opportunities for the students when they are invited to sit in on mediations conducted by the Director of the Clinic in very complex cases.

In conclusion, the Mediation Clinic has been a success on several fronts. Firstly, it prepares students to practice in an environment where ADR has become an accepted means of settling disputes. Also it provides a valuable service to the community who would otherwise be without this free useful service. Lastly the bench and bar of the state of Rhode Island benefit from the load on the legal system being reduced.

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11 The Rhode Island 'Mediation Privilege statute' provides that for the privilege to attach, a mediator must have completed a course of at least thirty hours, and parties must sign that they agree to participate. Nationally, the requirement for training is somewhat higher, requiring thirty to forty hours training. The Roger Williams program requires students to complete basic law school course, twenty hours of advanced training, and observation of more experienced mediators before mediating on their own.