



A Manual for Legal Services and Pro Bono Mediation Programs

*Essential information for designing and implementing a mediation program
in a pro bono or legal services program*

2nd Edition

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A Manual for Legal Services and Pro Bono Mediation Programs

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This 2nd edition is dedicated the memory of Joan F. Tobin

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INTRODUCTION

Purpose of this Manual

This manual has been created to assist legal services and pro bono agencies in developing mediation programs. The manual is designed to give governing boards, chief executives and mediation program administrators the tools to start new programs or to strengthen existing programs. It covers the benefits of mediation, how to design a program, the financial resources needed and where to find them, staffing the program, the recruitment of appropriate volunteer mediator service providers, the screening and processing of cases, sample forms and training tools, and ways to handle problems as they arise.

How ADR Can Help Increase Access to Justice

Access to justice for all has emerged in the past thirty years as an important goal within the American justice system. The delivery of legal services to individuals with limited financial resources is challenging work. Legal service and pro bono agencies across the United States never have adequate funding and staff to respond to the needs of their local communities. This situation requires them to set restrictions on the types of cases they can accept, and necessitates adhering to strict financial resource rules. Frequently, individuals who have a problem that has not yet become a bona fide legal issue or who have incomes slightly above the limits set by the agency are left without assistance of any kind. While workshops and classes may provide generalized help, many potential clients are turned away and left feeling discounted and helpless.

To demonstrate the large number of requests for legal services from the working and non-working poor in this country, one need only look at the largest county in the United States. Maricopa County in Arizona, which includes the city of Phoenix, has 355,000 community members who meet the financial eligibility requirements of the local legal service agency. This agency receives 2,000 telephone and walk-in requests for help each week. The limited financial resources of the agency have made it necessary to turn away the vast majority of applicants for service. Mediation programs have the potential to alleviate this problem.

Every jurisdiction in this country has witnessed growth in the use of what has come to be called alternative dispute resolution (ADR). Alternative dispute resolution is a term that refers to a number of processes that can be used to resolve a claim or dispute. Dispute resolution processes are alternatives to having a state or federal judge or jury decide the dispute in a trial. Dispute resolution processes can be used to resolve any type of dispute including family, neighborhood, employment, business, housing, personal injury, consumer, and environmental disputes. Common ADR processes include mediation, arbitration, early neutral evaluation, mini-trial, and many others. All forms of ADR are now routinely used to limit judicial caseloads and move lawsuits through the court system in a more efficient manner. ADR can also be effective in resolving disputes before they ever reach the courts.

Dispute resolution processes have several advantages. For instance, many dispute resolution processes are cheaper and faster than the traditional legal process. Certain processes can provide the parties involved with greater participation in reaching a solution, as well as more control over

the outcome of the dispute. In addition, dispute resolution processes are less formal and have more flexible rules than the trial court. Mediation can reduce caseloads and provide clients with resolution. The Community Legal Services pro bono mediation program in Phoenix demonstrated significant success: ninety percent of the cases mediated reached agreement.

While many judges and lawyers bemoan what they consider to be the loss of good “lawyering” skills, where lawyers are truly counselors to their clients and advocates in inter-lawyer negotiations, they recognize the benefits of a facilitated negotiation, especially mediation. Whether provided by in-court or community-based mediators, mediation is available in most jurisdictions, and is increasingly sought by both members of the public and the lawyers who represent them.

Contents of this Manual

This manual will address the specifics of developing a mediation program with a focus on projects housed within a legal services or pro bono program. There are a number of other service delivery models for providing dispute resolution services for low income populations, including partnerships and informal referral mechanisms. We will address these alternative service delivery models in chapter one.

In order to clarify or exemplify ideas in the text, Program Experience will be presented. This program experience comes from the existing pro bono mediation programs. We are greatly indebted to the experience of the Community Legal Services in Phoenix Arizona for providing most of these examples.

Extensive resources are also provided in the appendices. Additional information can be obtained by contacting the ABA Section of Dispute Resolution at (202) 662-1680.

MEDIATION IN THE PRO BONO/LEGAL SERVICES AGENCY

Included in this section:

- **Definition of Mediation**
- **Mediation Process**
- **Why Create a Mediation Program?**
- **Determining the Agency's Goals**
- **Designing the Framework for the Program**
- **Essential Elements of the Program Design**

WHAT IS MEDIATION?

Mediation is defined as a process where an impartial third party helps the parties resolve the dispute. The neutral third party does the following:

- Facilitates discussion of the issues
- Assists the parties in hearing one another's perceptions and version of the "truth"
- Helps to identify the interests and needs of both sides
- Explores alternative ways to resolve the dispute
- Guides the parties in choosing a workable and mutually acceptable resolution

Unlike many other resolution procedures, there is no "expert" other than the parties themselves. The outcome is dependant on the parties' willingness to agree on what they will do to solve the problem. The mediator is the expert on the process of mediation, while the parties are experts on the information and the solution that will work for them.

THE MEDIATION PROCESS

The following description of the mediation process will be familiar to every trained mediator, however there are some differences in the steps that are taught by mediator trainers. The steps below presume a single mediator serving in the role of the neutral.

- The mediator meets with all parties in a room, this allows for privacy and safety.
- A brief description of the process is given; ground rules are set (see Appendix C); and confidentiality is explained. A confidentiality agreement is signed by everyone present (see Appendix B).
- Each party is asked to explain how he sees the problem situation, and what he would like to see happen to solve the problem.
- The mediator asks clarifying questions, and works with the parties to reframe their position statements into interests (needs that are universal and positive in nature: respect, adequate funds to replace or repair something that was damaged or destroyed, apologies for actions or statements that have hurt someone, etc.).

- The mediator asks the parties to consider the needs of everyone, and comes up with options for meeting those needs. Willingness to be flexible and acceptance of the other's interests are encouraged.
- All options that have been generated are reviewed and evaluated in terms of how adequately they will solve the problem.
- If reached, a written agreement documents the outcome.
- If an agreement is not reached, the parties are informed of their options for getting their needs met in some other way (leaving the matter where it is, using an arbitrator, filing a case in court, seeking legal advice).
- The parties are thanked for their participation and attempts to work out an agreement, and the session ends.

WHY CREATE A MEDIATION PROGRAM?

Programs that provide legal services to low-income individuals have a variety of reasons for developing a mediation component. Mediation, using community volunteers, is a viable and valuable adjunct to traditional representation and advocacy. This process for resolving disputes can move cases off an advocate's desk and expand the population served. Problems that have not yet risen to the level appropriate for a lawsuit can be resolved, and thus reduce future needs for lawyer advocacy and legal services. Individuals who have financial resources slightly above the requirements of the agency and cannot afford a private attorney or mediator can be served. Mediation can be a free or low-cost method for better serving a community with few resources and expanding needs. Mediation can expand the service options for eligible clients and help advocates meet their needs efficiently.

DETERMINING THE AGENCY'S GOALS

The first step for any agency thinking about how to provide dispute resolution services for its client population is to define the agency's goals for the program. The goals will vary widely from agency to agency but may include one or more of the following:

- Help the agency's client population resolve disputes.
- Serve a greater number of clients.
- Serve clients who do not meet eligibility guidelines for legal services.
- Resolve disputes in mediation that use a significant amount of staff resources but could be resolved without a court proceeding.
- Ensure low-income clients have the same access to dispute resolution services as clients with the means to hire a private neutral.

How the agency defines its goals will determine the framework of the program.

Program Experience

- A legal services program noticed that pro se parties in divorce cases were experiencing high conflict over parenting plans and custody. The staff at this program developed a project to offer mediation services to assist the pro se parties reach a resolution.
- A legal services program provided service in a county where the housing judge routinely referred housing conditions cases to mediation. However, the court did not provide free mediators and the legal services program did not have the funds to pay for a mediator's services for their clients. The program recruited mediators from the community who would take a few cases each year as pro bono service.
- A pro bono program in a large metropolitan center noticed that its clients as well as the opposing parties often declined to participate in mediation even though free mediation services were available through the court and local community mediation centers. The pro bono program devised an education and outreach program to help clients understand the benefits of mediation and to help these clients and opposing parties develop a comfort level with negotiation and mediation.

DESIGNING THE FRAMEWORK FOR THE PROGRAM

There are a number of different ways to design a mediation program in a pro bono or legal services agency. The design depends upon the program's goals, services already available within the community, the availability of volunteer mediators and trainers, and the needs of the client community.

The impetus for most programs comes from the agency staff or board members who anticipate that mediation may be able to serve a particular category of clients or resolve certain cases that otherwise cannot be handled by the agency.

Five common designs are described below.

(1) A Sub-entity

Many agencies form a sub-entity within their organization to provide dispute resolution services. The dispute resolution program is administered by an agency employee or volunteer and the services are woven into the existing agency structure. For instance, the existing case intake process is expanded to solicit information about whether the case is appropriate for mediation.

(2) Spin-off

Rather than providing services within the agency, the agency may create a stand-alone organization to provide dispute resolution services. The pro bono or legal services agency may refer eligible clients to the dispute resolution program and, depending on the circumstances, may provide financial support. These spin-off programs are more independent than the sub-entities. The spin-offs may serve clients regardless of income and have flexibility to establish a sliding scale for their services. They are also riskier because they do not have the established organizational and structural support that the sub-entities have.

(3) Partnerships

Legal services and pro bono agencies may create partnerships with other service entities in the community and work together to provide services. These partnerships may take a number of different forms. For instance, a pro bono agency could establish a partnership with a community mediation center to refer all cases appropriate for mediation to the community mediation center. This partnership would allow the pro bono program to make mediation services available to clients but the pro bono program would not administer a program.

(4) Informal ADR referrals to other service entities or to lists of mediators.

Programs can establish lists of individual mediations or organizations that provide services and refer clients and cases to the list for mediation services.

(5) Educational and Informational Models

Programs can also provide education and outreach to inform clients and other citizens about mediation and negotiation. Educational and informational models can take the form of presentations to client groups, brochures for clients groups and other service agencies, and mediation information available on the program hotline.

This manual provides significant guidance for programs establishing an in-house program, and useful information for programs wishing to pursue any of the other options.

ESSENTIAL ELEMENTS OF THE PROGRAM DESIGN

In addition to the goals and framework, agencies must resolve the following questions before moving forward with the program.

Who will be served?

Will the program serve only clients the agency has accepted for legal representation or will the program aim to serve those clients who would otherwise not be accepted for representation?
Will clients need to meet the income eligibility guidelines of the program?

