

## **Call for Justice, LLC—United Way 2-1-1 Training Paper**

### **Session 16: Community Mediation Services**

**October 17 and 18, 2013: Jeanne Zimmer of the Dispute Resolution Center (St. Paul), Elise Chambers of the Conflict Resolution Center of Minnesota (Minneapolis), and Beth Bailey (Thursday's session) and James Henson (Friday's session) of the Community Mediation and Restorative Services, Inc. (North and Western Hennepin).**

#### **Featured Speakers' Topic**

This month, we have distinguished representatives from three separate community mediation services. Jeanne Zimmer, Elise Chambers, Beth Bailey, and James Henson will explain the concept of community mediation service and offer tips on when best to refer callers to mediation (as distinguished from referrals to legal providers).

#### **What is Mediation?**

Mediation is used to resolve disputes or conflicts between people. It's a *process* that facilitates people communicating with each other as a way of ending a conflict or dispute. A trained mediator conducts that facilitation.

Mediation can occur in many different contexts. For example, in personal injury lawsuits, the person suing (the plaintiff) is almost always a stranger to the person being sued (the defendant). In those cases, the purpose of mediation is to find a way to settle the injured person's claim or case by way of a money payment or some other form of compensation. Once that settlement occurs, the parties walk away and usually never see each other again.

In the context of community or family disputes, the parties to the dispute usually do know each other—they can be next door neighbors, family members, co-workers, etc. In those disputes, community mediation enables the disputants to establish or re-establish a relationship by communicating with each other. The goal then becomes finding mutuality or commonality (which usually involves having each disputant's interests taken into account and met, if possible) to resolve the dispute. In this way, the parties take ownership and have a say in how the dispute is resolved. For example, with our Zoey Zalopa problem this month, how does Zoey get what she wants (or needs) and Mrs. Whiner get what she wants (or needs)?

Mediators are trained in various dispute resolution techniques. They utilize a number of strategies to assist disputants in communicating. A mediator typically receives thirty hours of training and extensive mentoring before being considered ready to mediate a dispute. Many mediators are volunteers.

Mediation as a community resource is a relatively modern development and grew out of the Civil Rights movement of the 1960's. When Ellie began practicing law in 1982, mediation was

practically non-existent for people engaged in lawsuits. A big factor that's helped mediation become more common in the realm of lawsuits is the cost of litigation—it just costs too much to take a dispute all the way to trial. Additionally, the risk of runaway juries (can anyone say, “McDonald’s hot coffee case?”) and the desire to control outcomes has made mediation a far more viable option. Indeed, the trial statistics are striking: in 1982, approximately 25% of all civil cases proceeded to trial. In 2013, only 2% of civil cases actually reach trial, with the vast majority of cases being settled through mediation.

## Types of Mediation

Almost any dispute (excluding domestic abuse situations) can be mediated. For training purposes here, and utilizing Ellie’s shorthand phrases, there are two primary kinds of mediation:

- **“Community mediation”** involves neighbors, family, business-consumer, and public policy types of disputes. Examples would be noise, pets (the barking dog next door), parking, rents/deposits, repairs, co-tenant conflicts, post-divorce parenting time, refunds, faulty merchandise, and zoning or traffic problems.
- **“Litigation mediation”** involves disputes where a court case has either already been filed or is threatened. Examples would be accidents resulting in personal injury or death, employment discrimination, divorces (handled by private mediators [see more below]), and business-to-business claims (like patent infringement or breach of contract).
- Community mediators also work with the court system to mediate landlord-tenant/housing disputes, conciliation (small claims) cases, and harassment cases in various Twin Cities courthouses.

Community mediation in Minnesota is governed by MN Statute 494; therefore community mediators are unable to mediate divorce and custody cases, and situations involving “violence against persons”. However, there are many “private” mediators trained in family mediation (including many attorneys), and thus, they are permitted to mediate divorces and child custody cases.

