

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.⁷⁶ 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.⁷⁷

During the COVID-19 pandemic NYPI's presumptive mediation program continued, mediating disputes throughout the court shutdowns.⁷⁸ 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

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.

Nº 62

Impact

\$186 Per Case	45 Days to disposition	51% 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.”

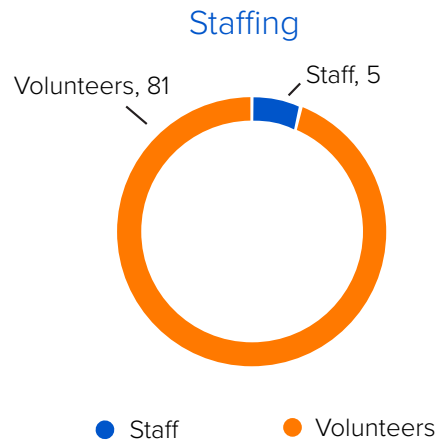
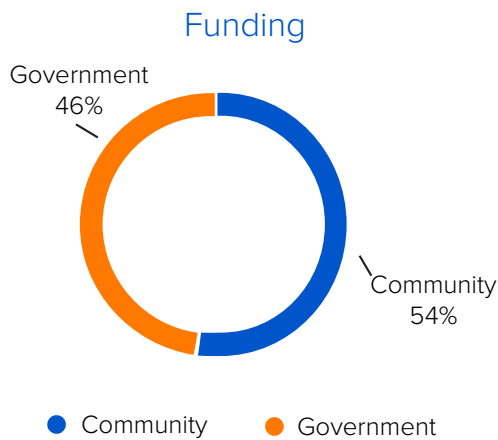
On average, NYPI’s program’s time from referral to resolution is 45 days. While NYPI doesn’t charge litigants anything to attend a mediation, each case costs NYPI approximately \$186.

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/>.