What services will be provided?

Usually agencies decide to provide mediation services, meaning that the clients and the opposing party are referred to a mediator selected for the case. But other service options are also available to meet the goals of expanding the options available to agency clients. For instance, the agency can decide to create a program to provide representation to clients who have been ordered by the court to mediation or who have chosen to mediate a case. Usually, the agency provides limited representation for the mediation and does not represent the client further if the case does not settle. In addition, the services might be educational and informational services, designed to encourage clients and opposing parties to use mediation in appropriate cases. Finally, the services might be a dispute resolution process other than mediation such as arbitration, med-arb, or early neutral evaluation. This manual focuses on mediation because it is the most common process used by courts and legal services and pro bono agencies but the information contained herein can be adapted for other processes.

What types of cases will be mediated?

Pro bono/legal services agencies handle certain types of cases that may not be appropriate for mediation. Family law cases, in which one spouse cannot be located, or where there have been incidents of extreme domestic violence, are not appropriate for mediation (unless both parties can state they are willing to participate and the mediator sees them in separate sessions, using shuttle diplomacy). Cases scheduled for court action within a short period of time may not be able to be continued until a mediation can occur. Criminal cases (seldom handled in legal services agencies) rarely involve mediation.

The chief executive and legal staff will need to determine what types of cases they will refer to mediation. The financial resources available to support the mediation program may be a factor in the decision. The program administrator and agency management staff may recommend that the program be started with a certain type of case as a pilot project while all the steps of referral, approach to the second party, set up of a session, mediation and closing of the case are tested. On the other hand, they may want to use mediation for all the types of cases the agency handles and indicate that the first referrals, no matter what type of case they may be, will be used to check that the procedures are working well.

Each agency that adds mediation to its services will determine what the program will encompass, and reasons for the decision should be clear. As with courts that offer mediation for one type of case but not another, a potential client of the program has the right to know why another case can be handled with mediation but his cannot. A well-defined scope will benefit both the clients and the agency thus creating a strong foundation for the program.

Where will cases come from?

For many agencies the initial answer to this question is easy. Most legal services and pro bono agencies have more requests for service than they can accept; the agency simply needs to adjust the intake process to screen cases for mediation. However, for some agencies the answer is not so simple. For instance, the agency's typical case-load may be inappropriate for mediation (see

section below). Or, mediation in a certain jurisdiction may only occur when the court orders the parties to mediation. But the court clerks are not aware of any agencies that provide mediation services for the poor and thus do not refer cases to the agency. Building a vibrant mediation program for low-income clients may require investigating sources of cases and networking with local courts, bar associations, and community service providers to ensure that cases appropriate for mediation are referred to your program.

Appropriate and inappropriate cases

In general, mediation is appropriate in most cases where parties understand what the process is and choose to participate. They may desire an informal flexible process, wanting to maintain control over the outcome whether resolution will take a monetary or other form.

Mediation is not appropriate when it is determined that one or both are only willing to accept an outcome which exactly matches their initial position, where they want to set a legal precedent, they want to air grievances in a public forum or they want the neutral to determine the outcome, possibly with the power of the court behind it.

Types of cases that are commonly mediated include landlord-tenant, employment, family, consumer, and community disputes.

STAFFING THE MEDIATION PROGRAM

Included in this section:

- **Responsibilities of Mediation Staff**
- **Staff Recruitment**
- **The Program Administrator**
- **Alternatives to the Program Administrator**
- **Additional Program Staff**

Each agency that considers adding a mediation program will need to consider the financial resources available to support staffing and supplies for the program. Since pro bono and legal services agencies seldom have sufficient resources to handle the advocacy and educational programs already in place, to some extent the outcome of fundraising efforts will determine how staffing can be approached. See the section on Funding for ideas about obtaining financial support.

RESPONSIBILITIES OF THE STAFF IN A NEW MEDIATION PROGRAM

Depending on the structure of the program, the staff may have the following responsibilities:

- Initial design of the mediation program (in conjunction with agency staff)
- Establishing relationships with the chief executive, department coordinators, and key staff members (finances, fund development, information technology, client screening and intake workers, etc.) of the agency
- Coordination of mediation services with other agency services
- Community outreach to locate potential volunteer mediators
- Outreach to law firms, community groups, and social service agencies to find facilities in which to hold mediation sessions
- Development of forms for use in the program
- Orientation and supervision of volunteers
- Maintenance of program records
- Case screening, tracking and coordination
- Maintenance of relationships with contributing organizations (those that provide assistance with the program's work, as well as those that provide funding)
- Ongoing oversight of the program, budget, expenditures and internal/external relationships
- Fundraising

STAFF RECRUITMENT

The staffing of the mediation program will be a natural outgrowth of the program design. If an agency determines that mediation will only be offered to one type of case, and that type constitutes 20 percent of the requests for service, fewer mediation program staff members and hours will be required than if mediation will be offered for all case types. If the program design includes referrals to mediation of cases that don't fall under the income requirement, and some individuals might be able to pay a small fee for service, staffing would need to include someone who would screen for this possibility.

The first consideration in creating a staff is whether a paid position should be added or if the program can be effective with an all volunteer staff. It is certainly possible for a program to function with an all-volunteer staff, however, research on coordination of volunteer programs in non-profit agencies demonstrates that paying at least the administrator, leads to greater success of the program. The unpaid coordinator of volunteers is less likely to have the commitment, the willingness to tackle problems and the ability to provide leadership over time. It is far better to have a paid, part-time program administrator than a full-time volunteer.

PROGRAM ADMINISTRATOR

If the agency decides to provide mediation services to a large number of clients then a mediation program administrator is essential to the success of the program. It is highly unlikely, given the number of tasks involved in the job, that one of the agency's existing staff members can handle the mediation program part-time while continuing to work on other agency responsibilities. Therefore, unless the agency is prepared to move an appropriately trained and committed staff member into the position, the program administrator (or whatever title is given to this position) will need to be found outside the agency.

Ideal candidates

Commitment: Any new position, especially one that is connected to new community service programs, requires a person with a strong commitment to the program goals and the tasks necessary to achieve successful service delivery. In a pro bono or legal services agency, candidates for the mediation program administrator should possess a history of work in a non-profit setting and beliefs about the rights of low-income individuals to access high quality services. She should have a strong drive toward program success and believe that mediation has great value as a dispute resolution procedure. She must be willing (if not eager) to work collaboratively with other agency staff to make the services flow in a seamless manner from intake to disposition.

Training/experience

Candidates should have extensive training and experience in mediation, mediation training, program administration, volunteer management, public speaking, budget creation and oversight,

grant writing, and interagency collaboration. If an individual also has experience as a mediator trainer, this is beneficial as well.

Knowledge of the community

Because the mediation program will rely on community-based volunteers and require collaboration with other community services, the candidate who has lived and worked in the area for some time is preferable. Knowledge of agencies that provide services that might benefit clients of the mediation program is also helpful, including the local court system and the existing culture of legal/judicial support for and reliance on mediation.

After the board of directors, the chief executive and key staff members have determined that a mediation program is to be a new service offered by the agency, it is advised that the program administrator be selected. If, as suggested above, this individual has lengthy mediation and community agency experience, he can play an important role in recommending the scope of the program. He can talk with the chief executive and staff members about how they visualize the mediation program functioning and what goals should be set for service delivery. He can begin designing the outreach program that will bring volunteer mediators to the program, and can educate staff and board about the benefits to be anticipated from mediation.

ALTERNATIVES TO A PROGRAM ADMINISTRATOR

Agency Staff Alternative

Some programs may not feel they have the resources to hire or contract with a separate individual to administer the mediation program. Large metropolitan areas with a large number of mediators frequently have a number of these trained individuals who would accept a part time contract eagerly.

Whether in a mediator-rich community or one where there are few trained and knowledgeable, the Pro Bono/Legal Service Agency may choose to have an existing staff member administer the mediation program. From the standpoint of encouraging referral of cases to the program, a staff member connected to agency intake procedure could be a good choice for program administrator. Any member of the agency's personnel who expresses interest and willingness to learn about mediation and program management should be considered.

Partnering Alternatives

Many communities have community mediation programs, neighborhood justice centers, or court-connected pre- or post-filing mediation programs. These agencies can be excellent alternatives to an in-house administrator. Having already established screening and case processing procedures, community mediation programs are fine partners for Pro Bono/ Legal Service Agencies when mediation service is to be implemented.

Agencies considering partnering possibilities should approach community mediation programs in their local communities to explore ways in which they can work collaboratively. Many of these mediation programs already may be serving low income individuals and understand their special needs. They may have funding sources that would consider adding money for developing a new service, and be willing to generally tailor a portion of their program to meet the specific needs of the Pro Bono/Legal Service Agency with which they may partner.

The best source of information on community mediation programs is the national Association for Community Mediation (NAFCM). NAFCM is a membership organization, providing information and assistance of programs around the country. Information is available at <http://www.NAFCM.org>.

ADDITIONAL PROGRAM STAFF

Hiring additional staff will be contingent on the size of the agency, the number of cases that might be referred to mediation, whether individuals who don't fit the agency's requirements will have mediation available to them and the overall agency budget and fundraising capability. If a strong, committed program administrator has been hired, volunteers can be considered to coordinate program components, such as case screening, evaluation of services, program presentations in the community, review of documents for report generation and many other tasks of the program.

The following should be viewed as referring to staff roles, not general volunteer assistance.

Law and graduate students

In communities where there is a law school, particularly one in which there is a mediation clinic, class or pro bono program, law students may be eager to obtain program experience through internships. The mediation program administrator can talk with faculty associated with the law school's ADR class or program to check on availability of students to participate in the agency's program. Roles for the students can be designed to meet the needs of the students, the school they attend, the mediation program, the agency and the community. If a formal internship is required by the school, the program administrator will need to carefully consider how much time will be spent supervising and training the students.

Many law schools with mediation classes and clinics look for opportunities in which the students will be able to mediate with real clients as opposed to the simulations they have experienced in the classroom. If the pro bono mediation program uses a co-mediator model for service delivery, and if the model has mentoring capability, this can be the proverbial win-win situation. If the mediation program has not found sufficient numbers of volunteers in the community, the law school mediation program can fill this gap. Law students are often looking for opportunities to gain experience, particularly if law school credits are also available. Many graduate programs also have dispute resolution programs; the students in these programs would similarly welcome real-life experience.

