

Seeking Peaceful Alternatives

Six mediation programs in the state are working to empower people involved in disputes to solve their own problems and accept personal responsibility.

By Ellie M. Bayrd

During a school lunch hour, three upperclassmen join forces to embarrass younger students. Food trays are “accidentally” spilled and the victims’ clothes and books are damaged. The victims complain of racial bias and feel hurt.

A neighborhood struggles with zoning issues, disgruntled that a business has been built despite their concerns. The neighborhood residents complain that their grievances have been ignored.

In both of the above examples, the victims called law enforcement and the case was referred to Mediation Services for Anoka. Instead of law enforcement or the courts placing legal restrictions on the victims or offenders, the groups were able to discuss their positions in the presence of mediators and come to mutually agreeable solutions.

In the case of the school bullies, fears of racial bias and retaliation were put to rest and letters of apology were handed out. The offenders also learned the impact of their actions. In the case of the neighborhood squabble, the participants found a way to communicate and made a plan for how to handle future issues.

A Voluntary Process

According to the description shared by the Minnesota Association of Community Mediation Programs on the 20th anniversary of mediation service in Minnesota: “Mediation is a voluntary process that provides an opportunity for participants to meet in a safe environment with an impartial mediator and work toward a satisfactory resolution of the issues without the additional time and expense involved in litigation. The mediator does not decide the outcome, but rather assists parties in reaching their own agreement in a manner that best meets their needs.”

Mediation first became a popular concept in the 1970s, and since 1982, when the idea took off in Minnesota, six mediation programs have been formed: Mediation Services for Anoka County (MSAC), North Hennepin Mediation Program (NHMP), Alternative Dispute Resolution Services in Olmsted County (ADRS), Dispute Resolution Center (DRC) in the East Metro, Minneapolis Mediation Program, and Rice County Dispute Resolution Program.

The caseload is heavy and constant. At any given time, says Beth Bailey-Allen, executive director of North Hennepin Mediation Program, their mediators are covering 50 cases; they handle approximately 15,000 cases a year. Minneapolis Mediation Program, says Executive Director Michele Gullickson Moore, worked 1,673 cases last year (389 community cases and 1,284 court cases). “We expect a 10 percent increase again this year,” she says.

Director Edwardo Wolle of Rice County Dispute Resolution Center notes that his program works approximately 100 cases a year. “Our volume of cases is smaller compared to our counterparts since we are in a rural county outside the Twin Cities.”

Kinds of Conflicts

The six statewide mediation programs differ in their categorization of mediation cases, but they are similar in the kinds of conflict they include. In each program, however, certain cases have a higher percentage of referral. Rice County, for instance, handles more reported rural problems than Hennepin County.

Mediation Services for Anoka County has three categories of service: community, family visitation, shared parenting and expediting, and victim-offender.

North Hennepin Mediation Program’s breakdown of non-court mediations in 2002 came to: 20 percent

neighbor, 20 percent post-divorce, 17 percent school/juvenile, 16 percent business/consumer, 13 percent landlord/tenant, 12 percent family-interpersonal, and 2 percent employer.

Bailey-Allen says North Hennepin Mediation Program's number of school cases has been growing steadily. Many of these cases are referred directly by school resource officers. In school cases, NHMP offers peer mediation training and support, teaching students how to help each other tackle minor conflicts. Many cases are too serious for peer mediation, and those are handled by adult community mediators. NHMP provides a team of mediators one day a week in two secondary schools.

Peer mediation training and support, plus an anger management class for court-ordered juveniles, is emphasized by MSAC, too. "We are working directly with schools districts in Anoka County, mediating school suspension cases," says Wallerstedt.

Neighborhood disputes are also commonly referred. Like its counterparts, the Dispute Resolution Center handles a variety of these, citing noise complaints, pet problems, parking, property lines, and vandalism as the most common. The Dispute Resolution Center also mediates small claims cases regarding accidents, money owed, and property damage.

Other cases referred to mediation include harassment and discrimination. Hennepin County District Court encourages the use of mediation to settle non-life-threatening disputes, urging disputants to try mediation before resorting to restraining orders.

With complicated, changing family situations becoming more and more prevalent, all six mediation programs offer services for shared parenting mediation services. These mediations help constructive decision-making in shared parenting situations and encourage civil interaction between participants ending relationships.

