

# Introduction to Community Mediation

States: **Arizona, Arkansas, California District of Columbia, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming.**

Estimate of Active Community Programs: **150**

Estimated Cases per Year: **400,000**

Case Types: **Small claims, tort, general civil, criminal misdemeanor**



Community mediation is the most widespread, and potentially the most promising, solution to delivering speedy, fair, and effective justice outside of traditional court processes. Created out of two separate movements in the 1960s, one to tackle the widespread inefficiencies and delays already present in the court system, and the other to moderate the rising urban violence that arose in the heat of the civil rights movement. Today, estimated 400 community mediation centers now mediate over 400,000 cases per year in the United States.<sup>39</sup>

Community mediation is one of the least structured approaches to conflict resolution, with few formal rules. Mediation cases span the spectrum from entirely voluntary, where community members bring their disputes directly to community mediators, to entirely mandatory, where courts order mediation before a formal court process can be initiated.

Mediations generally follow four phases. First, the mediator will contact both parties and arrange a mediation to hear both sides out. Secondly, the mediator will set an informal, non-confrontational tone and explain the process. Next, the mediator will hear the stories of both participants and try to find some common ground. Finally, the process usually ends with an agreement between the parties to remedy the situation. The National Association for Community Mediation (NAFCM) has 9 hallmarks for community mediation centers that also include being accessible, low-cost, inclusive, and timely.<sup>40</sup>

Studies indicate community mediation can significantly reduce case times and somewhat reduce processing costs, while increasing the satisfaction of all involved over traditional court processes. Some drawbacks, however, include concern over how mediation handles power dynamics and lack of public transparency

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39 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3F,-confrontation%2C%20prolonged%20litigation%20or%20violence.>

40 *9 Hallmarks of Community Mediation Centers*. NAFCM. Accessed May 12, 2022. [https://www.nafcm.org/?page=9Hallmarks.](https://www.nafcm.org/?page=9Hallmarks)

in this approach. Many scholars argue that in situations with significant power dynamics, like domestic violence, mediation could ultimately continue the harm being caused instead of resolving the dispute. The lack of due process protections in mediation may also make it unsuitable for crimes in which the accused claims innocence.

## History of Community Mediation

Community mediation in the United States arose out of two generally agreed upon, but separate, concerns. The first concern was with the overall efficiency of the judicial system. In 1965, the Johnson Administration's Commission on Law Enforcement and the Administration of Justice identified problems in court scheduling, management, and organization that resulted in some cases taking 3 months to reach a grand jury decision, with some serious crimes taking up to a year to go to trial. The commission did not mince words about these cases, saying they "made a mockery of bail decisions, were "unfair to the defendant," and "unfair to the community."<sup>41</sup>

Out of this commission, and a further report in 1976 by the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, rose a government-focused reform movement to bring formal mediation into the court system. Early efforts included the Philadelphia Municipal Court Arbitration Tribunal in 1969, the Columbus Night Prosecutors Program in 1971, which used law students to mediate cases, the Institute for Mediation and Conflict Resolution in Manhattan, and the Miami Citizen Dispute Settlement Program in 1975.<sup>42</sup>

The second concern, which also developed in the early 1960s, was rising urban violence. In the heat of the civil rights movement, violent, racially-motivated confrontations at protests and marches were common, and members of Congress hoped that a community mediation approach could reduce the damage. In the 1964 Civil Rights Act, Congress created a little-known agency under the Department of Justice called the Community Relations Service (CRS).

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41 United States Government Printing Office. *The challenge of crime in a free society: A report* § (1967). 154. <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/42.pdf>.

42 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3F,confrontation%2C%20prolonged%20litigation%20or%20violence>.

*"It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce."*

**-1964 Civil Rights Act**

The CRS was charged "to provide assistance to communities...in resolving [the] disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin...."<sup>43</sup> According to oral histories of the CRS, agency mediators did just that, responding to thousands of civil rights disputes over the past 50 years, including the famous "Bloody Sunday" civil rights march in Selma, Alabama, the assassination of Martin Luther King, Jr., and the riots following the 1992 Rodney King verdict.<sup>44</sup>

As the CRS focused on mediating racially-motivated conflicts from a federal level, organizations sprung up in communities across

the country to help mediate all manner of disputes at a local level. Early organizations included the Rochester American Arbitration Association Community Dispute Service Project, an organization dedicated to helping the community deal with changing racial balances, the Boston (Dorchester) Urban Court Program<sup>45</sup>, a court-connected program in a rapidly integrating Irish-American neighborhood; and the San Francisco Community Board Program, which still exists today.<sup>46</sup>

The biggest difference between these community mediation programs and the court-focused community mediation movement is that these community mediators saw mediation's role outside of the court system, not merely as an augment to it. This second movement of mediators saw mediation as a tool to create greater understanding among individuals and communities, help people take their power back from the government, and decentralize dispute resolution, and other forms of decision-making, back to the community.

The fruits of both of these mediation movements exist in America today. In the court-fo-

43 *Public Law*. Govinfo. Accessed May 12, 2022. <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf#page=27>.

44 Salem, Greta, and Richard Salem. *Civil Rights Mediation in the United States*. Civil Rights Mediation. Conflict Management Initiatives, 2007. [http://civilrightsmediation.org/us\\_med.shtml](http://civilrightsmediation.org/us_med.shtml).

45 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3F,confrontation%2C%20prolonged%20litigation%20or%20violence>.

46 *Community Boards*. Accessed May 12, 2022. <https://communityboards.org/>.

cused movement, Neighborhood Justice Centers, stretching from New York to Las Vegas, provide alternatives, primarily to youth, to being sentenced in a criminal court. From the community-focused movement, an estimated 150 community mediation centers now provide mediation services, and mediate over 400,000 cases per year.<sup>47</sup>

## How Community Mediation Works

Community mediation tends to be one of the least formal community solutions to justice. Some community mediation programs work directly with the courts and some work primarily outside of the courts. Some programs deal with civil cases, some with criminal cases, and many take disputes directly from the community.

Cases taken by community mediators, depending on the laws involved, span the spectrum from entirely voluntary to entirely mandatory. In entirely voluntary cases, where the parties are not legally obligated to participate in any way, parties choose to work with a community mediation center of their own accord to settle disputes. Examples might include marital disputes, neighborhood

disputes, and family quarrels, all of which are brought to the center before justice system involvement.