The main drawback to using students is the possibility that they might only participate for one semester. This situation can result in the need to do regular orientation of new students as well as writing internship contracts and evaluation of skills reports on a frequent basis. If a paid or volunteer student coordinator has been recruited to serve the program, this may not be a problem. The program could also consider having students return after a semester course and work as volunteers without getting academic credit.

Paralegal training programs

Individuals attending paralegal training programs may also be interested in serving as program staff members in a pro bono mediation program, especially those enrolled in programs with a mediation or ADR course. The same considerations must be given to paralegal students as to law and graduate students. An additional factor requiring attention is the level of sophistication, knowledge and education of students, who may have entered the paralegal training program/school directly from high school. While law and graduate students may have the benefit of a college degree and additional years of life and study, paralegal students need to be carefully screened if they are to be considered for “staff” roles. The program administrator may not have the time to train and supervise students who cannot work with some degree of autonomy. Certain general volunteer tasks in the mediation service delivery system can be handled well by paralegal students, however, it is best to give careful consideration to assigning paralegal students to program and volunteer supervisory roles.

Practicing lawyers, paralegals, corporate executives, business managers

Experienced practitioners, particularly ones who are retired, approaching retirement, cutting back or already working part-time, can be excellent part-time staff for the pro bono mediation program. Retired corporate executives or business managers, already serving as volunteer mediators in the pro bono or other community mediation programs, can be excellent candidates for staff roles. Their income needs may be handled in other ways, and they will find the role of an unpaid staff member attractive and challenging. These individuals can frequently be found through local volunteer bureaus, mediation associations and state bar sections.

To summarize, the agency developing a mediation program needs to consider a staffing plan that takes into account the program’s scope and design as well as the financial resources available. Emphasis should be placed on recruiting the appropriate program administrator, and finding sufficient funds to either pay a salary or contract fees. Excellent programs may rely on volunteers in other staffing roles; however, it is strongly recommended that the administrator receive compensation to assure commitment and continuity for the agency.

VOLUNTEERS: THE HEART OF PRO BONO MEDIATION SERVICES

Included in this section:

- **Recruitment**
- **Orientation**
- **Supervision/Evaluation**

Legal services agencies and pro bono programs would not be able to function without volunteers. Most mediators, coming from disciplines such as law, behavioral health, psychology, teaching or many other specialty areas, received their training in a court, community or college setting, and obtained their first mediation experiences outside the classroom in a volunteer capacity. While most trained mediators begin or continue to practice law or another profession such as psychology in order to support themselves, whether or not they charge fees for mediation, they also frequently give pro bono service to their local communities. Across the country, courts and state bar associations encourage such service. It is standard practice in every profession to give back to the community by delivering services to those who cannot pay for them, and mediators typically volunteer in community justice centers and court mediation programs. The organized bar has a tradition of providing pro bono services. Please see ABA Model Rule 6.1.

RECRUITMENT

Like other professionals, mediators in all states and many cities form associations. The statewide or local association provides mediators with an opportunity for networking, continuing education, community education and service, group marketing of services, and the opportunity to affect court rules and legislation related to mediation and the resolution of disputes. State and local bar associations also generally have dispute resolution sections or committees. All the following groups provide good sources for volunteers:

- Your STATE BAR ASSOCIATION
- Your COUNTY BAR ASSOCIATION
- Your Statewide MEDIATOR ASSOCIATION
- Your Local or County MEDIATOR ASSOCIATION

Many state Supreme Courts credential or license mediators through statute or rule, and may assist you in locating mediators. Also, check with universities that have law schools with mediation clinics or courses. The clinic director or instructor on alternative dispute resolution may be helpful in finding local mediator associations.

In rural communities, where there may be fewer mediators, those individuals who have received training and want to deliver service may belong to national associations. Your agency can contact the following groups for information about mediators in your state and local area:

- American Bar Association (ABA) Section of Dispute Resolution
- Association for Conflict Resolution (ACR)
- National Association for Community Mediation (NAFCM)

Presentations

Mediator organizations and sections of bar associations are always looking for speakers. Contacting the educational program chair generally results in an invitation to present information about your needs at an upcoming regular meeting of the group. Since recently trained mediators are always looking for ways to improve their skills and obtain “real client” experience, face-to-face presentations generally result in successful recruitment of volunteers.

While this seldom occurs, if a group is not interested in a presentation, sending program information, program brochures (if available) and a batch of applications can also generate interest. A call to the chair of the group, asking for distribution of the materials to the members, is likely to result in calls from mediators with questions and completed applications arriving at the agency.

Applications

An application form that provides the mediation program with important information is appropriate to use as a handout when recruitment presentations are made to mediator groups. If the agency has the capacity to generate a form that will electronically translate into an Access database or Excel spreadsheet, lists of volunteers can be generated that program staff will use when mediators are called to work on a particular case. It can also serve as the mechanism for generating group E-mails or letters for communicating with the volunteers once the program is operational. For a sample application form, see appendix K.

As you recruit volunteers, be careful to ensure that the program has the capacity to provide the volunteers with sufficient cases. A lack of good referrals may result in a lack of volunteer momentum and enthusiasm as well as a perception that the legal needs of the poor are being met sufficiently.

Addressing a lack of volunteers

Some programs may find it difficult or impossible to recruit volunteers to serve as mediators even after following all of the steps described above. There may be a number of reasons that a program receives few volunteer applications, including a lack of trained and qualified mediators in the community, an unwillingness on the part of the mediation community to mediate without compensation, or a fear on the part of the mediator that they are not competent to mediate the types of cases referred by legal services or pro bono agencies. In these circumstances the program should investigate why its volunteer rate is low and then try to address the problem systemically. For instance, if a pro bono program has an extensive list of attorneys willing to *represent* low-income clients in order to satisfy a pro bono requirement, then try to change the pro bono rules to have *servicing as a mediator* qualify for the pro bono requirement.

In many localities, there are more trained mediators available than cases for the mediators to work on and many mediators are willing to mediate without compensation in order to improve their skills or simply give back to the community. However, there are those communities where the few qualified mediators are in high demand for paid work and they therefore are not available to volunteer. One approach for such a locality is for the program to sponsor a mediator training program to educate potential mediators and require the trained mediators to serve as volunteers.

ORIENTATION

Volunteers need orientation for several reasons. They need to know what is expected when they sign up to assist with service delivery. They also need to know the value of the program to the community so they can serve as ambassadors for the agency and its mediation program. It is important to inform the volunteers about the steps in case processing and where they fit in it.

While mediators are trained to recognize the importance of confidentiality to the process they use, it is always appropriate to remind them. Exceptions to the confidentiality requirement should also be addressed.

Since many of the mediators may be lawyers who are accustomed to an aggressive, settlement conference format in mediation, the orientation session is a good opportunity to talk about a more facilitative approach for unrepresented parties. Inform volunteers that the pro bono mediation program serves clients of the agency and people referred by other community services where limited financial resources are a concern. Referred parties in mediation will seldom have counsel, although the opposing party may have an attorney coming to the session. Discussion of the program's view on the preferred style of mediation is appropriate during orientation.

Orientation also needs to include some education about the population to be served, as many lawyers and mediators have not worked previously with people who have extremely limited means, education, language skills, and general ability to function in the situations life presents. They may be homeless and/or may have developmental, mental or emotional disabilities. Patience and the willingness to explain seemingly clear information may be needed from the volunteers when working with agency clients.

The orientation session for prospective mediators, who think they want to volunteer, may result in a few individuals choosing not to offer their service. It is easier to lose prospective volunteers up front rather than counsel them out of service after it has been shown that they are not relating well to clients. Not everyone is cut out for working with every group in the community; individuals attending the orientation session should not be asked to give reasons if they choose not to volunteer.

Each agency and pro bono mediation program has unique features and resources, so it is important to tailor the agenda to your needs.

SUPERVISION/EVALUATION

Direct supervision of the volunteers is challenging unless the agency has space for service delivery at a site where the mediation program staff members work. A variety of methods for getting feedback on an individual volunteer is generally helpful in assuring high quality of service and volunteer satisfaction. The co-mediator model works well as one way of obtaining information about the volunteers. When concern has been expressed about a mediator by the other volunteer who serves with him on a case, a member of the program staff can step in as the co-mediator the next time that individual is asked to handle a case.

Co-mediation, where two mediators work as a team, is used by a large number of community and court programs. Many mediators are familiar with the shared responsibility of handling a case as they have been trained in a program that uses two mediators in their simulated exercises. For ongoing supervision and evaluation purposes, the co-mediator model has great advantages over the use of a single mediator.

Evaluation forms

Using a co-mediation format for service delivery provides the volunteers with the opportunity to debrief and evaluate one another immediately after a mediation session. The Program Administrator should establish that one mediator is considered the Mentor and the other the Mentee, so that the evaluation form can focus on the teacher/student roles. This allows for evaluation and a consistent emphasis on learning better mediator skills. Volunteers, at the time they are scheduled for the session, are informed that they will be asked to complete a confidential form that gives program staff valuable information for promoting skill enhancement

Program Experience

A young, law trained, new mediator was paired with an experienced older lawyer/mediator. The session was scheduled in one of the many conference rooms available at the law firm in which the older mediator had practiced for over 20 years. During the course of the mediation session, the lawyer's paralegal interrupted several times to ask that the lawyer sign papers, and once to take a short telephone call. The lawyer left the room for the call, but only asked that the session stop for a moment while the papers were signed. The Mentee mediator experienced great discomfort at these interruptions, observing the angry looks of the parties, however, she felt she could not address this verbally following the completion of the session. Using the confidential evaluation form, she was able to bring her concerns to the attention of a program staff member. The staff member felt no discomfort about raising the issue with the experienced mediator.

and quality control in the pro bono program. While encouraging the two volunteers to give verbal feedback to one another, the written form can give the volunteers the opportunity to address concerns which they may have felt uncomfortable speaking about directly.

The evaluation form works best if it is designed in a way that allows for most questions to be answered by checking a box. As is true with any written form, most people are more likely to check boxes than they would be to write detailed narrative answers. Statements about which they can agree or disagree generally work quite well. If program orientation has included discussion of use of the forms, mediators will provide the information needed in response to one statement, such as, "Please provide detailed information to the Program Administrator regarding any concerns you may have about mediating with this co-mediator again." It is important to provide stamped, program-addressed envelopes for each mediator so that forms may be mailed independently following the session. For an example of Mentor and Mentee Evaluation Forms, see Appendix O.

