

MAKING A DIFFERENCE| Alumni Profile

By Robert M. Viles

Peter Y. Wolfe '81

Court Clerk and Mediation Leader

The late Robert M. Viles, former dean and president of Franklin Pierce Law Center, interviewed Peter Y. Wolfe '81 for this profile on May 6, 1999. It is one of twenty-five interviews Viles conducted for his book entitled Making A Difference, *which was to feature profiles of alumni he believed would make a positive impact on society.*

Wolfe now serves as the New Hampshire Court Alternative Dispute Resolution (ADR) coordinator. In this position, he oversees the current court ADR programs that he helped to design and implement. In addition, he is working on expanding the use of ADR by the courts. As ADR coordinator, he participated in the training of court mediators for the Superior Court Rule 170 Program and the District Court Small Claims Program as well as serving as a mediator in each of these programs. As an adjunct professor at Pierce Law, he teaches dispute resolution and mediation. He also works privately as a mediation trainer. He served as clerk of the Sullivan County Superior Court from 1989 until his retirement in November 2005.

At the time Viles wrote:

Peter Wolfe is credited as a leader in the successful effort to embed alternative dispute resolution (ADR), principally mediation, in the civil justice system of New Hampshire. Rule 170 of the Superior Court Rules requires that all civil cases filed with the New Hampshire Superior Court, the court of general jurisdiction in the state, shall be assigned to ADR. Rule 170 has made New Hampshire an ADR leader nationally. As clerk of the Sullivan County Superior Court, neither promoting nor imbedding ADR in the civil justice system is part of his job description.

RMV: ***How did you get into ADR in the first place?***

PYW: Through Franklin Pierce Law Center. When I was graduating in 1981, Felicity Lavelle '77 was starting the Concord District Court mediation program. I didn't have the time to participate then; but about a year later, I met with Rose Hill, director of the New Hampshire Mediation Program, and ended up serving on the program's board. (The late) Professor Bruce Friedman was on it as well. I also mediated for the program. In 1985, I co-founded the Lake Sunapee Mediation Program in Sullivan County, where I was practicing law. In December 1988, I became the Superior Court Clerk for the county.

RMV: ***Why did you become interested in mediation?***

PYW: I'm not sure. Perhaps it was because I was older. I had worked for large corporations and had run my own business as well. I was slowly learning that imposed solutions rarely worked. My experience in law school, especially in the clinics and in shared activities like trial advocacy and group exams, illustrated the benefits of a collaborative process.

RMV: ***Why did you decide to become a full-time Superior Court clerk?***

PYW: Two reasons. First, I needed a break from the criminal and civil litigation I was doing. Second, I wanted to spend more time doing things that were important to me personally.

RMV: ***How did you come to bring ADR into the Superior Court system?***

PYW: The subject came up during the interview for the job. Joseph DiClerico Jr. was then the presiding judge in Sullivan County. He and I had been discussing ADR for some time. He understood the benefits that could be achieved from mediation. During the interview I indicated that, if appointed, I wanted to do something with ADR in the court system.

RMV: ***What did you do?***

PYW: At first, I attempted to establish a civil mediation program in Sullivan County, which failed because mediation was voluntary. Attorneys said they liked it, press coverage was good, and the court supported it. But no one used it.

RMV: ***Why?***

PYW: Lawyers get into habits in their practice. They do things a certain way. Radical change is not something that people do casually.

RMV: ***How did you recover from such an unpromising start?***

PYW: In 1991, the New Hampshire Supreme Court came out with a long-term planning report that included a recommendation for the use of ADR. I persuaded (the late) Walter

Dunfey, then chief judge of the Superior Court, to organize a meeting with all the people who were experimenting with ADR in different counties. Unfortunately, during the meeting, I had to leave to attend another meeting. The next day Superior Court Judge Linda Dalianis called to congratulate me on my election as chair. I had been in the wrong place at the wrong time!

RMV: ***Then what happened?***

PYW: Judge Dunfey allowed me to expand the committee to include plaintiff and defendant attorneys. We also added a representative of the General Court, the director of the University of New Hampshire Program for Consensus and Negotiation, as well as additional court personnel. A subcommittee of Fred Desmarais, Dave Immen '76, Bill Mulvey, Karen Godzyk and myself was formed to develop a plan. We spent a couple of days in the basement of the Supreme Court building trying to figure out how to proceed to craft a court rule.

Bill Mulvey was the genius behind the rule. He combined everything that the others contributed and came up with the first draft of Rule 170. All we had to do was sell it to the remainder of the committee.

We made some initial decisions. First, we didn't need another pilot program. Second, what we came up with was going to be mandatory because voluntary programs weren't working. While we were crafting our program, some of us went to a national conference that served to reinforce the direction we were taking. After many drafts the rule was approved. Now Joseph DiClerico, the new chief justice of the Superior Court, had to use his powers to usher in the rule.

You know how certain things happen because of timing? The right people were there, and the rule fell into place.

RMV: ***How well has Rule 170 worked?***

PYW: In all honesty, the success of Rule 170 has exceeded what we anticipated. This is a tribute to the New Hampshire Bar as much as it is to the rule. We had been worried that, with every case in Superior Court going to ADR, we would not have enough people to handle the cases scheduled for ADR and provide for quality control. We were facing the prospect of going from zero cases to over 2,000 a year scheduled for ADR.

