Community Dispute Resolution in New York State

By Mark Collins

Overview

Alternative Dispute Resolution in New York began in earnest with the initiation of the Community Dispute Resolution Centers Program in 1981. New York became the first state to provide statewide-funding to Community Dispute Resolution Centers (CDRCs). Twenty four years later, the CDRCs’ accomplishments continue to confirm the state’s status as a leader in community mediation. From April 1, 2004 to March 31, 2005, for example, CDRCs screened 40,576 cases involving 100,620 individuals for dispute resolution services. Of these cases, 23,635 mediations, conciliations and arbitrations were conducted, where parties reached voluntary agreements in 79% of the cases that were mediated or conciliated.

The work of the CDRCs helps the citizens of the state and the justice system simultaneously by relieving the courts statewide of a substantial caseload. These centers handle disputes ranging from family cases such as custody and visitation issues, status offense cases, Persons In Need of Supervision, juvenile delinquency, child permanency and divorce to civil cases including housing issues, breach of contract; special education, Department of Social Services conciliations, mobile home issues, and guardianship. Criminal cases are also handled including harassment, assault, and selected felonies.

The major dispute resolution service provided is mediation, but centers also provide conciliation, facilitation and group conferencing processes. Additionally, centers conduct trainings in basic conflict resolution, community mediation, truancy, anger management, diversity, conflict management in schools with teachers, faculty and students, diversity and other related topics.
The CDRCs are now part of the New York State Unified Court System’s Office of Alternative Dispute Resolution Programs (Office of ADR). The Office of ADR was created in 1998 after Chief Judge Judith S. Kaye created the ADR Task Force, and this group recommended expanding on the successes of the CDRCs by bringing ADR services to all courts in New York.

This article intends to describe the evolution of this statewide initiative as a program model for consideration in other jurisdictions.

**Historical Beginnings**

Community-based structures and processes for the resolution of interpersonal differences can be identified around the world and across history. While the modern “field” of community mediation can trace its origins to ancient and diverse traditions, two major trends have greatly shaped the present practice in the United States. One trend consisted of governmental responses to a justice system in need of reform and repair: the Neighborhood Justice Centers project grew out of recommendations from the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, known as the Pound Conference. The goal of this project was to enhance access to justice by improving court efficiency and effectiveness through the implementation of dispute resolution programs offering a variety of non-litigation processes (primarily mediation). The other trend was born of the social and political movements of the 1960s, and focused on the development of local, citizen-run resources to strengthen community capacity in resolving differences without court intervention.¹

In the late 1970s, there was only a handful of fledgling community mediation programs scattered around the United States. According to the National Association for Community Mediation (NAFCM), there are now approximately 550 community mediation programs in the United States, representing all 50 states. These programs are characterized by, and/or committed to:

- Providing mediation services primarily with the use of volunteers.

• Ensuring that mediators, staffs and governing/advisory boards are continually trying to represent the diversity of the community served.

• Providing direct access to the public through self-referral and striving to reduce barriers to service.

• Providing service to clients regardless of their ability to pay.

• Initiating, facilitating and educating for collaborative community relationships to effect positive systemic change.

• Providing an alternative to the judicial system at any stage of a conflict.

In New York State, community mediation received its greatest boost by the initiation of a stable state funding source—the New York State Unified Court System. The Community Dispute Resolution Centers Program (CDRCP) was created by the New York State Legislature on July 27, 1981, pursuant to the passage of Chapter 847 of the Laws of 1981, and it was designed to be administered by the Chief Administrative Judge of the Unified Court System of the State of New York. The Judiciary Law was amended to include Article 21-A, which provided governance issues as well as initial funding for the newly created Community Dispute Resolution Centers. The expressed purpose for the creation of this program was based on a, “compelling need for the creation of dispute resolution centers as alternatives to structured judicial settings to assist in the resolution of disputes in a complex society.” The legislative language continues with supporting rationale for the creation of the CDRCP.

Community dispute resolution centers can meet the needs of their community by providing forums in which persons can participate in the resolution of disputes in an informal atmosphere without restraint and intimidation. The utilization of local resources, including volunteers and available building space, can provide for accessible, cost-effective resolutions of minor disputes. While there presently exists centers where dispute resolution is available, the lack of financial resources limits their operation. Community dispute resolution centers can serve the interest of the citizenry and promote quick and voluntary resolution of certain criminal matters.

In 1981, the centers providing dispute resolution services in New York State included the Center for Dispute Settlement in Rochester (1972) and the Institute for Mediation and Conflict Resolution in New York City (1975). The newly created CDRCP,
however, was directed to expand the use of dispute resolution services and the legislative appropriation of $1,099,000 was designated to provide up to 50% funding for centers in 19 New York State counties.