Random phone calls/e-mails

Another evaluation and quality assurance tool is an occasional random call or e-mail to one or both of the mediators. Asking for some feedback on how the session went may elicit information about high quality performance or concerns regarding the other mediator. If no information is provided, the staff member can determine whether or not to ask a direct question about the other mediator. Getting to know program volunteers is key to obtaining useful information.

Case review meetings

While busy people may have no interest in attending meetings of the volunteer group, the program has a periodic need to see the volunteers and provide information to them. These meetings, which may include an opportunity to discuss recent cases and the challenges they presented, are good opportunities to talk with volunteers both in the group and individually. A volunteer may be asked to come early or stay late so that concerns can be addressed or questions asked on a confidential basis. All forms of interaction between program staff members and the volunteers offer a chance for thoughtful and sensitive individual mediator evaluation.

Terminating volunteers

Pro bono mediation program administrators must be ready and willing to terminate service from an individual volunteer at any time. Good volunteer management should not be seen as a totally different situation from managing staff within a corporation or government agency. While there are issues, such as prolonged periods of absence from volunteering, which would not be tolerated in a salaried staff /business environment, it is important for pro bono program administrators to have management skills and know methods for supervising volunteers in ways that best assure quality service delivery and satisfaction for the mediators.

Recognizing volunteers

Many court, community and non-profit agencies recognize their volunteers annually. They may provide certificates or pins to recognize merit, host a gathering with refreshments and presentations of small gifts such as dinner for two in a local restaurant, having the Agency Board

President speak to the group about the value of the volunteers' service or using some other method of thanking them. While some mediators love this public acknowledgement of their service, others feel good about the recognition they receive in calls and letters following a mediation session and would prefer to skip group meetings. Knowing your volunteers, talking with them about what they would value, and looking at financial resources for recognition will guide each program administrator in making the decision about what to do for volunteers who spend their time and give their skills to the pro bono mediation program.

Other program support for volunteers

The program should consider providing additional support for its volunteers such as mentoring, training, administrative support, malpractice insurance, etc, and more.

BUILDING SUPPORT FOR THE MEDIATION PROGRAM WITHIN THE AGENCY AND THE SERVICE COMMUNITY

Included in this section:

- **Benefits for the Agency**
- **Building Support in the Agency**
- **Building Support in the Community**
- **Answering the Critics' Arguments Against Mediation**

When an agency is considering creating a mediation program, what needs to be done to build support among agency, staff, the board and all people who are connected to the agency? This chapter will discuss benefits for the agency and client community, provide specific suggestions for how to build support for the program in the agency and the wider community address, and address some common criticisms of mediation for low income clients.

BENEFITS FOR THE AGENCY

Saving time of advocates for more appropriate cases: A benefit of mediation programs in pro bono and legal services agencies is that advocates have more time to attend to complex legal situations and cases that require rapid court action. When agency staff and volunteer attorneys carry large case loads, their morale improves if they spend their time on cases that may:

- Require knowledge of complex areas of law that are challenging and satisfying for advocates
- Rise to the level where litigation can appropriately be used for resolution
- Present novel legal issues with significant impact.

Expanding the number of clients and types of cases generally accepted for advocacy: Mediation programs can add numbers of services provided to low-income populations when cases are accepted that don't fit the agency's requirements for other types of service. Many potential clients may be turned away because there are insufficient staff and resources to handle their cases. Financial resource limitations may necessitate strict requirements on who will be served in what kinds of cases. Depending on how it is designed, the mediation program may be able to handle some of the cases that fall outside the restrictions of income and case type priorities.

Expanding types of service to reflect changing community values: As courts and law firms develop mediation services or use community-based mediators to assist with shortening case processing time, the agency that offers mediation is more attractive and gains respect from other justice system organizations. Other non-profit agencies that serve financially limited individuals will also value a pro bono legal agency that offers a service that teaches conflict management techniques to clients.

Low costs associated with volunteer-provided services: Every non-profit agency values the ability to expand service while keeping the costs low. The mediation program at a pro bono legal service agency can contribute expanded service at low cost.

BUILDING SUPPORT FOR MEDIATION IN THE PRO BONO/LEGAL SERVICES AGENCY

If the mediation program is to be successful, all individuals connected with the agency must understand and support its use. Ideally, the chief executive, governing board, staff members (particularly those involved with case intake procedures) and attorney advocates would be given a mini-training in the mediation process. Many bar associations consider this type of training appropriate for general and ethics Continuing Legal Education (CLE) credit. The time spent in obtaining a thorough understanding of what mediation offers to agency clients will help increase the number of cases being referred to the program. It will also help strengthen the connection between agency and mediation program staff members, hopefully resulting in the recognition that mediation may indeed be the better service to offer to certain individuals and types of cases.

While some people are skeptical about how successful this process will be, statistics from community mediation programs can be impressive. Settlement occurs in about 75% of mediated cases, and, in the Phoenix program, 90% of the cases that have been mediated resulted in an agreement.

Once the idea of starting a mediation program has been shared in a potential hosting agency, informational meetings need to be held. The mediation program proponents may suggest short presentations be given to the governing board and members of the staff. It is important to take the time to discuss the benefits as well as challenges so that, if possible, a decision to initiate a program will be universally supported. When the hosting agency is fully on-board regarding mediation, referrals to the program will flow more readily as staff members recognize that particular cases will be appropriate for a self-determining process in which consensus and collaborative problem-solving are the focus.

BUILDING SUPPORT FOR THE MEDIATION PROGRAM IN THE SERVICE COMMUNITY

After the program is running smoothly, it is time to build support in the broader community. Not only will this support result in appropriate referrals of low income individuals who receive other types of service from community agencies, it will prove useful when letters of support are needed in the fundraising endeavors of the program. Many grant making organizations ask about support in the local community in their Request for Proposals (RFPs). Advance planning and community outreach should be done long before drafting any grant applications.

Program Experience

The litigation attorneys in a metropolitan legal services agency wanted to start mediating housing cases. However, the executive director of the program had tried to mediate a large housing cases ten years prior but the mediation had failed miserably, leaving the executive director with the impression that mediation would not work for any of the agency's caseload. The litigation attorneys convinced the executive director to allow housing cases to mediate on a pilot basis. The litigation staff carefully selected cases that were appropriate for mediation, were careful about the selection of the mediator, and made sure that the opposing party was at least open to the concept of mediation. Several of the pilot cases quickly settled, either during or soon after mediation and the executive director gave the litigation staff approval to expand the mediation program.

Many communities have an information and referral service (I & R) that provides a directory of human services in the area. Listing the pro bono mediation program is important so that people needing dispute resolution can find the program. Some I & R services sponsor meetings of community service providers. This is a place to distribute brochures about the program and talk with other program directors/staff about what is offered at the pro bono/legal services agency. I & R is often connected with the local United Way or another agency that coordinates business and individual donations to support human services.

Community Foundations operate in a similar way to United Way agencies, and frequently hold meetings to provide training on how to respond to an RFP. These meetings allow for interaction between service providers, as well as information on how to raise money to support various programs.

Another way of building support for the mediation program is to ask the volunteers to assist with presentations at agency staff meetings. Many human service agencies hold staff meetings where a sister agency offering a new service can make a short presentation and answer questions. Volunteer mediators are generally pleased to talk about the service they provide, and can serve as part of any educational efforts. Getting the word out about service is important and appropriate referrals save the program's staff time spent on calls that do not result in cases.

ANSWERING THE CRITICS' ARGUMENTS AGAINST MEDIATION

Supporters of mediation may be surprised to confront significant opposition from members of the client and legal communities. Many mediators believe that the process of mediation sells itself. These mediation supporters believe strongly in the benefits of the mediation process that no one could possibly argue against a process in which people with a problem are assisted in talking through the situation, listening to the other side's perspective, exploring alternative solutions, and picking one solution that both sides believe will work. However, program staff should be prepared to address the following concerns about using mediation in disputes

involving low-income parties. Agencies are also encouraged to review and use the ABA's informational brochure, *Beyond the Myths: Get the Facts about Mediation*, listed in the Resources.

Criticism: Mediation has none of the safeguards built into a legal/court procedure

Response: Mediation is predicated on the concept of self-determination. In the mediation process the parties determine how a dispute will be resolved, not a judge, arbitrator or "expert." Allowing the participants this kind of control, may at first glance give the impression that procedural safeguards are sacrificed. However, the mediator allows parties the creativity to find solutions while at the same time the mediator provides structure to the discussion. Mediators facilitate the discussion, making sure each side is given an equal opportunity to present their concerns. They clearly establish ground rules and safeguards with the parties before a session can begin. Mediators try to ensure that parties will not be pressured to agree to anything they do not feel adequately addresses their interests and needs.

Criticism: People who have not discussed their rights with an attorney may reach an agreement in mediation, only to find at a later time that they are legally entitled to more benefits than they received as a result of their mediation agreement.

Response: Although a party may not have access to an attorney's advice during mediation, a trained mediator will check that the parties have all the information they need to make informed decisions. Further, in complex situations with potentially significant consequences, attorneys can review a proposed agreement before the parties sign. In mediation, the disputant has the opportunity for a full hearing as well as the ability to say that the proposed situation is unacceptable. While participants in mediation may run the risk of not achieving their full legal benefit, the process gives the participants the ability to meet their own perceptions of needs instead of only enabling a party to gain a legal outcome.

Criticism: Very few people are able to adequately express their concerns and see that their needs are met, so they may be easily persuaded to sign an agreement that does not really solve the problem or meet their needs.

Response: The process of mediation is designed to ensure that participants are given an equal opportunity to express their side of the dispute. In addition, the mediation process is voluntary. This means that the parties cannot be compelled to accept or reach an agreement. If the parties are not satisfied with how the mediation is going, they can simply leave the process without any penalty. While an imbalance of power can be an issue, mediators are careful to make sure both parties are being heard, and both parties are comfortable with the solution.

Another benefit of mediation is that the process is designed for parties to have sufficient time to present and discuss the problem at length. While a well-trained mediator is not going to allow a party to talk endlessly about the situation, the feelings generated may

require a lengthy amount of time to air. Parties often state that they were given the opportunity to address all concerns and emotions in the mediation session; this is in sharp contrast to court proceedings in which advocates do the talking and the parties have little, if any, opportunity to speak. The value of self-expression should not be underestimated, and in many cases has led to apologies and willingness to settle the case.

Criticism: Mediators, who may not be law trained, will not know what the law provides about the problem presented in mediation.