## The Mediator’s Role

A core tenet of mediation is neutrality—the mediator doesn’t take sides or decide who is right or wrong. Usually the mediator doesn’t give opinions on issues. (As stated below, this is not the case with mediation in actual or threatened litigation.) The mediator also has an obligation to keep confidential information conveyed by the disputants. Usually, the mediator can’t be called as a witness at any ensuing trial that follows a failed mediation. (Two exceptions to this are if there’s an allegation of abuse or neglect of a minor child or vulnerable adult.)

As a practical matter, in disputes where the parties are represented by attorneys, it's more likely the mediator will also be an attorney with 20 or 30 or more years' experience. Sometimes the mediator is an acting or retired judge. The reason for this? Seasoned attorneys and judges have perspective and can offer opinions on whether a particular claim or defense has merit. In other words, with litigation, the questions always are, "What will a jury do with this case? Is it more likely they'll find for one side or the other?"

A mediator who's tried a lot of cases or a judge who has presided over many trials will be able to offer his/her perspective on how they believe the case will turn out. Most attorneys will respect this kind of opinion in particular.

Regardless of the type of mediation (whether community mediation or litigation-related), a primary role of the mediator is to guide the negotiation process, and to ensure that it's respectful and progressing toward some productive endpoint.

### **Mediation Distinguished from Arbitration**

Mediation, as stated above, is a process where a neutral third-party (the mediator) works to help the disputants reach an agreement that resolves their dispute. This is a voluntary process; each disputant can decide to terminate the mediation at any time. Most importantly, the mediator doesn't decide the dispute for the parties.

Arbitration, on the other hand, does involve a third-party (the arbitrator) who decides the dispute for the parties. In many instances, an arbitration proceeding is simply a barebones trial that takes place in the conference room of a hotel or attorney's office. There are national services (such as the American Arbitration Association) through which disputants can select an arbitrator to decide their dispute. Usually, the arbitrator's decision is binding on the parties, and most often there is no appeal from that decision.

The advantages to arbitration (as compared to a regular court trial) are that it costs much less and can be accomplished much quicker. On the other hand, some attorneys believe the barebones nature of the proceeding can work to hurt their clients—you don't get the right to conduct full "discovery" of the other disputant, and thus, you may not obtain key information that could help your client win the dispute.

Many of us unwittingly become parties to contracts which specify that we relinquish our rights to a court-system trial, and instead, become bound to arbitrate any dispute. Almost all bank or stock brokerage accounts have written terms that require the customer and bank arbitrate rather than litigate. (In some instances, litigation can follow the arbitration.) In some employment situations, an employee becomes obligated to arbitrate any employment dispute (as opposed to filing an employment discrimination claim with a governmental agency).

With callers, it's not likely you'll receive many calls about arbitration; however, in any event, it's better to refer a caller to a legal provider rather than trying to determine if the caller has a situation involving arbitration or mediation.

## **Restorative Justice**

While this month's training focuses on mediation, we offer a few words about "restorative justice" to provide context.

Restorative justice (also sometimes called reparative justice) is an approach to justice that focuses on the interests of the victim and the offender, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. Victims (who usually have suffered a physical harm or property loss) take an active role in the process. Offenders are encouraged to take responsibility for their actions and to repair the harm they've done—by apologizing, paying medical bills, returning stolen money, or by performing community service as determined by the various persons involved in the process (the victim, the county or city attorney, law enforcement, and the offender). In addition, restorative justice provides help for the offender in order to avoid future offenses. Restorative justice is based on a theory of justice that considers crime and wrongdoing to be an offense against an individual or community, rather than against the state. Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability.

Usually, restorative justice involves a face-to-face meeting between the victim and offender (with others present). There is much preparation before such a meeting occurs, with the primary consideration being the offender's attitude toward his/her offense and empathy toward the victim. If the offender isn't repentant or remorseful, then restorative justice isn't possible. Some diversion programs (e.g. where youth commit bullying or property damage) involve restorative justice. Restorative justice may be offered anywhere from diversion to re-entry, or separate from the justice system. It can include: circles, conferencing, family/group decision-making, and victim-offender mediation.