There are also mandatory cases. California mandates mediation for child custody and visitation cases.<sup>48</sup> Iowa requires mediation for debts of \$20,000 or more on agricultural property.<sup>49</sup> In many states, including Alabama, a judge can require parties to go through a mediation process before continuing their case in court.<sup>50</sup>

From our research, the majority of mediation cases appear to fall into the category of mostly voluntary, i.e., both parties agree to mediate the dispute with a community mediator but may, if mediation fails, then seek remedies in court.

These cases fall into two categories. The first is diversion cases, where a ticket or citation has already been issued, and the parties are given the opportunity to divert from the court system to repair the harm in mediation. The second category consists of community cases, where the parties go directly to mediation to resolve their conflict, but if it fails, the parties will likely seek court involvement. Examples of this second kind of case might include small claims, divorce proceedings,

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47 *Community Mediation Basics*. Resolution Systems Institute. Accessed May 12, 2022. <https://www.aboutrsi.org/special-topics/community-mediation-basics#:~:text=What%20is%20Community%20Mediation%3F,confrontation%2C%20prolonged%20litigation%20or%20violence>.

48 Winestone, Jennifer. *Mandatory Mediation: A Comparative Review of How Legislatures in California and Ontario Are Mandating the Peacemaking Process in Their Adversarial Systems*. Mediate, February 2015. <https://www.mediate.com/articles/WinestoneJ4.cfm>.

49 Tidgren, Kristine A. *Mandatory Agricultural Mediation in Iowa*. Center for Agricultural Law and Taxation. Iowa State University. July 27, 2016. <https://www.calt.iastate.edu/article/mandatory-agricultural-mediation-iowa>.

50 *Alabama Mandatory Mediation Act*. Alabama ADR. Alabama Center for Dispute Resolution, May 17, 1996. [https://alabamaadr.org/web/roster-documents/med\\_Ala\\_Mand\\_Med\\_Act.php](https://alabamaadr.org/web/roster-documents/med_Ala_Mand_Med_Act.php).

Not on criminal activity that hasn't yet been charged.

The mediation process varies by state, community mediation program, and individual mediator style. However, after referral, the process often follows Marje Burdine's 4 stages of mediation:<sup>51</sup>

**1. Set an informal tone** - The mediator welcomes parties to the mediation and explains the process to participants.

**2. Ask for accounts** - The mediator asks each party, in turn, to relate their account of the events. The mediator asks questions to clarify and understand the difference between the various parties' recounting of the events.

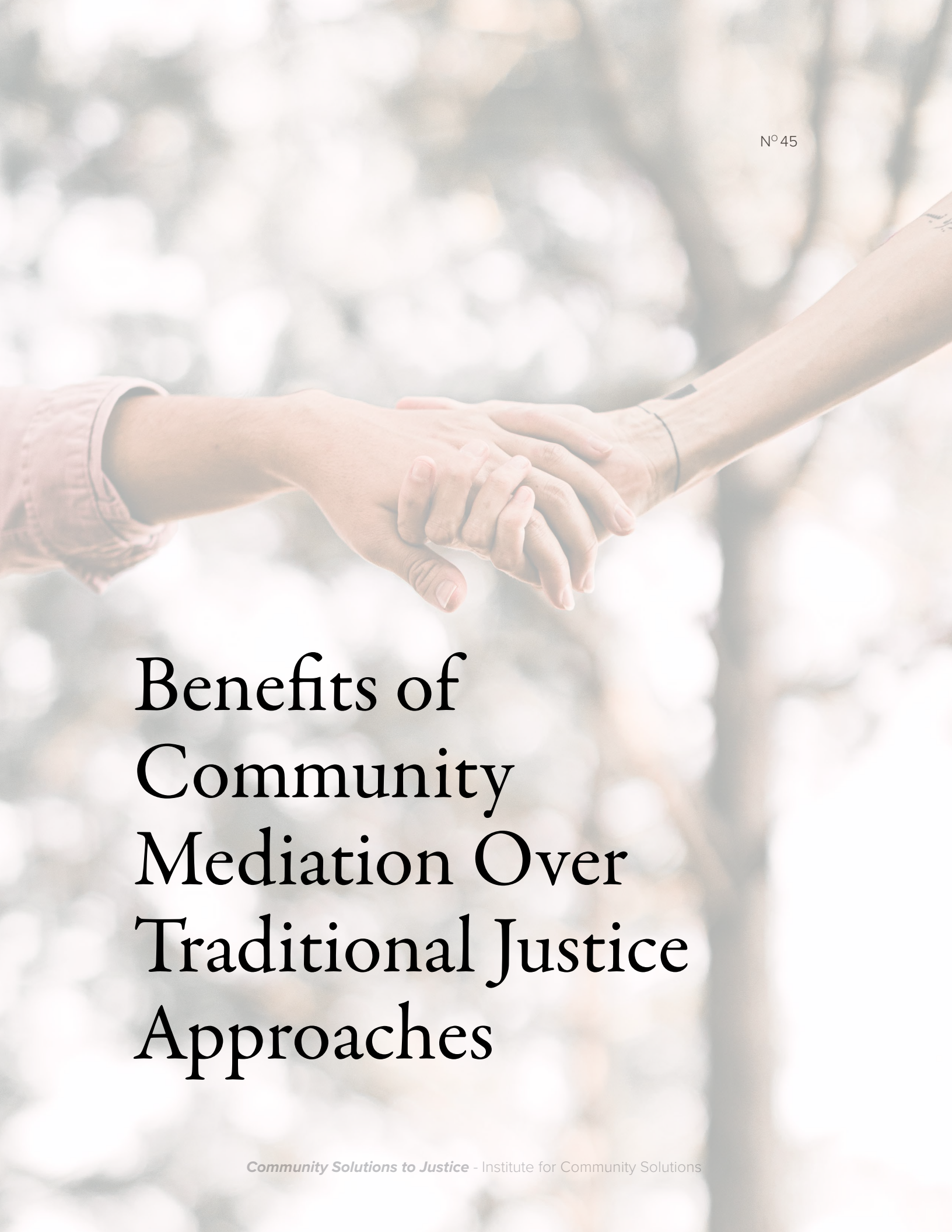
**3. Establish common ground** - The mediator attempts to establish commonalities between the parties over the case, including their interests, goals, and understanding of the events.