Response: Well trained mediators, whether possessing law degrees or not, know enough about the laws that apply to provide the participants with legal background to understand the problems presented. If the mediator is not knowledgeable about the current issue, most mediation programs ensure that mediators have access to a consulting attorney or relevant media where they can further research the matter.

Criticism: While mediators talk about neutrality, they are people with opinions and values, and may try to get one or both of the parties to agree to a solution chosen by the mediator.

Response: Retaining complete neutrality is always an issue with which mediators struggle. It is only natural to have an opinion and further, to want to help parties reach a solution. While mediators may help to structure a mediation session, the parties are the ones who create the solution. Unlike attorneys or arbitrators, mediators do not get paid for creating results. Instead a mediator's success is judged upon their ability to create an environment where the participants believe that their concerns are being heard and acknowledged by all parties present.

Criticism: Mediation does not always end with an agreement, so it just wastes time that would be better spent in preparing for trial.

Response: Lack of resources contributes to a feeling of impotence and reliance on others for meeting of the most basic needs. Living at or close to the poverty level can create feelings of hopelessness and helplessness. When conflict is present, individuals may feel they have no choice but to fight or run away from a situation that requires assertiveness and good communication/negotiation skills. Many people who ask for help from a pro bono or legal service agency are in this position. Even if an agreement is not reached, mediation enables the participants to be heard, which is often the first step towards satisfaction and a solution. In addition, even if a solution is not found, the parties will have had the advantage of hearing the other side's positions before the case comes to trial. Listening to both sides of the dispute enables them to better understand potential options and gives them a better understanding of how to address their case.

Criticism: Most people are adversarial in nature, so they really cannot work within a collaborative process.

Response: People often enter mediation with an adversarial attitude; however, a skilled mediator will use the opportunity to demonstrate the value of using a collaborative

approach to problem solving. Using a facilitative style of mediation encourages the parties to assess their own interests and needs, while listening to those of the other side. Because there is no designated expert who will focus on positions before determining an outcome, the disputants can be helped to see how to communicate with an opposing party, hear a different perspective, and work jointly to come up with a workable solution.

One goal of a pro bono mediation program is to assist people in acquiring comfort with expressing their needs, hearing differing points of view and recognizing that needs of more than one person can be met simultaneously. While it is too much to expect that parties will walk away from mediation with significant skill in managing conflict, good mediators will model communication and problem-solving skills, using the mediation process to point out and demonstrate how these skills can help with handling future disputes. Participation in a mediation session can be an opportunity to practice self-reliance.

Criticism: Mediation is just arbitration by another name.

Response: Given a significant increase in use of mediation by courts and lawyers across the country and the number of mediation statutes that exist in many states, the legal community and judiciary have taken a large step forward in awareness of the benefits and utility of mediation. Unfortunately, there continues to be a large number of judges and attorneys who think that mediation is just another name for arbitration. Many mediators are familiar with the question posed by a legal professional, “After the mediator makes a decision, is it binding on the parties?” They are confusing mediation, where the parties make the decision, with arbitration. In arbitration, the case is presented to a third party neutral, who makes a decision that may be binding on the parties.

In summary, building support for the mediation program is a two-pronged effort and has multiple benefits for the program. Whether it is within the hosting agency or out in the local community, knowledge of the benefits of mediation, the process and techniques used for resolving disputes, and how to address criticism of mediation can assist program staff in meeting important goals and sustaining the program.

FUNDING THE PRO BONO MEDIATION PROGRAM

Included in this section:

- **Funding Sources**
- **Grants**
- **Donations**
- **Allocation of Agency Budget Funds**
- **Fund Raising Events**
- **Other Community Resources**

As with any new program, a pro bono mediation program requires funding. Office supplies, postage, a computer and a telephone line are required for the program to function. While it may be possible to find an individual to administer service delivery who will work as a volunteer, the agency will always face the uncertainty of a volunteer's commitment. It is recommended that at least a part-time paid administrator, whether given employee status or hired as an independent contractor, be used to give the agency and the program greater assurance of stability, commitment and ongoing professional service. The administrator also provides support for the volunteers involved with the program.

FUNDING SOURCES

Following development of the mediation program design and a budget for operations, a fund development plan needs to be created. The following sources of funds may be considered for solicitation:

- Local, State or National Bar Association Dispute Resolution Sections or Committees
- Private and Commercial ADR Organizations and Associations
- Law Firms, Private Mediation Service Providers, and Service Recipients
- Corporations and Foundations
- The Host Agency
- Fund-Raising Events
- Other Community Resources

GRANTS

Seeking a grant may encompass many activities ranging from a simple oral or written request to a local bar or mediation association to a formal multi-stage written proposal to a corporation or foundation. Depending on the amount sought, the agency or program staff will usually know or can research the likelihood that a certain law or mediator association source will be responsive to a request for assistance in supporting a program. Community education about the goals and

benefits of the mediation program should precede the request. Personal relationships between agency/program staff and officers of the organization being approached will certainly contribute to the possibility of a positive response to a request for funding assistance. If the budget for the mediation program is small, all costs may conceivably be covered by yearly grants from local associations.

Foundation and corporate grants generally involve larger sums of money, and require staff time to respond to formal requests for proposals (RFPs). Most public libraries have grant sections, and a librarian can be of great assistance in determining local entities that fund non-profit agencies serving members of the community with limited financial resources. Each agency seeking to fund a mediation program must consider how much time and effort will be expended in seeking funding from grant sources. While every human service organization would benefit from multi-year, easily obtained, large grants, it is likely that the mediation program and pro bono program staff will need to address program funding on at least an annual basis.

DONATIONS

Individual and corporate donations can be a source of small amounts of program funding. Most legal service and pro bono programs receive some type of support from local lawyers and law firms, frequently in the form of direct volunteer service. Many large law firms across the country are developing ADR departments, and some designate an interested mediation-trained partner or associate to handle the mediation service delivery for the firm. These law firms, as well as mediator practice groups, are good resources for both volunteer assistance and financial support.

Solicitation of donations must include information on the mediation program itself, and this can be done in a formal presentation format or an informal conversation between a program staff member and a friend in a private law firm. A procedure for recording donations and thanking donors needs to be established when the agency determines that donations will be a part of their fund-raising plan.

Donations from service recipients may at first glance seem to be both unlikely and inappropriate. The majority of individuals receiving mediation services from the agency will not be in a position to pay their ongoing bills, much less make charitable donations. However, the landlords, employers and other second parties in the dispute often have the financial resources that allow them to make a donation. The challenge is when and how to encourage this program support.

Successful outcomes, in which all issues in the dispute are resolved to the satisfaction of the parties, represent the best environment in which to solicit donations. Follow-up letters and phone calls may be used to encourage the second (opposing) party to make a tax-deductible donation to the agency to support the program. Quick-thinking volunteer mediators can also be of assistance.

Program Experience

An employment case involving the payment of salary prior to a dismissal was successfully mediated. Both the employer and the low-income individual were represented in the session, the qualifying individual having received a loan from a friend at the last minute that allowed her to hire counsel. Both attorneys representing the parties were pleased with the outcome, and when approached by the mediator, agreed to have their law firms donate \$100 to the agency for program support.

Each pro bono/legal services agency must determine whether this type of solicitation is acceptable. Although donations from opposing parties or their lawyers will not be large sums, you can note on the solicitation that \$37 buys 100 stamps for correspondence with parties in 50 mediation cases. Timing of the solicitation is critical and should be handled in the period immediately following the successful resolution of a dispute. Solicitation should only be considered with institutions and/or law firms that clearly have the financial resources to respond positively when asked to support mediation service to future cases/parties. A sample solicitation letter may be found in Appendix M.

ALLOCATION OF PROGRAM BUDGET FUNDS

Some pro bono/legal services programs may consider their mediation program to be so beneficial in saving advocates time and serving more clients that they will create an expense line in their budgets for the program. This is unlikely to occur at the inception of the program, but may be considered after the program has been operating for a couple of years when it can be demonstrated that mediation has value.

While the program may not be in a position to fund the salary or fees for contract services of a program administrator, the small increase in funds allocated for office supplies and telephone service may be acceptable to the agency chief executive and the governing board that approves the budget. This is an issue that can be presented to the board by one of its members if that member is a champion for mediation services. The mediation program administrator also can raise the issue with the chief executive, who will undoubtedly know whether the board may find this acceptable and the timing is right.

Undoubtedly, the ideal situation is where the mediation program expenses are accepted as a normal expense of running the hosting agency. If the program administrator is a part time employee or has a contract under which she is paid and the total program costs are low, this ideal may be realized. Again, it cannot happen until the program proves its value.

FUNDRAISING EVENTS

Non-profit agencies raise money to support their programs in many ways. Some engage in silent auctions, raffles, dinners or concerts with local celebrities or politicians, and other single event fundraising efforts. This type of fundraising can be directed toward all agency services or one program that needs funding. Discussions between the mediation program coordinator and the agency's fund development staff member or chief executive can inform mediation program staff about the possibility of using this type of fundraising to support mediation services. It should also be noted that fund raising events may have the dual role of bringing in small amounts of money and contributing to good public relations with other community agencies and influential individuals. This second benefit often results in more financial support at a later date.

OTHER COMMUNITY RESOURCES

Creativity in considering the ways to support the pro bono mediation program is certainly needed. Both agency and program staff should be given the opportunity to contribute their ideas on ways to support all agency services. Perhaps a board member is a printer and will contribute brochures or business cards. A volunteer may know the contributions manager at a local business or corporation. Volunteers who practice in large law firms may be willing to be the spokesperson to solicit support from the law firm. It is important to explore all possible avenues of fund generation as this assures the mediation program of continued support over the first year or two of operation. Once a track record has been established, other sources may be available.

CASE SCREENING, REFERRAL AND SERVICE DELIVERY PROCESS

Included in this section:

- **Case Screening**
- **Contacting the Opposing party**
- **When the Opposing party Says Yes**
- **When the Opposing party Says No**
- **Setting up the Session**
- **Final Stage of Case Processing**

CASE SCREENING

Pro bono and legal services agencies have a screening process by which they determine what clients will be accepted for legal guidance, advocacy or participation in educational programs. In most agencies, the screening of potential clients, whether over the phone or in-person, assesses whether the individual meets the financial resource and case type and priority requirements. When people do not meet the agency's requirements, they are given information on outside resources that might be of help. If the person seeking assistance fits all the agency's criteria for service, one of the following two next steps is taken: 1) a meeting with one of the agency's lawyers, or 2) the information gathered during the screening call is provided to the appropriate agency department and further screening may take place. If mediation is available, the outcome of the staff meeting may be a referral to the mediation program administrator.