## **Community Mediation Service Resources**

### **General Mediation Resources—Twin Cities Metro**

- 1. Conflict Resolution Center**, 2101 Hennepin Avenue, Suite 100, Minneapolis MN 55405, 612-822-9883 ([www.crcminnesota.org](http://www.crcminnesota.org)). Territory: Hennepin County. Fees determined on sliding scale; no one turned away. Minneapolis and the southern suburbs.
- 2. Community Mediation and Restorative Services**, 9220 Bass Lake Rd., No. 270, New Hope MN 55428, 763-561-0033 (Spanish speaking callers 612-629-6058) ([staff@mediationprogram.com](mailto:staff@mediationprogram.com)). Territory: Hennepin County, northern and western metro suburbs. Fees determined on sliding scale; no one turned away.

3. **Dispute Resolution Center**, 91 Arch Street E, St. Paul MN 55130, 651-292-7791 ([www.disputeresolutioncenter.org](http://www.disputeresolutioncenter.org)). Territory: East metro, Dakota, Ramsey, and Washington Counties. Fees determined on sliding scale; no one turned away.
4. **Mediation Services for Anoka County**, 2520 Coon Rapids Blvd. Suite 100, Coon Rapids, MN 55433, 763-422-8878 ([daveb@mediationservice.org](mailto:daveb@mediationservice.org)). Territory: Anoka County and some work in counties north. Fees: no charge except a sliding scale fee for work on shared parenting, up to \$200 per parent.

### General Mediation Services—Outside Metro

See generally, [www.communitymediationminnesota.org](http://www.communitymediationminnesota.org) for a general listing of mediation services throughout Minnesota, plus more on how mediation works/what it consists of.

- [Mediation & Conflict Solutions](#), 1700 N Broadway, Suite 124, P.O. Box 6541, Rochester MN 55903-6541; phone 507.285.8400.
- [Mediation Center of Southern Minnesota](#), 301 North Main Street, Austin, MN 55912; phone: 507.433.3663.
- [Mediation Works North](#), 4010 9th Avenue West, Hibbing MN 55746; Phone: 218.263.7307.
- [Rice County Dispute Resolution Program](#), 1651 Jefferson Parkway, Suite 125, Northfield, MN 55057; Phone: 507.664.3522.

### Additional Community Mediation Providers:

**Center for Multicultural Mediation and Restorative Justice**, 2400 Minnehaha Ave, Minneapolis, MN 55404; Phone: 612.722.2739.

- [Hmong American Mediation Center](#), 320 University Avenue West, St Paul, MN; Phone: 651.209.6807
- [Peacemaker Resources](#), 3124 Hannah Avenue NW, Bemidji MN 56601; Phone: 218.444.8048.

### Family Law Appellate Mediation Program

**Minnesota Court of Appeals Family Law Appellate Mediation Program**,

(<http://www.mncourts.gov/?page=3412>), 651-296-6739 (no street address given). This is a specialized program for parties who have already had their family law case decided by a Family Law Court. Referral to mediation takes place after the parties have filed the appeal and paid the

filing fee; it occurs before the briefing (and most expensive) stage of an appeal. Territory: State of Minnesota. Fees: cost which is shared by the parties.

### **Education Law Mediation**

**Minnesota Special Education Alternative Dispute Resolution Services (MNADRS)**, 1500 Highway 36 West, Falcon Heights, MN 55113, 651-582-8222

(<http://education.state.mn.us/MDE/SchSup/ComplAssist/AltDispRes/index.html>). Provides conflict resolution assistance for students, schools, parents and agencies. Parents and school staff can use a mediation session or facilitated IEP/IFSP/IIP meeting to address issues of concern. Territory: Covers the entire state (they will travel to the location of the student/parents if need be). Fee: free. (Note: this service also handles complaints of student maltreatment by school system personnel.)

Let us know if you have any questions!

Ellie and Emily, Call for Justice, LLC