The Costs of Conflict

Mediation is affordable, which is one reason why it is so successful. Disputing parties are more tempted to attend the sessions because it will save them money on legal fees or restitution payments in the courts. For the Dispute Resolution Center, says Director Jeanne F. Zimmer, "Fees are dependant upon the type of case and number of participants involved. Sliding fees are available for those who meet income guidelines. No one is denied service for inability to pay."

Beth Bailey-Allen says, "Typically the cost of mediation is covered by or at least subsidized by a third party—for example, a municipality or a court. Fees range from free to \$150 for shared parenting mediation.

Mediation may be economical for disputants in comparison to court fees, but the programs do take a lot to run. While most of the program staff is volunteer, the full-time positions are paid and there are many other expenses for running a mediation program.

Most of the money comes from a combination of "state funding, local funding, and private funding," says Bailey-Allen. Executive Director Ann Wallerstedt says Mediation Services of Anoka County also receives county funding and hosts a benefit each year.

Dispute Resolution Center, says Jeanne Zimmer, is facing cuts in government support. "Over the past 21 years, a variety to government entities have supported DRC; that funding has been reduced by almost 80 percent," she says. The effect of these cuts has been a decrease in caseload. In 2001, DRC handled a total of 714 cases; in 2003, that number slipped to 485.

Betty Christenson of Alternative Dispute Resolution Services says their program been affected recently by their financial situation. A significant state reduction in funding for services at the local level "challenged the viability of all non-mandated services," she says.

Relationship With Law Enforcement

Ann Wallerstedt of Mediation Services of Anoka and Beth Bailey-Allen of North Hennepin Mediation Program both feel that the relationship between law enforcement and the mediation programs is critical. Officers are the first ones called to disturbances and are aware of ongoing squabbles that might benefit from mediation. Officers are encouraged to identify these cases and tell the parties about mediation option.

Each of the six mediation programs has different protocols for reporting mediation cases. Officers need to familiarize themselves with the procedures of the mediation program available to their department before reporting any cases.

Bailey-Allen prefers that NHMP staff make the call to the parties involved after receiving referrals from law enforcement. She notes, "There are two things police can do that will greatly increase the odds that [a case] gets resolved. First, make the referral directly to the mediation program so that the burden is on us to

make that first phone call. The second thing they can do is let folks know right on the spot that they think mediation would be beneficial and that they [the officers] will refer them to mediation.”

Wallerstedt’s program differs slightly in its reporting process. She hands out business cards to officers with the program’s contact information and encourages them to fax police reports. Most juvenile cases in Anoka County, however, need to go to the county attorney first.

Michele Gullickson Moore of Minneapolis Mediation Program tries to make a presentation at police station roll call once a year. She hands out laminated business cards for law enforcement officers and provides the precinct with brochures. Referrals can come “either by having the officer call us and give us the contact info or by having the officer encourage the parties to call in. The latter usually works better.”

Edwardo Wolle of Rice County Dispute Resolution Program also hands out cards at law enforcement events and roll call. Their cards are printed in both English and Spanish. He prefers to receive referrals by phone or e-mail.

Jeanne Zimmer of Dispute Resolution Center says that they are open to both direct and indirect referrals from police officers, and, according to coordinator Betty Christenson, referrals at Alternative Dispute Resolution Services “generally come from the person referred. ... Sometimes the police or sheriff’s department will contact us describing the situation so we can anticipate a call from the individual.”

Recognizing a Referral Case

Both Bailey-Allen and Wallerstedt have found that officers receive repeated calls for service from the same residence. These cases may be suitable for mediation. Bailey-Allen says that sometimes the issue is a lack of communication between the disputing parties. “I am amazed in neighborhood mediations ... how often the people are meeting each other for the first time in the mediation,” says Bailey-Allen. Mediation helps give the disputing parties a way to cooperate in the future, so their first call isn’t to the police.

The most important thing police need to know about mediation, though, is that while mediation may work in many small disputes, any cases involving weapons or alcohol, drugs, or domestic violence should *not* be referred to mediation. “We are not a crisis agency,” Wallerstedt adds. Bailey-Allen agrees, “We get too many calls for domestic violence situations and that’s got to be frustrating for the people who are making those calls and finding out that the resource they’ve been given isn’t going to be helpful.”

Another reminder for police is to refer cases *early* to mediation. Wallerstedt just recently was referred a case by law enforcement that the police had been dealing with unsuccessfully for five years.