Agencies setting up mediation programs need to decide whether the client intake process will be expanded to include mediation screening or that screening will be handled in another way. Generally, this screening procedure is expected to be brief due to the high volume of potential clients seeking help. Few agencies present alternatives to litigation at the case screening stage and the screening staff member has no time to explain mediation or assist the individual in determining whether the problem situation is appropriate for mediation.

An agency considering adding mediation to its spectrum of services needs to determine how the mediation screening will be handled. Should telephone and walk-in screening staff receive training to be able to screen the case for mediation during the first contact? Should departmental staff review the information provided by screening personnel and determine when to make the referral to mediation? Should there be a separate mediation screening conducted by mediation program staff? Should the mediation program administrator attend staff meetings to assist the lawyers in looking at the benefits of mediation for any particular case under review? Should outside volunteer resources be used to augment the screening of cases for mediation?

Program Experience

In the Phoenix program mediation screening takes place at several steps starting with the standard intake procedure and continuing through the case review process.

1. Intake workers have been asked to provide the phone number of the mediation program administrator when the caller doesn't meet agency criteria for legal representation. The caller can then contact the mediation program administrator directly or choose to handle the problem in another manner. If the caller contacts the program directly, then the Program Administrator (or another program staff member) screens the case.
2. Some agency department coordinators consider a referral to mediation rather than scheduling the client for a face-to-face meeting with a lawyer. In this situation, a staff member may call the mediation Program Administrator to discuss whether the case should be referred. If the answer is yes, the Program Administrator calls the client to do the mediation screening.
3. Mediation is sometimes discussed when a case is reviewed at the program staff meeting. If judged appropriate, the case is referred to mediation. The program administrator then handles the mediation screening process.
4. The intake supervisor reviews all cases handled by her staff each day, and selects those considered appropriate to give to the program administrator for mediation screening.
5. Volunteers from the College of Law at Arizona State University have come to the agency and been given cases by the intake supervisor, and a second call to screen for mediation is made by one of the volunteers.

Screening procedure:

In a telephone mediation screening procedure, the specifics of the problem situation are solicited from the potential client. Questions are asked to clarify the information provided. Emphasis is placed on the relationship between the client and the other person or people involved. For example, if the case involves a tenant/landlord dispute, the mediation screener may ask:

1. How long has the tenant lived in the apartment or house?
2. Was the property rented by the owner, an on-site manager, or a management company?
3. Who are the key people with whom the tenant has had telephone or face-to face contact?
4. What is the nature of the relationship between the tenant and the key people?

5. Have there been occasions when the key people handled something in a responsive manner (an on-site manager who fixed a toilet, etc.)?
6. What were the occasions like when key people handled something poorly (a management company that never returned calls in a timely manner, etc.)?
7. What is the tenant's belief about the key person's potential willingness to work collaboratively to solve the problem?

At this point, mediation is explained. The mediation screener focuses on the benefits associated with a direct, face-to-face meeting between the tenant and the landlord facilitated by the mediator(s), the confidentiality of the process, and what staying out of court saves. The screener uses examples from the tenant's explanation of the problem situation to show how a mediator's involvement can assist the tenant, as well as the landlord, in getting more of what they want or need.

As the screener is listening to the tenant, an unspoken assessment is being made about the participation of this particular individual in a mediation session. The questions that the screener is asking herself could be:

1. How much emotion is connected to the problem situation?
2. Does the tenant show flexibility or a need to "be right" or to get revenge?
3. Is the tenant articulate and able to express the underlying interests of his position?
4. Does the tenant sound like he would be able to talk about his own contribution to the problem situation?

Finally, either the screener tells the tenant that the case does not seem appropriate for mediation or that this particular case type is appropriate for mediation. If the latter is true, the screener asks if the tenant finds mediation to be an acceptable step in resolving the issues that caused the initial call for legal assistance to the agency. The answer of yes from the tenant initiates the process leading to mediation. This tenant has now become the initiating party (initial party) of a case in the mediation program. For a diagram of the service flow, see Appendix J.

CONTACTING THE OPPOSING PARTY

Following the screening, the initial party is asked to provide all contact information for himself and the opposing party:

- INITIATING PARTY's full name, address and phone numbers
- OPPOSING PARTY's full name, address and phone numbers
- Days and times that would work for the INITIATING PARTY to attend a mediation session

The screener explains that a letter describing mediation and asking for participation will be sent to the opposing party and a copy of that letter will go to the initial party. See Appendix D for a sample letter. The initial party is told that he will get a call from the mediation program administrator as soon as contact is made with the opposing party. If the opposing party is willing

to mediate, the case will be set up for a mediation session. If the opposing party has declined mediation, the initial party will be given information on alternative ways to handle the problem.

The program administrator sends the opposing party a request to contact the program by phone by a specific date (generally five business days from the date when the letter is sent). If no call comes in, the program administrator attempts to reach the opposing party by phone. Occasionally, the opposing party is reached by phone and will agree to mediation immediately. Most of the time, it will be the program administrator's responsibility to show how beneficial mediation will be for the opposing party, as well as the initial party. This should be done by highlighting the neutrality of the mediators to help in getting the opposing party to say yes to mediation.

WHEN THE OPPOSING PARTY SAYS "YES"

After an opposing party has indicated willingness to participate in a mediation session, the days and times of availability are checked, and the mediation program staff member indicates that contact will be made again when the mediation is scheduled. Since the program already has information on the availability of the initial party, days and times can be matched, and a proposed date can be given to the opposing party, subject to mediator availability.

WHEN THE OPPOSING PARTY SAYS "NO"

If the program administrator (or other staff or volunteers) gets a firm "NO" from the opposing party, no mediation session can be scheduled. All the staff can do is thoroughly explain the benefits of the process to the opposing party. Volunteer mediators and staff of mediation programs have witnessed a successful outcome in sessions when the opposing party has been reluctant or hostile to mediation. When talking with reluctant opposing parties, the program staff can explain that mediation gives all parties the opportunity to learn about varying perspectives on the problem. In addition, the staff can relay that many people who have used mediation indicate they feel much better after telling their stories, even when no agreement has been reached. However, the staff must accept no, when the opposing party remains unwilling.

Then, the mediation program staff must inform the initial party that mediation is no longer an option, and give the initial party information about next steps. If the agency has advocates who will step in at this point, the case can be referred back immediately for this service.

SETTING UP THE MEDIATION SESSION

Finding a venue in which to hold the session

Many large law firms have conference rooms that are not in use every hour of the workweek. Before initiating the mediation program in the pro bono or legal services agency, it is best to contact law firms, libraries and corporations, social services and community agencies with

community rooms to ask if they would be willing to assist the program by providing space for mediation. A letter, signed by the pro bono mediation program administrator or the chief executive of the agency, should give a brief overview of the program and request this assistance. Law firms are generally very responsive to such requests, and corporate and library community rooms are frequently available to non-profit agencies at no cost. In order to serve mediation clients, who may not have cars and use public transportation, it is best to have several locations where sessions can be scheduled.

The letter requesting assistance should make it clear that the program is not asking that a room be held open for mediation at all times, but that a program staff member will call when there is need. It is important to stress that a response of “no room available” on any particular day will not result in a discontinuation of requests in the future, and that the agency is grateful for the willingness of the law firm, library or corporation to support the program by providing this resource to the community.

Assigning the mediator(s) to handle the case

The next step is to assign a mediator or co-mediators if the program uses a co-mediator model to the case. Most programs use one of two methods of mediator assignment. One method is for the program staff to select the mediator and individually contact the mediator about availability to serve on the specific case. This method allows the program to carefully match the mediator’s skills and interest with each particular case. It also allows the program to evenly distribute the cases amongst the volunteer mediator pool.

A second method is for the program to maintain an e-mail list of all the volunteers and send descriptions of available cases out to the e-mail list of all volunteers, asking for a volunteer mediator for each case. The program can then select from the volunteers who express interest.

Scheduling the mediation session

Once the two parties have agreed to mediation, mediators on the volunteer roster are contacted to check their availability for a session on the date and time that the parties are both available. Either the program staff can schedule the mediation at a time convenient for the parties and the mediator, or the program staff can ask the mediator to schedule the mediation session.

Setting the location

The last step in the process is to contact one of the organizations that have indicated a willingness to make a conference room available. The contact person at the organization is given the name of one of the mediators, and asked to see that the parties are seated in a waiting area should they arrive before the mediators.

Finalizing the session set-up

A confirmation letter (see Appendix F for an example) is sent to the parties and the two mediators. The letter sent to the lead mediator (Mentor) is accompanied by the forms that need

to be used during the mediation session. These include: ground rules for the session, a confidentiality agreement, a mediation agreement form, evaluation forms for the parties to complete and mail back to the program administrator in stamped, self-addressed envelopes, a mediation outcome report, and Mentor/Mentee evaluation forms for the mediators to complete following the session. Examples of these forms are included in the appendix.

If the mediation session has been scheduled for more than one week from the final telephone conversations with the parties, it is best to call to remind them about the session 48 hours before it is to occur. This allows parties to ask any final questions or indicate they will not be coming for the session due to some problem. When the latter occurs and a fair amount of work has gone into the final stages of getting the case to the mediators, it is to be expected that program staff will feel annoyed that they must go through the steps of setting a new date and contacting everyone again. This is the time to remember that the people we serve often have unpredictable lives that make it difficult for them to plan ahead and keep scheduled appointments.

Program Experience

An extremely poor single mother, with whom the program administrator had been working for several months to get a mediation session scheduled, did not appear at the time the case was to be mediated. After repeated calls to her home resulted in no response, the mediators and the other party left the session. It later was found that the client had been waiting on a corner for a bus, which failed to arrive, leaving her stranded with no way to contact the mediator. The case was rescheduled, and was settled several days later.

The mediation session

The mediators and the parties have received the confirmation letters. The mediators have the necessary forms to complete. The location is scheduled. Calls have been made to the parties to check that they will attend and know how to find the location for the session. Program staff members have completed all the work so that the mediation session can be held. Now, everything is in the hands of your program volunteers.

Following the session, the mediators hand the evaluation forms to the parties and encourage them to complete and mail them to the program administrator. If agreement has been reached, the parties are congratulated on their hard work and flexibility. If no agreement was made, the mediators indicate that the program administrator will contact the initial party to explain the next steps. The parties are thanked for their willingness to participate in mediation and for their attempts to find resolution.