**4. Reach agreement** - Once the parties have all been heard and common ground established, the mediator works to create an agreement, usually legally binding, among the parties to resolve the dispute.

Some community mediation programs track the success of the agreement reached after a community mediation, and others simply rate the participants' satisfaction after the mediation has concluded.

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51 Burdine, Marje (1990) *Mediation Skills Manual: "How to Mediate a Dispute."* Vancouver: The Centre for Conflict Resolution Training, Justice Institute of B.C.



# Benefits of Community Mediation Over Traditional Justice Approaches

Community mediation appears to be the most promising candidate for speedy, fair and efficient justice. Limited research shows significantly reduced case processing times, costs, and an increased satisfaction with the process by all parties. Some studies even show greater likelihood for fulfilled agreements and reduced use of police services when community mediation is used. However, the lack of due process protections, public transparency, and the power imbalances present in mediations may limit the kinds of cases it can address.

## Short-term Benefits

### Reduced Case Processing Times

The starkest potential benefit of mediation is a significant reduction of case processing time. A 1979 study of five projects sponsored by the Florida Supreme Court found an average case processing time of 11 days for mediated cases.<sup>52</sup> In 2002, the Michigan Community Dispute Resolution program reported a case disposition time of 24 days. In 2003, New

York community mediation centers reported an average case processing time of only 18 days.<sup>53</sup>

### Reduced Case Costs

The second potential benefit of mediation might be the same or lower processing costs per case, especially if the cases are being processed faster. Determining the exact costs of court processing is challenging, which makes comparing the direct costs of mediation to court difficult, and is an area which researchers agree requires further study.<sup>54</sup> One 1985 study, which did make a direct comparison, found that the average case processing costs for the Durham, NC court system were \$186, while cases processed by the Durham Dispute Resolution Center only cost \$72.<sup>55</sup>

Other studies have looked at potential cost savings, instead of direct comparative analysis of case processing costs. A 2004 California study estimated that the community mediation programs would save \$1.4 million in San Diego, \$395,000 in Los Angeles, and \$9,770 in

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52 *The Citizen Dispute Settlement Process In Florida: A Study of Five Programs*. OJP. Florida Supreme Court. Accessed May 12, 2022. <https://www.ojp.gov/pdffiles1/Digitization/58274NCJRS.pdf>.

53 Rep. New York State Unified Court System. Office of Alternative Dispute Resolution Programs. *Community Dispute Resolution Centers Program 2002-2003 Annual Report*. 1. <https://www2.nycourts.gov/sites/default/files/document/files/2018-07/AR02-03.pdf>.

54 Charkoudian, L. and Bilick, M. (2015), *State of Knowledge: Community Mediation at a Crossroads*. Conflict Resolution Quarterly, 32: 233-276. <https://doi.org/10.1002/crq.21112>

55 Sheppard, B., *Report to Durham Dispute Settlement Center on the Comparative Costs of Going to Court vs. Mediation*. Durham, North Carolina. Duke University. 1985.



Sonoma based on averted judges' salaries.<sup>56</sup> The Task Force on Appellate Mediation in 2001 estimated a savings of \$6.2 million total for all mediated cases in the sample size.<sup>57</sup>

## Increased Perception of Fairness

The impact of perceptions of fairness cannot be overstated. There are not enough police to enforce all of the laws, so it is the belief that the justice system is impartial and fair that realistically gives judgements their power. A study of community mediation in Brooklyn found that both complainants (77%) and respondents (79%) found mediation outcomes a fairer process for all involved, as opposed to only 56-59% of complainants and respondents who went through a standard court process.<sup>58</sup> In a comparative study of three small claims courts in Maine, parties thought the judgment was fair in only 23.5% of adjudicated cases, while 44% thought it

was fair in mediated cases.<sup>59</sup>

## Increased Party Satisfaction

Perhaps because of the quicker dispositions of justice, greater perceptions of fairness, or simply the ability to have one's story heard in a safe environment, party satisfaction after mediation is also starkly better than that for traditional adjudication.

Several studies have compared participant satisfaction with the courts as opposed to community mediation. In the 1980 field test of Neighborhood Justice Centers in Atlanta and Kansas City, only 33% and 42%, respectively, of parties indicated that the courts had handled their case well. In contrast, 80% of participants in Neighborhood Justice Center mediations indicated they were satisfied with their mediation.<sup>60</sup> Similar studies in North Carolina (90%+ satisfaction rate)<sup>61</sup>, Nebraska (89% satisfaction rate)<sup>62</sup> and New York,

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56 *Rep. Evaluation of the Early Mediation Pilot Programs*. Judicial Council of California. Administrative Office of the Courts. February 27, 2004. XXII. <https://www.courts.ca.gov/documents/empprept.pdf>.

57 Stufflebeem, Cory William, *A New Method to Evaluate Community Based Mediation Programs: MultiAttribute Cost Utility Analysis (2013)*. Electronic Theses and Dissertations. 632. <https://digitalcommons.du.edu/etd/632>.

58 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/txtfiles/165698.txt>.

59 McEwen, Craig A, and Richard J Maiman. *Small Claims Mediation in Maine: An Empirical Assessment*. RSI. Resolution Systems Institute. Main Law Review, January 1, 1981. <https://www.aboutrsi.org/library/small-claims-mediation-in-maine-an-empirical-assessment>.

60 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/txtfiles/165698.txt>.

61 Clarke, S H, E Valente, and R R Mace. *Mediation of Interpersonal Disputes: An Evaluation of North Carolina's Programs*. Office of Justice Programs, 1992. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/mediation-interpersonal-disputes-evaluation-north-carolinas>.