Senior Commander Colleen Luna of the Saint Paul Police Department is chair of the Dispute Resolution Center Board of Directors. Luna says that alternative dispute resolution is “near and dear” to her heart and notes that “every case mediated or facilitated by a DRC volunteer is one less 911 phone call or protracted legal dispute.” Luna is “committed to the community-based mediation and restorative justice services DRC offers.” She says, “DRC provides a forum for healing communities and empowering individuals to solve their own disputes ... Mediation is an efficient, effective, and economical approach to resolving our community’s disagreements.”

Volunteer mediators Bonnie Lukes and Jerry McCadden both feel that police officers should refer annoyance cases before they escalate. Police officers should hand over these cases, Lukes says, so they are free “for the things that need their exact police expertise.”

McCadden says that sometimes police have sat in on his mediation sessions and the community has learned from them about what they can and can’t do. In one case, the police were accused of “doing nothing,” but since no charges had been filed, there were no legal actions that they *could* take. Once this was explained to the complainants, they better understood the role of the officer.

Community Justice Coordinator David Hines of the Woodbury Police Department encourages police officers to refer cases. His department has a special restorative justice program for juvenile cases and neighborhood disputes. They began including mediation in 1994. Hines says that “agencies [should] get involved by at least referring cases out and participating in them as a key player if not facilitating cases, as we do.”

Hines often speaks to law enforcement officers and has been asked many questions about the responsibilities of law enforcement in terms of mediation. Hines says if manpower is a problem, officers don’t have to be too involved, they can just refer the cases to mediation and not participate themselves. To those who question whether cops should be involved, he says, “Policing has always been and always will need to be about community interaction, problem solving and, to be effective, working with and seeking out community resources to define and address the community’s needs. Our prime goal should always be to prevent crime and when that fails to help repair victims and community while

holding offenders accountable.”

Hines reminds, though, that it is not an easy out: mediation can be a lot of work. And mediation is not the answer for all cases, Hines says to those who see it as “nearly miraculous in its outcome.” Hines has also had some people question whether mediation is “soft” on crime. He says, “People find this more difficult, demanding, and rewarding than lawyer-dominated court.”

The Gift of Time

Besides the knowledge that he or she has helped solve a dispute, an officer can thank the mediation process for giving the gift of time. To illustrate mediation’s usefulness, Bailey-Allen cites a Harrisburg, Pennsylvania, 1995 study of the effectiveness of neighborhood dispute resolution (mediation) as proof of the time-saving benefits. Roosevelt E. Shepherd, associate professor of criminal justice at Shippensburg University, prepared the report.

In 1994, a partnership between the Neighborhood Dispute Settlement Center and the Harrisburg Police Department was created and a study tested the usefulness of this new collaboration. In the Shepherd study, neighborhood dispute resolution was used in a select group of law enforcement referred cases. The results were positive: In the 37 mediation-referred cases, there was a 75.3 percent decrease in calls after six months; in the 37 cases without mediation, the number of calls to police increased 5.8 percent.

Chief Richard Shaffer said, “I realized this [the use of the Neighborhood Dispute Settlement Center] was the tool by which I could decrease the number of times a police officer must respond to the same neighborhood problem and, thus, improve the utilization of police services to the city of Harrisburg.”

The same results have been noted in Minnesota. Wallerstedt recalls an Anoka County case where neighbors in an apartment building had been squabbling. One of the neighbors lived directly above the other. The two had called police more than 40 times over noise disturbances. They were referred to MSAC. By mediation, the parties were able to empathize with the others’ work schedule. They exchanged telephone numbers, and one party agreed to wear earplugs at night when the other would come home from work. Follow-ups show that the agreement is working, frustration is down, and no further calls to police occurred. The bottom line is, says Wallerstedt, 80 to 85 percent of the time, you can rely on other people’s word.

Role of the Mediator

The mediation process begins with the aforementioned referral. The case is then assigned two mediators as part of the co-mediation structure. There are more than 200 volunteer mediators in the state of Minnesota. These mediators come from a variety of backgrounds, but all have fulfilled the Minnesota Supreme Court’s guidelines. Among the requirements, 30 hours of initial training and six hours of continuing education per year. Most mediation programs also require six mediations a year.

Bonnie Lukes, former executive director of North Hennepin Mediation Program, currently serves NHMP in the capacity of volunteer mediator. Lukes mediates about once a month. Jerry McCadden is a volunteer mediator with Mediation Services for Anoka County, and volunteers twice a week to mediate.