After the parties depart, the mediators complete the Mediator's Report to Program form as well as the evaluations of one another. Hopefully, the two mediators have discussed the flow of the session and provided oral feedback before independently writing their assessment of the co-mediator's skills and performance.

Program Experience

The program administrator in Phoenix found that many management companies handling tenancy issues for a building owner were not willing to come to a mediation session. Having spoken with the tenant (the Initiating Party) about the issues in dispute, the administrator was able to use her mediation skills to assist the Opposing Party in looking at solutions that might bring in some of the money being assessed, but not all. When the IP admitted responsibility for some damage, the administrator was able to present this information along with the time and money to be saved by avoiding a court proceeding, and the Opposing Party agreed to reduce the charges. Presenting the flexible stance of the management company to the Initiating Party frequently worked in getting a settlement. A case that would never come to mediation was closed without need for an advocate to be involved, and saved time and money for the agency.

Telephone conciliation

One service that is used frequently in mediation programs is telephone conciliation. Talking with the initiating party (IP) on the phone, and then with the opposing party (OP) when the OP has rejected a face-to-face meeting, can bring the parties into alignment on a solution to the problem. This service requires mediation program staff or volunteer time, as there are some cases in which the conciliator needs to talk with both parties many times.

FINAL STAGE OF CASE PROCESSING

It is important to stress with volunteer mediators the need to contact the program administrator immediately after the session in order to complete the final stage of case processing in a timely manner. Particularly when no agreement has been reached, the initial party needs to be contacted and given guidance about the available resources for resolving the issues in dispute. It is good to talk with the initial party before closing the case no matter the outcome, however, if there is likelihood that a case will need to be filed in court, the program administrator needs to check on agency resources for advocacy. When the agency cannot provide an appointment with a lawyer, whether staff or outside volunteers, information about pro se representation, including small claims court procedures, needs to be sent to the initial party.

If the initiating party took the first steps in initiating action on a problem, he may choose to drop the matter, but this is seldom the case. No resolution in mediation frequently enhances the initial party's desire to move to an adversarial process to resolve the issues in dispute. The program administrator can assist with resources, and guide the initial party in handling the matter in a responsible manner.

There is also value in telephone contact with the opposing party, as this individual may have second thoughts about willingness to settle once the mediation session is over.

Program Experience

In some cases, the opposing party, when contacted by the Program Administrator after the mediation session, made an offer of settlement. The Program Administrator conveyed the offer to the initiating party, and assisted with consideration of the offer. A number of cases have been settled in this manner. There have also been cases in which one party contacted the other party directly. A call to one of the parties alerted the Program Administrator that although the mediation session had not directly resulted in resolution, the opportunity to discuss the situation in a neutral forum had led to second thoughts and subsequent settlement.

After all the work with the parties has been completed, the Program Administrator completes the case record and conveys the outcome to the agency referral source. This allows that agency to complete its own case closure process.

Program Experience

While program experience has shown a high percentage of cases in which the opposing party is unwilling to mediate, neutral empathic and supportive contacts with opposing parties have proven to be quite beneficial. In fact, they have resulted in a new category of resolution being added to the spectrum of possible outcomes, namely, settled by telephone conciliation. Disputes between landlords and tenants appear to be particularly responsive to this technique.

The entire process of moving a case through mediation requires time as well as thoughtful responsiveness to the unique personalities and issues involved with any case. It is natural to feel frustrated when it becomes clear that either an opposing party cannot be contacted or, once contacted, is unwilling to participate. These feelings, once a mediation program has been operating for a few months, are over-shadowed by the great satisfaction mediators and program staff members experience when a difficult situation is brought to resolution. Over time it will become clear that certain procedures aren't working and may need reconsideration and change because each agency has different conditions, resources and values.

DEVELOPMENT AND MAINTENANCE OF RECORDS

Included in this section:

- **Benefits of Records**
- **Who Wants What Information for What Purpose**
- **Confidentiality of Records**

BENEFITS OF RECORDS

The pro bono or legal service agency developing a mediation program should give careful consideration to the records that will benefit the agency and the mediation program. Appropriate records can influence a funding source to donate money, help to reduce stress of advocates with high caseloads, document problems so that they can be addressed, determine the specific ways to improve service delivery and designate those volunteers and organizations that should receive recognition. Repetitive reports of meaningless numbers and uninformative narratives about service simply annoy the staff members and volunteers who are required to generate them, and frustrate readers who seek useful information.

WHO WANTS WHAT INFORMATION FOR WHAT PURPOSE?

The agency and mediation program will need to decide what kind of information and reports are important to maintain funding, show program accomplishments and maintain high standards of service delivery. The ‘who and what’ question above should be answered so that the appropriate information can be gathered for specific report generation. Does the board of directors or the chief executive want an annual report on the program, and if so, what information is considered to be relevant for their needs? Will a funding source require a specific type of report to consider additional years of support? What information does the mediation program administrator need to evaluate program components and volunteers? What information will be useful if a problem arises in the program or with a volunteer?

Unfortunately, many programs begin operation without determining what records are necessary to meet the needs of various categories of people associated with the agency. If a problem arises and the relevant information that could lead to a solution has not been kept, it can be frustrating to everyone involved. Therefore, time spent in discussion of what reports and information may be needed is time well spent. The program administrator, the agency’s chief executive, and perhaps a member of the board of directors are well advised to think through what they will want to know in the future, and set up information collection and report generating mechanisms in advance of the need. See the appendix for a recommended list of records to collect.

CONFIDENTIALITY OF RECORDS

Privacy and confidentiality of communication during the mediation session is one of the major reasons parties choose to use mediation for resolving disputes. Following referral of a case to mediation, there are many points in case processing where information is provided to program staff members. This information may be recorded and could become a part of a permanent case record.

The same attention given to confidentiality during the session needs to be applied to case records. The mediation program must ensure that records are protected, maintained in locked storage (if in printed documents), and kept in computer document files that require a password or other protective measures so that they are accessible only to designated staff members.

The agency should determine whether it will retain case notes regarding information provided during the time the case was active. Some agencies may decide that once the case is closed only party contact information, dates of significant case processing events, and final disposition will be maintained. Agencies should consider retaining a permanent record of the following:

- Case number
- Date of referral to mediation
- Parties contact information
- Type of case: housing, family, etc.
- Date of mediation (if a session was held)
- Names of mediators
- Disposition - mediation, settled; 2nd party unwilling to mediate, etc.
- Case closing date

While the case is open, notes or phone calls and other significant events are recorded, however, these are destroyed once the case is closed.

Whatever decision is made about the specific records to maintain, they must be protected. Attention paid to this issue will add to the confidence of clients and others connected to the program.

Programs receiving funding from external sources should also be aware of the funder's record-keeping requirements. For instance, legal services programs receiving funds from the federal Legal Services Corporation must comply with the specific record-keeping requirements of the LSC if they count these cases towards the program's private attorney involvement.

TROUBLE SHOOTING

Included in this section:

- **Steps in the Trouble Shooting Process**
- **Examples of Problems**

All the good planning in the world will not assure an agency that the program will run smoothly. When there is evidence of trouble, it is good to have a starting place for analyzing the situation and finding an appropriate solution.

STEPS IN THE TROUBLE SHOOTING PROCESS

1. Determine whether the problem is a one-time event or has wider program ramifications.
2. If the problem is a one-time event, talk with those involved and brainstorm possible solutions.
3. If the problem has wider program implications, define the exact problem for which a solution is sought.
4. Determine how this problem is affecting various people or program components.
5. If the problem is in the service delivery component, check to see if it relates to an administrative function or to some area of the service delivery that is handled by volunteers.
6. If the problem relates to service delivery by volunteers, convene a small group of well-known and trusted volunteers to review the problem and help with determining a solution.
7. If the problem relates to an administrative function, bring other staff members of the program and/or the chief executive or other agency staff together to determine the best approach to solving the problem.
8. In all problem situations needing involvement of other individuals besides the program administrator, set the stage for good problem-solving by reiterating collaborative techniques and encouraging consensus decision-making.
9. Once trouble has arisen, a problem has been defined, people are called together to work on a solution, and a solution has been determined – check to see that everyone who needs to know is informed if changes are being made that will effect them.
10. Implement the solution with a plan for evaluating whether the solution has indeed solved the problem.

Of these steps, number three and four are extremely important. Problem definition and determining the people affected are critical since the people who experience the problem need to be included in the problem-solving process. If the program administrator has identified trouble, she must talk with the people who have some knowledge of the situation, and then bring them together, unless there are good reasons not to do this. Administrators, who develop their own

definition of a problem without others' involvement, will find it difficult when they attempt to impose solutions essentially developed in a vacuum. Poorly defined problems can waste a lot of time, cause a program administrator to bring in the wrong problem solvers, and often start a new problem where none previously existed. As noted in step 8, it is wise to remind people that collaboration and consensus-based decision-making will create buy-in for the chosen solution.

The program administrator who sets the right tone with program staff and volunteers will gain their respect and willingness to work together. Problems are to be expected, and there are good problem-solving techniques to be used when they arise. There are no perfect programs or administrators, and the problem-solving process can build staff and volunteer morale as well as strengthen the program.

EXAMPLES OF PROBLEMS

Some examples of problems, gained through experience in existing programs are presented here. They can be used in interviews of prospective program administrators to give an interview committee or the agency chief executive more information on a candidate's skills.

PROBLEM #1 – Referral of certain types of cases dwindles to zero. No one from the agency department responsible for these referrals is talking about any problems. What steps need to be taken to define the problem accurately and find a solution?

PROBLEM #2 – Attorneys in the agency ask that one specific volunteer be used to mediate the cases they refer; yet no information has been provided about problems with other volunteers. What could be the problem or does one really exist?

PROBLEM #3 – Volunteers take a lengthy period of time to send in the mediation outcome reports, making it difficult for program staff to complete and close cases. What may need to be done in this situation?

PROBLEM #4 – A large number of volunteers indicated willingness to mediate in the program and attended an orientation session. Only a very small number of cases are being referred to mediation and volunteers have complained. How should the problem be defined, and what are possible solutions?

PROBLEM #5 – Opposing parties in a certain type of case refuse the offer to mediate. What needs to be done to assess whether it is fruitful to try to mediate this type of case and/or how to encourage the opposing parties to agree to mediate?

The solutions to these problems and others like them will depend upon the context and the particular challenges of each program. By using the steps outlined above, the agency should be able to devise at least partial solutions to the problems presented.