62 *Nebraska Office of Dispute Resolution Annual Report, July 1994-June 1995*. OJP. Nebraska Office of Dispute

which found that 95% of those who reached agreement and even 63% of those who did not thought “mediation was a good way to attempt to resolve their dispute.”<sup>63</sup>

## Long-term Benefits

### Increased Fulfillment of Judgments

Mediation also has some interesting longer-term benefits over traditional court processes. First, and somewhat surprising given the coercive nature of court agreements, is that mediation agreements can be more likely to be fulfilled. In the same small-claims study in Maine, only 34% of judgements reached through adjudication were paid in full, compared to 71% of mediated cases.<sup>64</sup> In a different study of divorce mediation, only 6% of participants in mediation reported having serious disagreements about their settlement, while 34% of participants in traditional court processes had serious disagreements.

## Community Benefits

### Reduced Use of Police Services

Mediations also appear to reduce future reliance on police resources. An unpublished 1995 study found that, after mediation, calls for police service in Harrisburg, Pennsylvania decreased sharply.<sup>65</sup> Harrisburg’s police chief corroborated this study in testimony before the Pennsylvania House of Representatives:

“Through the NDSC referral network [a network of community mediation centers], dealing with interpersonal and neighborhood problems has benefited the Harrisburg Police Bureau by fewer calls to the same persons; fewer prosecutions at the district justice courts; more available patrol time for emergencies; and an increased rapport between the police and the community for the utilization of this new, community-oriented solution to an old problem.”<sup>66</sup>

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Resolution, 1995. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/nebraska-office-dispute-resolution-annual-report-july-1994-june>.

63 *Community Dispute Resolution Centers Program*. NyCourts. New York State Unified Court System, 2003. <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/AR02-03.pdf>.

64 McEwen, Craig A, and Richard J Maiman. *Small Claims Mediation in Maine: An Empirical Assessment*. RSI. Resolution Systems Institute. Main Law Review, January 1, 1981. <https://www.aboutrsi.org/library/small-claims-mediation-in-maine-an-empirical-assessment>.

65 Shepherd, R., *Neighborhood Dispute Settlement: An Evaluation Report of the Neighborhood Dispute Settlement Center’s Program with the City of Harrisburg Bureau of Police*, 1995.

66 McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S.

Further, many of the cases that utilize a significant amount of police resources are personal. People in conflict who get the police involved may do so numerous times, taking up a significant amount of police resources. A 2005 study looked into the effect of mediation on these conflicts, and found that calls to the Baltimore Police Department for each case dropped by an average of about 9 calls per case in the six months after mediation for the group that had their cases mediated, compared to the control group.<sup>67</sup>

## Reduced Likelihood of Returning to Court

Perhaps most importantly, there is some evidence that mediation actually reduces the likelihood that a conflict will return to court. One study of a court-connected mediation program found that misdemeanors addressed through mediation were nearly 5 times less likely to return to court in the subsequent year than cases that went through the regular court process.<sup>68</sup>

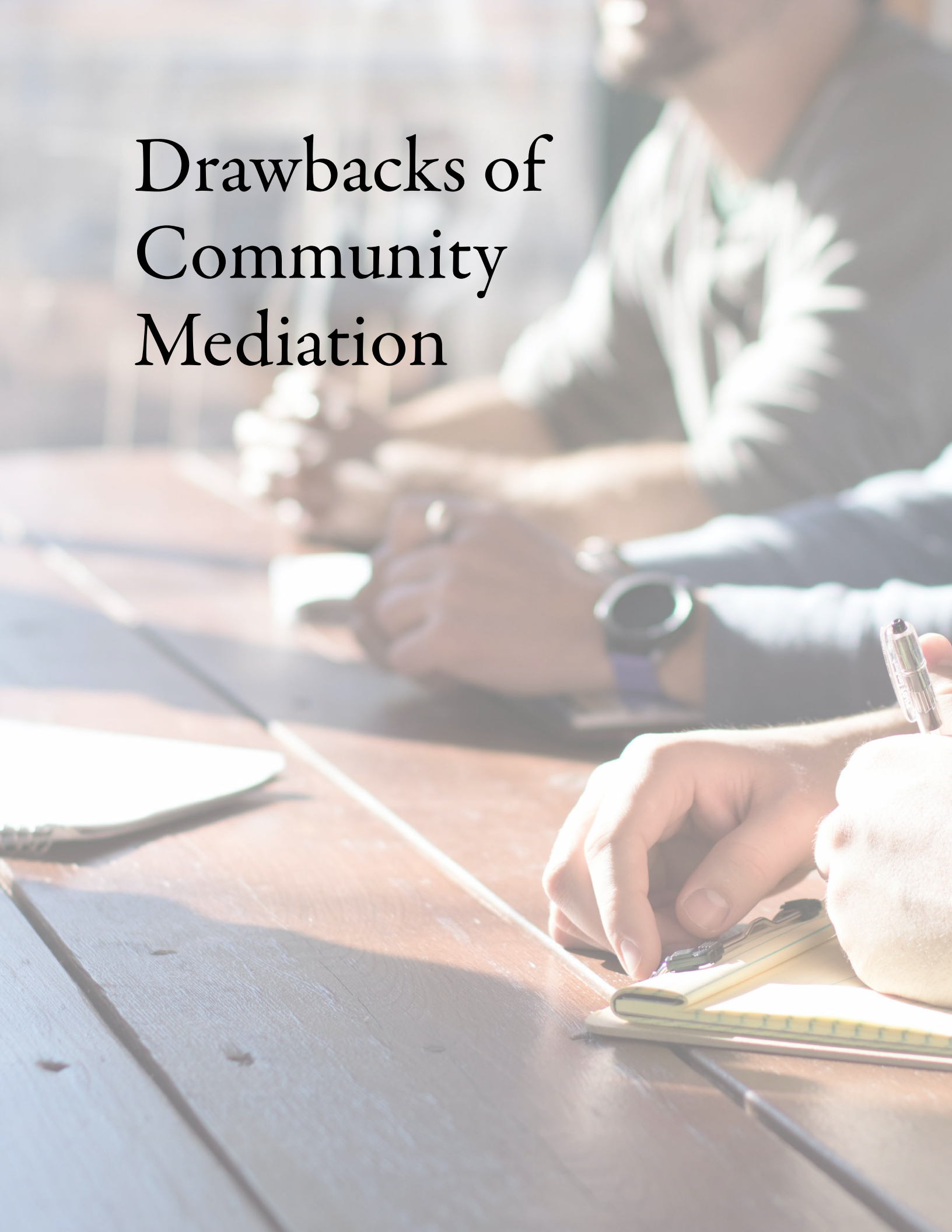
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Department of Justice , July 1997. <https://www.ncjrs.gov/txtfiles/165698.txt>.