In November of 1981, the Chief Administrative Judge promulgated the Rules Governing Community Dispute Resolution Centers Programs (22 NYCRR, Part 116). Materials announcing the call for proposals were then sent to more than 800 interested parties in 19 counties identified in the enabling legislation. Thirty-four proposals were received by December 1, 1981 from seventeen counties. A total of seventeen centers were granted $528,992 as partial funding to seventeen centers serving sixteen counties throughout New York State. These dollars were then matched by public and private funding sources on the local level, resulting in a state-local partnership that has continued to the present day. It is this partnership relationship between local and state funding organizations with local centers that has resulted in the continued expansion of quality services throughout the years.

**Promoting Quality Mediation Services**

The enabling legislation in the CDRCP in 1981 required that neutral mediators must have received at least twenty-five hours of training in conflict resolution techniques. Classroom training was initially augmented by an apprenticeship phase of the training, and then later, by continuing education requirements. Specialty areas such as parenting mediation required an additional twelve hours of classroom training. Although this approach to training produced many good mediators, the Office of ADR collaborated with center staff and mediators to enhance these minimum standards in 2002, based on the need to expand initial classroom training hours, particularly to more adequately cover agreement writing, domestic violence, and ethical and cultural diversity issues. Beginning January 1, 2003, the new standards detailed herein were adopted.

**Initial Training**

Based on Article 21A of the New York State Judiciary Law, every mediator must complete an initial community mediation training that is at least 30 hours in duration and
conducted by a trainer who has been certified by the New York State Unified Court System’s Office of ADR Programs.

**Apprenticeship**

To obtain certification by a local center, every mediator must participate in an apprenticeship. The 2002 collaboration referenced above recognized the need to better define the minimum requirements of the apprenticeship phase of a prospective mediator’s training. Each local center is required to develop and submit an apprenticeship plan to the Office of ADR Programs for approval to ensure that the center is able to monitor the development of its newest mediators and that mediators are providing effective mediation services consistent with the criteria in the local center’s performance standards.

At a minimum, each center’s apprenticeship plan shall require all mediators seeking certification to:

a) Mediate or co-mediate at least two structured role-plays;

b) Observe at least one mediation session involving an actual conflict between actual parties;

c) Mediate or co-mediate at least five cases involving actual controversies between actual parties under the direct supervision of a coach, mentor, or staff-person;

d) Mediate or co-mediate at least one case and either debrief with staff or complete a self-evaluation instrument at the conclusion of the case; and

e) At the conclusion of each mediator’s apprenticeship, the Program Director observes mediator and provides a written assessment as to whether the mediator is adequately prepared to mediate pursuant to the criteria in the local center’s performance standards.

**Performance Standards and Assessment**

Mediators are certified by their local centers; it is the responsibility of each center’s Program Director to certify to the Office of ADR Programs that each mediator is adequately prepared to mediate. Local centers must establish performance standards for mediators. These standards must be consistent with the Training Curriculum Guidelines set forth by the center’s apprenticeship plan as approved by the Office of ADR Programs, and must include locally adopted standards of conduct. The Office of ADR Programs
strongly encourages Program Directors to develop performance standards in cooperation with staff, volunteer mediators, and members of the board of directors for the local center.

Local centers are encouraged to adopt a required minimum number of cases mediated or time period mediating as a performance standard before allowing the trained neutral to mediate special case types; however, the local center may waive this standard for mediators whose initial training occurs in a Combined Initial and Special Case Type Training

**Advanced Training for Special Case Types**

During the 1980’s, some CDRCs began to mediate parent-child issues and eventually parenting issues, including custody and visitation matters. CDRC mediators, staff and the Office of ADR Programs recognized that additional training was needed for mediators working in these areas. In fact, a special manual was created in the early 1990’s for CDRCs mediating parenting issues and special advanced training requirements were developed for different case types.

Mediators assigned to one of the following Special Case Types must have been certified by the local center after completing the Initial Training and must complete additional training as outlined below:

1. Parenting Disputes Involving Child Custody and Visitation—minimum 12 hours additional training;

2. Child Support Matters—must have completed the 12 hours of training for Parenting Disputes Involving Child Custody and Visitation and additional training as approved by the Office of ADR Programs;

3. Parent/Child or PINS (Persons In Need of Supervision) Matters—minimum 12 hours additional training; or

4. Child Permanency Matters—minimum 12 hours additional training

5. Cases referred from a City, Civil or District Court must complete an additional six hours of training.
Requirements to Continue Active Status as a Mediator

Mediators must annually complete at least six hours of continuing education in order to maintain their certification. This may include attendance at conferences or trainings that meet the needs of the local center, and trainings that are sponsored by the Office of ADR Programs. In addition, mediators must conduct—as lead or co-mediators—a minimum of three mediation sessions per year.