There were compromises along the way. We would have liked a 40-hour training program for mediators, but we settled for two days initially, with a third day of advanced training later. To find experienced people, we looked for attorneys with more than five years of trial experience. We identified from Bar lists over 900 people with enough experience to understand the process. We sent a request to these individuals asking if they would be willing to donate six days a year serving as a neutral without pay. We received over 500 responses saying "yes." What a phenomenal response! Because of funding limitations, we still haven't trained them all.

RMV: ***Why do you think there was such a positive reaction from the Bar?***

PYW: The New Hampshire Bar is unique. In responding so favorably to the new rule, the members really wanted to improve the system. They wanted to help clear the backlog of civil cases, including their own cases. In addition, they were attracted because we promised to teach skills useful in practice. For example, one attorney called to say she had settled six cases following her ADR training. Rule 170 certification is now seen as conferring status.

Over 300 people have been trained since Rule 170 went into effect. The number of neutrals needed to run the program raises some concerns. Quality control is an ongoing challenge.

RMV: ***What do you do to assure quality control?***

PYW: Initially, we had each party and each lawyer to a mediation fill out a three-page exit questionnaire. I personally read all of them and made phone calls to lawyers to provide feedback. Information from the questionnaires has influenced our training and helped monitor the quality of the mediations.

RMV: ***What kind of ADR does Rule 170 bring?***

PYW: Eighty percent is mediation. Arbitration is rare, but there is some neutral evaluation of cases where, because of liability issues, counsel feel settlement is impossible.

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RMV: ***What have been the quantifiable results of Rule 170?***

PYW: It has contributed to a large extent to the elimination of the Superior Court's civil backlog. You can now get a case heard within a year of filing it.

Settlement rates from Rule 170 mediation vary from county to county because each county administers its own program. In Sullivan County, my county, the rates vary between 65 and 75 percent. In Nashua, the rate was 78 percent. Settlement rates would go up further if the courts could allow more time for the mediations. They also go up when mediator styles are matched to the needs of the case. Some lawyers are better at evaluation of the merits and worth of a claim while others excel at focusing on party's interests.

The most profound effect of Rule 170 has been the change in the way people practice law.

RMV: ***What do you mean?***

PYW: The preparation for mediation is different from the preparation for trial. For mediation, you can cut out a lot of the cost of trial preparation. You need to obtain enough information to assess your position and reach a settlement based on the assessment. For trial, you need to go further, preparing your experts and completing all the discovery required to defend your adversarial position.

Now attorneys come to early structuring conferences and say that they don't need discovery deadlines or trial dates because the case will settle at mediation. ADR has become part of the attorneys' case processing.

RMV: ***How does Rule 170 stack up with its counterparts in other states?***

PYW: We're light years ahead of Maine and Vermont. To some extent we're also ahead of Massachusetts, which is difficult to compare to because each county has its own program. ADR is not mandatory in Massachusetts. Instead, courts have some sort of information session where ADR is pushed. Attorneys are free to ignore ADR. What I do like about Massachusetts is that mediators are paid.

Maine was, however, the first state to mandate mediation for all marital cases involving custody of children. The program there has operated since the mid 1980s. The kind of mediation they do differs from the marital mediation you see in other states. In Maine, the mediation takes place in a single session with attorneys present. Other states use a model where the mediation takes place over many sessions, usually without the attorney present.

We also tried to establish a marital mediation program in the mid 1980s. We were unsuccessful because of concerns relating to the quality of mediators. As a result, New Hampshire took the approach of developing a certification program. It was the first state to do so. Today, most of the certified mediators are non-lawyers. They do multi-session mediations helping the parties find ways to resolve custody and property issues as well as learning to communicate with each other and make decisions in the future. This takes a long time. Generally lawyers are not involved with their clients at mediation.

There is some animosity in New Hampshire between the certified mediators and attorneys. The former blame the latter for escalating conflicts. The latter blame the former for failing to understand, to the parties' detriment, the legal issues associated with divorce. There is some merit to both perspectives. From the court's perspective, we would have liked to establish a marital mediation program but for many reasons, too numerous to detail, we instead opted to establish a neutral evaluation program for divorcing couples that is populated by lawyers. The program fills the gap between couples who want to mediate their divorce and those who want something closer to the outcomes found in court. The program has worked well when used. But, since the program is voluntary, usage is low.

RMV: ***What do you see happening next on the ADR or mediation front?***

PYW: I don't know. I would like to see Rule 170 use paid professional mediators. The problem is one of funding. The court will not have the resources to pay the mediators, and it is difficult for policy reasons to require the parties to pay for a mediator in a mandatory program. Currently, we have some time to resolve this issue, as satisfaction with the program is high.

RMV: ***Has your experience with mediation changed your own dispute-resolving style?***

PYW: Completely. I started with a very competitive, confrontational style. Now hopefully I adopt a problem-solving role. Sometimes the old style surfaces and I have to work to keep old habits under control.

RMV: ***I forgot to ask you earlier how you happened to come to Franklin Pierce Law Center. What's the story?***

PYW: As proprietor of an inn and restaurant outside of Waterville Valley, NH, I was involved with many environmental issues. I decided to go to law school to be more effective in preserving what I really loved about New Hampshire. What was great about Franklin Pierce Law Center was that the admissions people were willing to look past my undergraduate grades, which were not great due to a lot of partying, and look at what I had done since graduation. It was a perfect match for me.