67 Charkoudian, Lorig. *A Quantitative Analysis of the Effectiveness of Community Mediation in Decreasing Repeat Police Calls for Service*. *Conflict Resolution Quarterly* 23, no. 1 (2005): 87–98. <https://doi.org/10.1002/crq.126>.

68 Charkoudian, Lorig, Jamie Walter, Caroline Harmon-Darrow, and Justin Bernstein. *Mediation in Criminal Misdemeanor Cases*. *Criminology, Criminal Justice, Law & Society* 22, no. 3 (2021). <https://doi.org/10.54555/ccjls.3769.30144>.

# Drawbacks of Community Mediation



There are three criticisms of mediation worth considering before implementing this solution in your community: the lack of due process protections for the accused, the lack of public transparency, and the limitations of mediations with regards to conflicts where there is a significant power differential.

## Lack of Due Process Protections

The American judicial system, in contrast to many other judicial systems around the world, gives precedence to the innocence and rights of the accused. William Blackstone summed up the aims of the American judicial system well when he said “the law holds that it is better that 10 guilty persons escape, than that 1 innocent suffer.”<sup>69</sup> The Bill of Rights guarantees specific protections, such as the right to face your accuser, the right to see the evidence against you, and that you cannot be compelled to self-incriminate, and others have been interpreted by the courts throughout the years, such as the right to an attorney

in many proceedings. Federal and state sentencing guidelines that lay out detailed processes for protecting the rights of each party in traditional court processes run into the hundreds of pages.<sup>70</sup>

Few of these protections, and often only those imposed by individual state laws, exist in mediation. Critics argue that this lack of protections “allows more powerful interactants to gain the upper hand, and allows the powers that be to define and impose community norms and moral standards” in the mediation process.<sup>71</sup>

## Lack of Public Transparency

A second criticism to consider is that, in contrast to court cases, resolutions from mediation are confidential. Therefore, these resolutions do not create court precedents.<sup>72</sup> This may reduce the viability of mediation for addressing disputes in which there is a significant public interest, such as constitutional challenges, class action lawsuits, and conflicts between individuals and governments.

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69 Halvorsen, Vidar (2004) *Is it better that ten guilty persons go free than that one innocent person be convicted?*, *Criminal Justice Ethics*, 23:2, 3-13, DOI: 10.1080/0731129X.2004.9992168.

70 United States Sentencing Commission, *Guidelines Manual*, §3E1.1 (Nov. 2018).

71 Bottomley, A. (1985). *What is Happening to Family Law? A Feminist Critique of Conciliation*.

72 Nader, L., *Trading Justice for Harmony*. NIDR Forum (Winter 1992).

## May be Unsuitable for Certain Cases

Finally, while cases taken vary significantly from community mediation center to community mediation center, many observers oppose the use of mediation for cases where a significant power differential means one of the parties is unlikely to speak honestly and straightforwardly, or where it may continue a cycle of abuse, such as cases where one or more of the parties have a history of domestic violence.<sup>73</sup> Many mediation centers have developed procedures to screen out these kinds of cases for this specific reason.<sup>74</sup>

In cases like these, it may be more valuable to have the due process safeguards of the traditional court system in place to ensure each party gets a fair hearing.

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<sup>73</sup> *Mediation in Cases of Domestic Abuse: Helpful Option or Unacceptable Risk?* The Final Report of the Domestic Abuse and Mediation Project, Maine Court Mediation Service, January 1992.

<sup>74</sup> McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. New OJP Resources. U.S. Department of Justice, July 1997. <https://www.ncjrs.gov/txtfiles/165698.txt>.

# Community Mediation Program

## Summary

**Organization:** Dispute Resolution Center  
of Thurston County

- Program: **Community Mediation Program**
- Location: **Olympia, WA**
- Established: **1991**
- Cases per year: **2172**
- Case length: **35 days**
- Cost: **\$630/case**
- Impact: **46% of general civil cases in Thurston County, WA**

## Operations

- Staff: **14**
- Volunteers: **161**

## Support

- Community: **65%**
- Government: **35%**

## Impact Story - “We talked for the first time in 4 years.”

When “Jim” returned from active duty, he had a tough time communicating with his family. He and his wife, “Brooke,” were still married, but still lived a few blocks away from each other. They had two daughters together, aged 12 and 14 at the time. The girls told their mom that they didn’t want to go over to dad’s house anymore, because there were too many people coming and going, and that dad was checked out most of the time.

Brooke wanted an amicable divorce so she could move on with her life, and she wanted her kids to have regular, supervised contact with their father, but Jim wasn’t willing to do that. Brooke decided to call the Dispute Resolution Center of Thurston County. After talking to Brooke, DRCTC staff called Jim and encouraged him to try mediation.

In the first mediation session, Jim was slow to talk, and spoke quietly with few words. TDRC mediators worked hard to slow down the session and be attentive to him so he could respond and actively participate. Through the process, Jim was able to

clearly communicate that he wanted to see his kids regularly.

At the end of the session, Brooke and Jim were able to agree to have the girls visit him in a neutral place with Brooke present, and to attend another mediation session. Brooke said that was the first time her and Jim had talked in 4 years.

## History of the DRCTC

Evan Ferber, founder of the Dispute Resolution Center of Thurston County (DRCTC), describes himself as a hippie. “I started the center because I just believed that peace was possible,” he says. DRCTC was one of numerous dispute resolution centers formed in response to the 1984 Court Improvement Act, a response by the Washington state legislature to rising concerns about the cost and complexity of court proceedings. The 1984 act laid out the legal framework for alternative dispute resolution, including community mediation, in the state.

DRCTC opened its doors in 1991 with their community mediation program. Since then, the DRCTC has relieved Thurston County’s court system of over 120,000 potential,-



cases, and takes on 46% of Thurston County, WA's general civil caseload<sup>75</sup> - over 2,000 cases per year.