All mediators are volunteers and work in pairs. “Since we use volunteers as the mediators, what we have to offer is time,” says Bailey-Allen. “That’s what these situations call for and that’s what police officers don’t have. They may have 15 minutes, for example, to spend on a call. For our average mediation we block out two hours of time.”

Mediators can dictate their own level of participation. Some mediators have time for only the minimum six cases a year; others choose to dedicate a few hours a week. Wallerstedt notes that some mediators choose to focus on a particular kind of case; they will not do juvenile cases or will only do neighborhood disputes. The mediation programs recognize these choices and also notice when a mediator has proficiency in a specialty area.

Mediators represent all walks of life. Some mediators are lawyers, but it is important to have mediators who “are as diverse as the community we serve,” says Bailey-Allen. Lukes also serves as chief trainer for the state in AARP defensive driving. McCadden is a retired rehab counselor and school counselor, having always worked in some capacity helping others.

Inside a Mediation

Statistics from the National Association of Community Mediation show that 85 percent of mediations result in agreements between disputants, 90 percent of disputants uphold agreements through mediation, 95 percent of participants indicate that they would use mediation again, and 82 percent of Americans would

prefer to go to mediation rather than court.

Much of this appreciation for the process stems from three important facts. Mediation is voluntary, it's confidential, and the disputing parties get to create their own mediation agreements. The dispute is given back to the people, who are also given the tools to fix the problems themselves so they don't keep calling the police. "They now have the relationship with each other so when that future incident comes up," Bailey-Allen says. "they will call each other or communicate with each other in whatever way they've agreed upon through mediation."

Mediations are held at the mediation program's headquarters or at a neutral location. These meetings can include any number of people. Gullickson Moore of Minneapolis Mediation Program explains that they "are adept at handling groups in excess of 125 people."

Mediators begin the process by doing a pre-screening, ensuring safety for participants and making sure the case is acceptable for mediation. In addition to screening to ensure safety, mediators do at times contact law enforcement to request that a squad car drive by the location and ensure safety for themselves and the participants. Making mediation voluntary helps ensure that only participants who want to be there, are there and this keeps the meetings safe.

Mediators also do preliminary casework to make sure all involved parties are contacted about the situation and to learn about the conflict at hand before the meeting. "It is important," Wallerstedt says, "to have all who are responsible to the agreement present so things won't become an issue later."

The way mediation is conducted varies by situation. For some large-group mediations, the groups are split up; in other small-group mediations, the restorative circle is implemented. The restorative circle mediation model comes from the indigenous practice of talking circles. A restorative circle emphasizes living in balance with one's self and the community. In this type of mediation, the group sits in a circle, and each person gets time to speak before coming to a group solution. Wallerstedt says that mediators often use a talking piece to ensure order to conversations. The person holding the talking piece is the only one who can talk; this keeps people from talking over each other.

Lukes says that when working in the co-mediation style one mediator is not put in charge; they have an equal share of work. When a mediation begins, the volunteers greet the participants and then ask who wishes to begin or ask the person who reported the case to be the first speaker. That person gives a brief overview of the problem and then the other side has a chance to respond. The mediator's job is to "listen for areas of agreement and ask questions for clarification," says Lukes.

The hardest part, according to both Lukes and McCadden, is getting people to communicate if they don't want to. Mediators work to break down barriers blocking conversation, like getting quiet people to speak up and vocal people to calm down.

In Agreement

The agreement that is formed during a mediation is one created by the disputing parties. Before its signing, the mediators will do a "reality check" on the agreement by coming up with "what if" scenarios so that the disputants know how to handle any future problems. An agreement is considered successful "as long as the agreement repairs the harm to the victim and the offender feels that he or she has been able to make amends for it," says Bailey-Allen.

When writing a mediation agreement, the mediator is very specific about what is agreed upon. Copies are made for both parties so there is "no mistaking what they've agreed to," says Lukes.

Bailey-Allen calls the mediation room the "If only" room, as disputants often come in saying, "If only my ex were more reasonable," or "If only my neighbor were more reasonable." In effect, the mediation room is the place where people have the opportunity to be reasonable.

Sometimes the mediation agreements do have some legal ramifications. Cases referred by the courts or legal system can come with restrictions on the disputants. Charges that were dropped upon the assignment of mediation can be reinstated if the agreement is not followed. Most agreements are more what one might call a "gentleman's agreement" or an agreement in good faith. Senior Commander Colleen Luna, Saint Paul Police Department adds that, "Mediation allows a win/win rather than a win/lose outcome."