APPENDICES

Appendix A:	Benefits of Mediation
Appendix B:	Confidentiality Agreement
Appendix C:	Ground Rules
Appendix D:	Initial Letter to Second Party
Appendix E:	Mediation Agreement
Appendix F:	Mediation Confirmation Letter
Appendix G:	Mediation Process
Appendix H:	Mediation Process Evaluation
Appendix I:	Mediation Referral Form
Appendix J:	Mediation Service Flow
Appendix K:	Mediation Application to Volunteer
Appendix L:	Report to Program Form
Appendix M:	Solicitation Letter
Appendix N:	Timing Options for Mediation Screening
Appendix O:	Volunteer Evaluation Forms
Appendix P:	Advocacy in Mediation Role-play
Appendix Q:	The Guide to Dispute Resolution Processes
Appendix R:	Sample Orientation Agendas
Appendix S:	Records Needed for Program Operation
Appendix T:	Ethical Considerations
Appendix U:	List of Resources

APPENDIX R: SAMPLE ORIENTATION AGENDAS

One-Hour Orientation for Members of the Agency's Governing Board

- I. Mediation Program Design – 15 minutes
(Chapter 1 and Appendices A and G)
 - Who will provide the service
 - How the service will be provided
 - How it will benefit clients of the agency as well as individuals for whom the agency cannot provide service
- II. Mediation program evaluation – 10 minutes
(Appendices H and O)
 - How it will be done
 - How the Board will receive information
 - Solicit board requests for specific evaluative information
- III. Funding – 10 minutes
 - What the program will cost
 - How funds will be generated
 - Role of the Board, if any
- IV. Integrating mediation into the Agency's service plan – 5 minutes
- V. Board Member Outreach to Community – 10 minutes
 - Contacts in local mediation community
 - Contacts with impacted service provider organizations
- VI. Questions from Board members – 10 minutes.

Agenda for Three-Hour Orientation and Training for Agency Staff Members

- I. Mediation - 30 minutes
(Appendices G and Q)
 - Definition
 - Benefits
 - Overview of procedures to be used in the Agency's program
 - Qualifications of the mediators who will volunteer to provide service

- II. Screening cases for mediation - 30 minutes
(Appendix N)
 - Who will do it
 - Where does it fit in the new client intake process
 - Referral of individuals who don't meet Agency requirements for service
 - Agency staff responsibilities

- III. Mediation program evaluation - 20 minutes
(Appendix L)
 - How will it be done
 - Staff involvement, if any
 - How staff will receive program updates

- IV. Overview of mediation program procedures - 30 minutes
 - Case flow
 - Role of program administrator
 - Program forms
 - Case disposition and additional services to be delivered when mediation is rejected or no settlement is reached

- V. Advocacy in mediation- 60 minutes
(Appendix P)
 - Training of advocates in how to represent a party in mediation with practice on a simulated case

- VI. Wrap-up, Q & A

APPENDIX S: RECORDS NEEDED FOR PROGRAM OPERATION

Programs should consider using a database or case management software to manage the program operation information.

Individual client records

The pro bono mediation program cannot function without obtaining the following information:

- Contact information (name, address, e-mail, and phone numbers) for
 - Initiating party (IP)
 - Opposing party (OP)
 - Others who will play a role in the case (attorneys, family members, employers, housing management staff, etc.)
- Specific dispute or problem information
- Referral source information
 - outside agency referrals
 - internal agency staff referrals
 - case type department referrals
- Case type

Service delivery information

To determine program efficiency and track case status as parties move through the program, the following information is needed:

- Referral of IP date
- Case screening date (may precede referral)
- Date when initial letter is sent to OP
- Date when contact is made with OP
- Dates of any significant information collection or provision
- Date on which the mediation session is scheduled
- Date when the case is closed
- Notes about information that is relevant to the case as it proceeds through the various stages of the process

After the case has been closed, case specific information is less important, and aggregate data for the program as a whole is used for program and service delivery evaluation and reports. For example, if the agency delivers 30 percent of its services to clients who have housing problems, it would be useful to understand why only 10 percent of the mediation referrals are housing cases. When 50 percent of the agency services go to family law cases, why are only 5 percent of the mediation referrals family cases? Records of this kind can assist the program administrator as well as the agency as a whole in spotting problems and making appropriate changes to the program.

APPENDIX S: RECORDS NEEDED FOR PROGRAM OPERATION

Mediator volunteer records

To facilitate volunteer contacts and assure high quality mediation service, the following information needs to be recorded about each volunteer mediator:

- Contact information for all volunteers (name, address, phone numbers, e-mail addresses, fax numbers)
- Training and experience
- Availability
- Mentor or mentee status
- Attendance at orientation and training sessions
- Documentation of any unusually positive contributions, as well as problems noted by co-mediators, staff members, clients or others
- Periodic evaluation of skills and service to the program

Facilities in which sessions may be scheduled

The program should also retain detailed records about the many facilities where mediation sessions might be held:

- Name, address and phone number for organizations that will provide space for a session
- Contact person's name
- Number of times used (for thank you letters)

Program funding sources

The program needs to retain records about funders in order to recognize those who have contributed to the program and have information easily accessible when seeking additional funding.

- Name, address and phone numbers for all organizations that have contributed funds to the agency for the program
- Contact person's name
- Amount of funds contributed
- Type of contribution (one time contribution, potentially long term contributions, grants (which require proposals), etc.
- Date when funds were solicited and received
- Any other pertinent facts that will assist with future requests for specific information, thank you letters and annual or periodic reports, etc.

Community agencies or programs that contribute to program operation and success

In order to establish a network of community agencies and ties within the community, the program should maintain a list of relevant community agencies and the appropriate staff.

- Organizations that refer potential clients

APPENDIX S: RECORDS NEEDED FOR PROGRAM OPERATION

- Organizations that provide associated services
- Volunteer source organizations
- Courts and judges where cases may be heard when mediation does not settle the dispute

APPENDIX T: ETHICAL CONSIDERATIONS

The ethical considerations associated with the mediation program (and the host agency as well) are too numerous to completely cover in this manual. Most mediator training programs spend several hours looking at the issues that arise in a mediation session and the ethical dilemmas they present to the mediator. When the mediation program recruits volunteers, the Program Administrator may want to review the training agenda for each volunteer applicant to determine each has had appropriate training. Additionally, it is important to have continuing education regarding ethics, and this can be done at a volunteer meeting. Lawyer mediators, as well as professionals from other disciplines, can often use these sessions for continuing education credit.

Some of the ethical issues that should be included in training for volunteers are:

1. Confidentiality – The general guidelines and reporting issue in cases of abuse and other types of cases that may raise confidentiality issues.
2. Terminating a mediation session – What issues would prompt this action and how to do it.
3. Neutrality – How to handle when the mediator or a party feels neutrality has not been maintained.
4. Self-determination – Issues regarding pressure to settle
5. Co-Mediator Feedback – Providing information to the Program Administrator about breach of ethical responsibilities.
6. Different considerations when working with represented and unrepresented parties.
7. Handling party complaints about mediator behavior.
8. Handling complaints about attorney behavior in mediation.
9. Conflicts of interest from the mediator's perspective.

There are numerous resources available for those wishing guidance on ethical issues. Please see below for a partial list of available resources.

Dispute Resolution Ethics: A Comprehensive Guide, available from the ABA Section of Dispute Resolution (512 pages). For ordering information, see the publications available from the ABA Section of Dispute Resolution – <http://www.abanet.org/dispute>.

The ABA/AAA/SPIDR Revised Model Standards of Conduct for Mediators. See <http://www.abanet.org/dispute>.

The CPR-Georgetown Principles for Provider Organizations. Available at (<http://www.cpradr.org>).

The Model Standards of Practice for Family and Divorce Mediation. See (<http://www.afccnet.org>. ABA Model Rules of Professional Responsibility (Rules 1.2, 1.4, 1.6, 2.1, 3.3, 4.1, 4.2, 4.4, 8.3, and 8.4).

APPENDIX U: RESOURCES

Organizations

- The ABA Center for Pro Bono is a national resource center for pro bono advocates. The Center offers a pro bono clearinghouse library, which contains information on recruiting, retaining and recognizing volunteers, program operation and management issues, and much more. Contact www.abaprobono.org or (312) 988-5759.
- American Bar Association Section of Dispute Resolution:
<http://www.abanet.org/dispute>
- American Bar Association Division for Legal Services:
<http://www.abanet.org/legalservices/>
- National Association for Community Mediation: <http://www.Nafcm.org>

CLE and Conference Materials

- Expanding Your Horizons through Pro Bono Mediation, an online complimentary ABA CLE program: <http://www.abanet.org/cle/clenow/probonomediationreg.html>
- 2005 Equal Justice Conference Materials: “Innovative Ways to Increase the Number of Clients Served Without Increasing Your Budget or Staff”:
http://www.abanet.org/legalservices/ejc/workshop_preview_2005.html

Model Standards and Protocols

- Model Standards of Conduct for Mediators
http://www.abanet.org/dispute/documents/model_standards_conduct_april2006.pdf
- Model Standards of Practice for Family and Divorce Mediation
http://www.afccnet.org/resources/resources_model_mediation.asp
- Domestic Violence and Child Abuse/Neglect Screening for Domestic Relations Mediation, Model Screening Protocol
<http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf>

Dispute Resolution System Design:

- *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass Conflict Resolution Series, 1995) by Cathy A. Costantino and Christina Sickles Merchant

APPENDIX U: RESOURCES

- *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Jossey-Bass, 1988) by William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg
- *Alternative Dispute Resolution for Organizations: How to Design a System for Effective Conflict Resolution* (John Wiley & Sons, 1998) by Allan J. Stitt
- *Controlling the Costs of Conflict: How to Design a System for Your Organization* (Jossey-Bass, 1998) by Karl A. Slaikeu

Fundraising:

- *Best Books on Fundraising for Non-Profits*, Joseph P. Garecht
- *Fundraising for Dummies*
- Statewide or city-based community foundations
- Innovative Fundraising Ideas for Legal Services (an ABA publication)
<http://www.abanet.org/legalservices/sclaid/perls.html>

Working with Volunteers:

- *The Volunteer Management Handbook*, Tracy Daniel Connors, Ed.
- *Leadership and Management of Volunteer Programs*, James C. Fisher and Kathleen M. Cole
- *Volunteer Management: Mobilizing All the Resources in the Community*, Steve McCurley and Rick Lynch