## How DRCTC's Mediation Program Works

At first, DRCTC's mediation program primarily received referrals from attorneys and other members of the court. "In the early days, the cases that were coming our way were judicial officers, attorneys basically saying to their clients 'You know what? You guys have a different way you can approach this. How about you call the dispute resolution center?'," says Jody Suhrbier, DRCTC's Executive Director.

Since then however, the center has worked hard to get more referrals directly from the community. Today, 55% of referrals to DRCTC contact them before they reach the justice system. "We really want to not just be a court-adjacent service," Jody says. "We actually do a lot of promotion and advertising where we get our name and our conflict resolution resource line out into the community."

The resource line is where a potential mediation starts. On the line, trained facilitators ask the caller pointed questions about their dispute, what actions they've already taken, and what potential solutions they have in mind. If

the caller wants to continue with mediation, the facilitators explain DRCTC's facilitative mediation model. "As much as we might like to believe that everybody understands what the facilitative mediation model is, there's a lot of confusion about it. Folks can very easily assume that they are coming to us to be their arbitrators, their judges, or even coming to us for an evaluative process. That's just not what we do," Jody says.

If the caller wants to continue with mediation, DRCTC facilitators will then reach out to the other party. This part can take awhile if the caller hasn't given the other party a heads-up that they will be contacted. "Sometimes [the caller] just gives us the contact info and we reach out cold. And that can take a little bit if folks weren't expecting us," Jody says.

After both parties have been contacted, a mediation is scheduled. Jody emphasizes that although some mediations are mandatory, the court only mandates that the parties show up, not that they mediate. DRCTC facilitators make sure the parties know the process is voluntary from there. "We emphasize for folks that while you were told to come, you have met your obligation to the court by showing up, but very rarely do parties choose to leave once the session has begun."

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<sup>75</sup> *Rep. Courts of Limited Jurisdiction 2019 Annual Report: Annual Caseload Report*. 176. Washington State Courts, 2020. <https://www.courts.wa.gov/caseload/content/archive/clj/Annual/2019.pdf>.

Once the parties enter mediation, DRCTC typically uses a two-facilitator mediation model. Jody says this helps ensure that their mediations are balanced. “Having two different individuals at the table can help balance the sense of what the process is for the parties. They can see that there isn’t just one person that I need to plead my case to, but rather that there are two facilitators, and very much a balanced approach as to who does what.”

In the mediation itself, DRCTC facilitators follow the facilitative mediation model. They start by informing parties of the legal guidelines around the mediation, namely that the mediation itself is confidential and that the agreement is legally binding when sent to the court. Then, they ask each party to share their version of the events, first with the facilitators, and then with each other.

Then, the parties enter negotiations, where they can ask questions of one another and start exploring solutions. “The bulk of the session is in negotiation,” Jody says. At that point, “it’s no longer time to state your case to us, but to consider what you’d like to ask of the person in front of you or the thing you might like to offer.”

At any time, either party can “caucus,” or have a private conversation with the facilitators to work through something or deal with a difficult issue. As the mediation is coming to an end, the facilitators will note down any agreements that are made and write up the settlement agreement. “Folks know in

advance it’s intended to be a legally binding agreement, so they’re really intended to hold it with high regard,” Jody says.

## Impact

<b>\$135</b> Per Case	<b>35</b> Days to disposition	<b>83%</b> Full or Partial Agreement
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There are two big indicators of the DRCTC mediation program’s impact over the years. The first one is the agreement rate. Over 83% of DRCTC mediations reach a partial or full agreement. However, Jody says, the agreement number isn’t the only thing they measure success by. “In our evaluations, that folks fill out when they’re done, we’re not just measuring whether or not they reached agreement because their own sense of satisfaction is a key part of it.” Even if mediation participants don’t reach a specific agreement, 90% of participants in DRCTC mediations say they are satisfied with the process.

Another big benefit of mediation is that it allows participants to create their own solution, Jody says. “It may be a rare occasion for them to truly have a voice in their conflict and feel empowered to address it. But in mediation “[they] have that self determination to come up with an outcome that is truly theirs.” Participants can also learn how to handle their own conflicts just by watching the facil-

itators' example. "We also get a lot of feedback from folks that they just so appreciate being around the mediators, because there's just something about being with skillful facilitators where you notice these people just being calm and interactive with one another and it can't help but influence your behavior, at least somewhat, as well," she says.

This leads into one of DRCTC's greatest impacts, which is that the skills participants learn in mediation often spread far beyond the mediation they are in. "For instance, folks will say I took your training 15 years ago and now I serve on this committee at my church and I found myself using the golden questions." Jody says that is DRCTC's ultimate goal. "Our vision is that everybody has these skills and uses them. We don't want to mediate for the whole community."

On average, every DRCTC mediation is completed within 35 days of referral. They charge each mediation participant \$165, on average, from a sliding scale based on income and ability to pay, while the actual cost to the DRCTC per mediation is \$630/case.

## Why it Works

The number one reason DRCTC's mediation program works, Jody says, is that it's a community effort where the mediators are made up of the community and representative of the community. "When you can effectively hold this constantly changing mix of over a

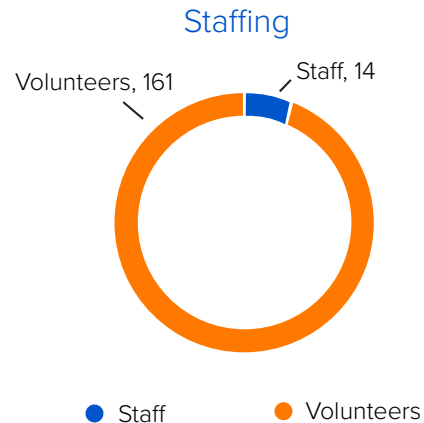
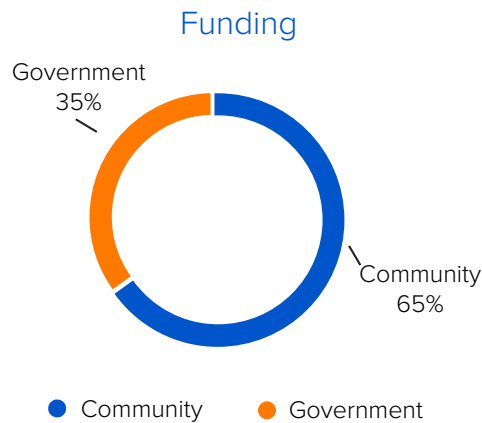
hundred volunteers and keep everybody going in the same direction while learning from one another, it just makes for a really rich process."