Acceptance of Practice

Over time, Community Dispute Resolution Centers began to be better accepted within their communities as front-line resources to help parties resolve and manage conflict. The clearest indicator of this accomplishment is CDRCs’ growth into new areas of practice. Whereas the CDRCs began by providing services for traditional case types including disputes between neighbors, tenants, consumer and merchants, over time these same centers expanded the scope of their work to include family issues (parenting mediation, parent-child, juvenile delinquency, and later, divorce and child permanency), breach of contract, special education, workplace, and manufactured housing, along with many others.

This increasing variety of case types has contributed towards enhancing the credibility of CDRCs within their communities. For instance, once Family Court judges recognized the contributions of the CDRCs’ work with mediation of parenting plans, they soon looked for assistance with other family matters including juvenile delinquency and child permanency. Additionally, state organizations began to see the CDRCs as a valuable resource, and soon began contracting with these organizations to handle disputes between parents of children with disabilities and the schools (Department of State Education), conflict between mobile home tenants and owners (Department of Housing), and workplace disputes (Department of Labor). In fact, after the events of September 11, 2001, the local CDRC in Manhattan was instrumental in mediating disputes between small business owners displaced due to the horrific events of that day and the building owners who rented them their space.
Core Values

Community Dispute Resolution Centers provide mediation services based on a collection of core values that include self-determination of the parties, confidentiality of the process and voluntary participation in the process. The commitment to these values instructs other mediation providers within the state by modeling best practices in mediation, whether this is accomplished when volunteer mediators expand their services into the private arena or when trainers working in both the public and private arenas use these core values in their trainings. Any state supporting community mediation should recognize these core values and work collaboratively with local programs to design referral mechanisms that reflect the shared interests of the court, local centers and parties that will be using the services.

Beginning in 2005, the ADR Office began work on standards of conduct for CDRCP mediators. These standards, which set out transparent guidelines and rules for conduct, are an important step in having mediators adhere to the core values of mediation as already discussed. The standards of conduct are aspirational in nature and not meant to impose liability or disciplinary action upon mediators.

To complement the standards of conduct, the development of a Mediator Ethics Advisory Committee (MEAC) is planned to help provide guidance when there is a conflict between any of the standards of conduct or core values of mediation. MEAC will provide advisory ethics opinions in an effort to educate both mediators and parties who use mediation to communicate effectively and resolve disputes on mediation ethics. The Office of ADR has chosen to limit the Committee's work to CDRC programs—as opposed to court-connected programs—at this time because the CDRCs are highly evolved in their practice and have a sufficient caseload to generate a meaningful number of inquiries. Nonetheless, the MEAC’s ethical guidance will instruct mediators working in court-connected programs and outside of CDRCs, as well, through publication of its responses. By working with the CDRCs, we will also allow the ADR Office to test and evaluate the effectiveness and quality of the proposed standards of conduct before attempting to expand them to court-connected programs. Within one year, the ADR Office will evaluate the standards of conduct and consider revisions based upon
comments received and in light of the experience of the Committee. Again, this formidable work will provide a strong foundation to develop and work from which the Office of ADR Programs can expand to the court-connected arena.

**Foundation on Which to Expand**

The success of the CDRCs has provided a foundation in New York State by which expansion of ADR processes has benefited. Because judges throughout the state learn first hand the benefits CDRCs have in Town, Village, City and Family Courts, many of these judges have been elevated to other courts and administrative posts, and are in a position to understand how alternative dispute resolution processes can help their new courts, thus extending the reach of ADR as delivered by CDRCs, court-connected or private programs into new areas of practice.

The many thousands of mediators who have been trained over the past twenty-five years become ambassadors for supporting alternative dispute resolution processes, whether they are still mediating or not. A number of these experienced mediators have continued to receive additional training, expanding into new areas of practice. Thus, mediators are able to act as resources to courts and other organizations who seek to extend the scope of mediator practice by providing quality mediation and information about the field and its potential for expansion. These same mediators are able to team up with newly trained mediators who have various content knowledge (e.g., child development backgrounds in child permanency mediation), and take on new process knowledge from others who have considerable experience mediating different types of cases. Other volunteers have stopped mediating but remain strong supporters of alternative dispute resolution services.

The work of the CDRCs has contributed to building public confidence with mediation services, which in turn has helped grow other alternative dispute resolution processes. CDRCs have helped the broader goal of advancing alternative dispute resolution processes by their continued expansion to serve new areas; their accomplishment of training thousands of mediators; and their success at developing strong public awareness through their client base and marketing efforts for using collaborative processes for resolution of disputes.
Community dispute resolution centers offer constructive processes for resolving differences and conflicts between individuals, groups, and organizations. They provide community members with alternatives to destructive confrontation, prolonged litigation, or avoidance. They give people in conflict an opportunity to better understand the issues underlying the conflict and the people involved in it and to take responsibility for a constructive resolution of the conflict. Community dispute resolution is designed to preserve individual interests while strengthening relationships and building connections between people and groups. This is what makes communities work for all of us.