Mediation does not end with the agreement. Mediators do check back to make sure the problem was cleared up during mediation and keep tabs on the number of calls made to police pre and post-mediation. In rare cases, further mediation is required, but most times the first meeting and the agreement created work to solve the issue.

Dispute Resolution Center has its clients fill out evaluations after creating their mediation agreement. One content community participant remarked on her evaluation, "An amazing process! I wish all

communication could be this straightforward. People are free to share what they really think and feel—what a concept.” Another, a parent of an offender, said “Very powerful tool, essential to the healing process for all.”

Not Inconsequential to Them

Wallerstedt feels mediation is important because “those little things we think of as inconsequential” can be so important to others. People will resort to violence as a result of minor neighborhood disputes like a barking dog. Wallerstedt says there is an old phrase used in mediation, “It’s not minor when the barking dog is the neighbor’s and the lost sleep is yours.”

Mediation agreements can be quite imaginative; there is no set guideline for how they must be formed. In an example of this creativity, one juvenile was asked by the victim of his vandalism to join the Boy Scouts for one year to make restitution. The boy ended up enjoying the Scouts and learned lessons through that program about how to treat people better. Lukes says that she gets “such a good feeling all around when the parties themselves reconcile and bring peace to that one part of their lives.”

Mediation is valuable in teaching offenders the impact of their actions. Wallerstedt says that, in terms of juvenile offenders, often the actions they have taken, like vandalism, were made out of boredom. They “really have no sense of how they are impacting people until they are in that mediation,” says Bailey-Allen. “I really believe that if we are only focused on punitive consequences, people just get better at not being caught.”

Mediation holds people accountable. In fact, some juveniles have said they would “rather go to court” than face mediation, because that’s a faceless place to be, says Wallerstedt. In mediation, the offender is forced to sit across from his or her victim and learn about how his or her actions made someone feel. It is more effective than showing up to have “a judge shake their finger or a diversion hearing officer say ‘you shouldn’t have done that.’ They know they shouldn’t have done that.”

Bailey-Allen says the current practice of issuing a letter and a small fine as restitution for small juvenile infractions is not as much of a deterrent. Having mom or dad pay the fine is easier to do than work through community service.

Get Involved

There are available training opportunities for would-be mediators each spring. If you or someone you know is interested in pursuing such an opportunity, contact your local mediation program to learn more about the qualifications and training opportunities.

Police officers make great mediators, because they already have training in conflict resolution, Woodbury Community Justice Coordinator David Hines says. “To be good at [mediation] you must be able to be neutral, recognize and drop personal and professional biases, care about people, understand and seek out fairness, be a good communicator at all levels, and be dedicated to the work, not worried about how this may fit in the inner world of policing but involved because it is the right thing to do.”

If you have other questions about mediation, representatives from any of the six state mediation programs are more than happy to answer questions.

Contact Information

Alternative Dispute Resolution Services

1421 Third Avenue S.E.
Rochester, MN 55904
Phone: 507/287-2249
Fax: 507/287-2436
E-mail: christenson.betty@co.olmsted.mn.us

Dispute Resolution Center

974 West Seventh Street
Saint Paul, MN 55102
Phone: 651/292-7791
Fax: 651/292-6065

Web: www.disputeresolutioncenter.org
E-mail: drc@disputeresolutioncenter.org

Mediation Services for Anoka County

2520 Coon Rapids Boulevard,
Suite 100
Coon Rapids, MN 55433
Phone: 763/422-8878
Fax: 763/422-0808
Web: www.mediationservice.org
E-mail: annw@mediationservice.org

Minneapolis Mediation Program

310 38th Avenue East, Suite 221
Minneapolis, MN 55409
Phone: 612/822-9883
Fax: 612/822-9890
Web: www.mplsmediationprogram.org
E-mail: mplsmediation@mtn.org

North Hennepin Mediation Program

3300 Bass Lake Road, Suite 212
Brooklyn Center, MN 55429
Phone: 763/651-0033
Fax: 763/561-0266
Web: www.mediationprogram.com
E-mail: staff@medationprogram.com

Rice County Dispute Resolution Program

1651 Jefferson Parkway,
Suite HS 125
Northfield, MN 55057
Phone: 507/644-3522
Web: <http://rcdrp.com>
E-mail: rcdrp@clear.lakes.com