That community learning is the second thing that makes DRCTC's mediation program work. "All throughout the process from training, to certification, to recertification, there's always this commitment to learning and growing and benefiting from the wisdom of those around us," Jody says. "I think that is what makes us work and what makes our process continue to be honed and really just consistently appropriate and effective."

These two things combine to help drive the sense of purpose for everyone at DRCTC, Jody says. "If you have both of those things, where you have this deep commitment to the place where you live and you have this wonderful learning community that continues to develop and grow together, it creates a sense of family, a sense of purpose."

## Funding and Support

DRCTC's mediation program is 65% community supported, including voluntary donations, volunteer hours, and fees for services, and receives 35% of its income from state and local government contracts and grants.



14 staff are involved in the program. DRCTC staff cover about half of the center’s mediation intakes, follow-up with parties, participate in some mediations, and provide volunteer support. DRCTC’s 161 volunteers serve as mediators and handle about half of the intake and preparation needed for mediations.

For advice on implementing a similar program in your community, contact the DRCTC at <https://www.mediatethurston.org/>.

## How to Implement a Community Mediation Program in Your Community

Jody’s advice for implementing a similar program is to focus on the main thing that makes community mediation work - community. “It comes down to a lot of the same things that are going to make a community mediation center thrive in the future. It’s having a real strong understanding and commitment to the core tenets of what it means to have a community mediation center, as far as being community-based, accessible, and representative of the community, not just being an arm of the court, and then committing to setting up programs and services that are in line with what the community most needs and wants to be strong and thriving.”

# Presumptive Mediation Program

## Summary

**Organization:** New York Peace Institute

- Program: **Small Claims Presumptive Mediation Program**
- Location: **New York, NY**
- Established: **2019**
- Cases per year: **300**
- Case length: **45 days**
- Cost: **\$186/case on average**
- Impact: **51% of participants reach agreement, 80% of participants satisfied with the mediation process**

## Operations

- Staff: **5**
- Volunteers: **81**

## Support

- Community: **54%**
- Government: **46%**

## Impact Story - Funeral Home Removes Charges

When her mother passed away in 2020, “Nancy’s” life insurance company paid equal claims to her and her brother. However, when her brother didn’t pay for his half of their mother’s funeral, the funeral home charged Nancy the full amount, which she couldn’t pay. She tried contacting the credit card company to address the error, but since it was a legitimate charge they wouldn’t help.

When she tried contacting the funeral home to get it addressed, the funeral company was willing to talk with her, but not willing to give up the full cost of the funeral. Nancy went to the Richmond County, NY small claims court and filed suit.

Because of the New York State Court’s presumptive mediation initiative, she was diverted to the New York Peace Institute’s presumptive mediation program, where she attended a mediation with the funeral home. In the session, the funeral home was able to plead its case as well. They were a family-owned business that had

been in business for 40 years, and while they didn’t want to make people unhappy, it would be a difficult loss for them to give up the whole amount.

In the mediation, Nancy got to talk about her relationship with her brother, how he was generally considered the “black sheep” of the family, and that it wouldn’t be worth the time for the funeral home to go after him. At the end of the mediation, both parties felt heard, and the funeral home ended up not only removing the charge from her credit card, but giving her back her portion of the funeral costs as well.

## History of the Small Claims Presumptive Mediation Program

While the New York Peace Institute (NYPI) has always handled some small claims cases as part of its mediation programs, NYPI’s small claims presumptive mediation program began in 2019. As part of her Excellence Initiative to reduce court backlogs and increase court efficiency, New York State Chief Judge Janet DiFiore intro-

duced presumptive small-claims mediation into the New York State Courts.<sup>76</sup> In partnership with dispute resolution centers across the state, including the New York Peace Institute, NY State Courts started referring most small-claims cases to alternative dispute resolution processes, including mediation, as an initial step before court.<sup>77</sup>

During the COVID-19 pandemic NYPI's presumptive mediation program continued, mediating disputes throughout the court shutdowns.<sup>78</sup> In September 2020, the New York City (NYC) court system, facing an overwhelming backlog of cases, started sending all small claims cases to NY mediation centers, including NYPI's presumptive mediation program, for resolution. To date, NYPI's presumptive mediation program has taken 626 cases, and continues to take 40-50 cases a month off of the dockets of small claims courts in all five boroughs of NYC. How NYPI's Small Claims Presumptive Mediation Program Works

Unlike most mediation programs, which are entirely voluntary, presumptive mediation requires parties to be referred to mediation before they can continue their claim in court.

In New York, parties can choose to opt out of the process after referral, and are not required to stay for any length of time or mediate with the other party. Nicholas Schmitt, Esq., NYPI's Program Manager for Civil and Housing Court, says they make it clear to parties that the mediation itself is voluntary. "The concern with mandatory mediation has always been people won't participate solely because they're required to. They won't necessarily be there in good faith. We try to come up with reasons for people to want to participate, but if they just flatly refuse, we send those cases back to court."

All referrals to the presumptive remediation program come directly from the NYC court system. When someone goes to file a claim in a NYC small claims court, they receive an email from the court diverting them to mediation, which is quickly followed up by an email from NYPI. "That email from us asks them to give us a time [to talk] and tells them we're excited to talk about the mediation process," Nick says.

On the initial call to each party, NYPI staff explain the mediation process and answer

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76 Billingham-Hemminger, Savannah. *Update: ADR Breakfast on New York State's Presumptive Mediation Implementation*. CPR ADR, July 16, 2019. <https://blog.cpradr.org/2019/07/16/update-adr-breakfast-on-new-york-states-presumptive-mediation-implementation/>.

77 Marks, Lawrence. *Court-Sponsored Alternative Dispute Resolution and Access to Justice*. New York Law Journal. April 28, 2022. Accessed September 25th, 2022. <https://www.law.com/newyorklawjournal/2022/04/28/court-sponsored-alternative-dispute-resolution-and-access-to-justice/?sreturn=20220825162513>.

78 *Ibid.*

any questions the parties may have. Once the parties agree to a time to meet, NYPI staff sends an email out to their hundreds of volunteer mediators to set up a time for the mediation. All small claims mediations are held remotely. “95% of the time it’s Zoom, maybe 5% of the time we do teleconference mediation,” Nick says.

NYPI follows the facilitative mediation model, but leaves significant flexibility for its volunteer mediators. “We try to allow for freedom and for the parties to lead the process as much as possible” Nick says.

Typically, a small claims mediation starts with an opening statement from the mediator. Then, the mediator allows both parties to talk about their side of the story. From there, mediators will start working with the parties to generate options.

During the options generating portion, Nick says the options created can be surprising. “It was common to have people who sued for the statutory limit in small claims, which is \$10,000 in New York City. But they only had, for example, \$321 in actual damage and the rest is pain and suffering,” he says. “So those are interesting conversations because, you know, a \$10,000 claim might settle for \$300, plus some small amount for pain and suffering when you could assume, purely from the amount sued for, it would settle for maybe \$5,000.”

If the parties come to an agreement, the parties sign and the mediators send the completed agreement to the originating court.

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## Impact

<b>\$186</b> Per Case	<b>45</b> Days to disposition	<b>51%</b> Agreement Rate
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We were not able to confirm whether or not there are small claims backlogs in any of NYC’s five boroughs. According to Nick, the presumptive mediation program, in partnership with other nonprofits, virtually eliminated the backlog of court cases in those courts. “When we first started this program, [the NYC court system had a backlog] in the thousands of cases. Now, there’s no backlog,” he says.

While only 51% of small claims participants reach some kind of agreement by the end of the process, Nick says that the satisfaction of the parties involved is more important than any specific agreement. “We would rather a person leave the table with a proposal they want to consider rather than a signed agreement they might have second thoughts about down the road.”

Party satisfaction rates in the program are high. A little over 80% of small claims mediation participants agreed that the process was valuable and that they would recommend mediation to others. Nick says the first reason is because of the amount of time the parties get in mediation. “107 minutes tends to be the average, which is way more time than they’d get in front of a small claims court judge,” he says.



The second reason is that NYPI mediators are “able to give them the opportunity to talk about not just that they want money, but who they are as a person, how they want to be seen as a person, how this conflict has impacted them, what, any amount of money, if they were to get it, how that impacts them, how not having the money has impacted them, how not having the thing, if it’s not about money, has impacted them.”

Some harder to measure impacts of the program, Nick says, are the conflicts prevented in the future by going to mediation. “We do know that one conflict, like a conflict between two people, winds up impacting something like nine other people in their sphere of influence.”

This also extends to preventing future violent conflicts. One small claims dispute NYPI mediated centered around a dog bite, where the party being sued had agreed to pay for the medical expenses of the claimant, but had not. “After they signed the agreement and shook hands, the guy said, you know, I’m glad we came to an agreement because if we hadn’t come to an agreement, I would have had to break in and rob you. And he was not joking, he was a hundred percent serious,” he says. “I don’t know how often people come to an agreement and wind up not getting robbed because of that agreement, but there are police that don’t have to get involved in a situation, there are people living in the house who would have been im-

pacted, and there could have been criminal justice system involvement. That didn’t have to happen because they came to an agreement.”

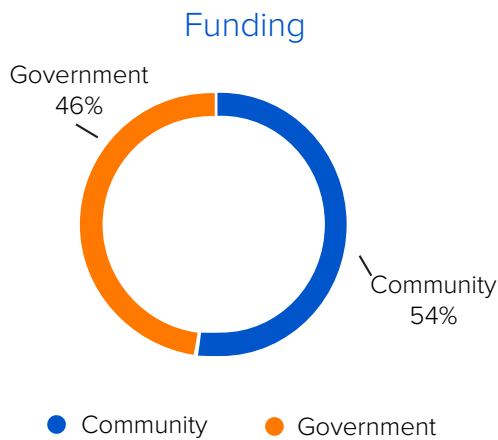
On average, NYPI’s program’s time from referral to resolution is 45 days. While NYPI doesn’t charge litigants anything to attend a mediation, each case costs NYPI approximately \$186.

## Why it Works

The first reason Nick says the small claims program works is because of the centralized referral process from the small claims courts. “Without that, things would be scattershot. Courts in one borough might be sending lots of cases, but courts in another might be sending zero, which would mean that people living in that borough wouldn’t get the service.”

The second reason is the dedication of everyone to the program. “Without the dedication of all the people who are trying to make this work, the courts, the law schools, our organization, the referrals wouldn’t matter. People wouldn’t be getting phone calls. They wouldn’t be calling people up to do the mediations.”

This extends to the volunteer mediators, who Nick says really drive the program’s impact. “Some of our mediators have been doing this for 20 years, not necessarily in small claims



court, but mediating for 20 years. Without the mediators, I don't know that we would have the same response rates, the same agreement rates, the same ability to have people understand each other."

## Funding and Support

NYPI doesn't track specific funding for each program, but the organization is 54% community supported, including voluntary donations, volunteer hours, and fees for services, and receives 46% of its income from state and local government grants.

5 part-time staff are involved in the program, and handle administrative work, contacts with parties, scheduling, communicating with court staff, and conducting mediations as needed. All of the small claims mediations are mediated by NYPI's 81 trained volunteer mediators.

## How to Implement a Community Mediation Program in Your Community

For anyone who wants to implement a similar mediation program in their community, the

first thing Nick recommends is to intervene as early as possible. "I'm a big fan of getting in as early as possible. If there were a way to implement this before a small claims case has been filed, I would encourage people to think about that."

The second thing is to get as many volunteers involved as early as possible. "We were lucky in that we already had a pretty large group of people who were trained to do cases like this. But if we hadn't been, we would've had a lot of issues trying to be responsive."

Another important thing to consider is how to make the follow-up with litigants as quick as possible. "We try to do our initial outreach less than 24 hours after the [first] email goes out. Because otherwise what happens is even if people are interested, they stop responding," he says. Nick suggests being open to communicating with the parties in as many ways as possible "We email, we follow and we text, we do everything," he says.

For advice on implementing a similar program in your community, contact NYPI at <https://nypeace.org/>.