

Examining the Dispute Resolution Section Pro Bono Mediation Project Lessons learned and a plan for the future

BY: SHERRILL HAYES, PHD

Hayes, S. (2008). Examining the Dispute Resolution Section Pro Bono Mediation Project: Lessons learned and a plan for the future. *Dispute Resolution*. 23(1), 5-7.

Made available courtesy of North Carolina Bar Association: <http://www.ncbar.gov/index.asp>

*****Note: Figures may be missing from this format of the document**

“If we knew what it was we were doing, it would not be called research, would it?”
- Albert Einstein

From its inception in the autumn of 2008, of the Dispute Resolution Section’s Pro-Bono Mediation Project represented the best type of collaboration between members of the Dispute Resolution Section and community organizations, one designed to improve the lives of the citizens of North Carolina through the use of alternative dispute resolution. Every option explored and decision made was done in the spirit of the 4ALL Campaign. Those involved have the leadership of the North Carolina Bar Association to thank for their vision and leadership in implementing such an innovative and needed project.

Although the project did not reach the conclusion envisioned, all those involved believe that the process provided a valuable experience in program planning that could be used by groups or other sections working on community based projects. In that spirit, this article presents the committee’s perspective on the processes, relationships, steps, and potential pitfalls for developing projects across the state. The conclusion of the article provides some specific suggestions based on several different potential program models. In the words of the author Louis L’Amour, “Sometimes we have the dream but we are not ourselves ready for the dream. We have to grow to meet it.”

Background and Development of the Project

Lynn Gullick, then chair of the Dispute Resolution Section, asked Dr. Joseph E. Johnson, professor Emeritus of the Bryan School of Business and Economics at the University of North Carolina at Greensboro and a non-attorney member of the Dispute Resolution Section, to undertake the development and coordination of a program for the 4ALL campaign. In the initial stages Gullick and Johnson brainstormed and reviewed projects in several prospective fields, including medical expenses cases, for possible pro bono mediation pilot projects. Most of these proved to have pre-existing programs or processes in place (e.g. binding arbitration clauses), which made them inappropriate for a new mediation program.

At the December 2007 section council meeting, a number of volunteers formed a committee to work with Johnson and Gullick after an inspirational presentation about the 4ALL Initiative by NCBA Immediate Past-President Janet Ward Black. These volunteers included, Lesley McCandless, Judge Melzer “Pat” Morgan, and Dr. Sherrill Hayes. This committee went to work immediately identifying possible referral sources, locations, and developing program forms and materials. Members had meetings with representatives from local schools, courts, and the non-profit community and monitored progress through the use of email and weekly teleconferences.

By the February section council meeting, much of the structure of the program had already been developed and included a client referral source, forms, materials for clients and counsel, a location, and an evaluation strategy. During this meeting, committee members requested names of mediators who were interested in participating and available on that day. It was also suggested that in collaboration with the Pro Bono Committee of the

section, chaired by Judge Morgan, and some questions regarding the ethics of offering pro bono mediation should be submitted to the Dispute Resolution Commission. After the February section council meeting, the committee continued to solicit names of mediators, worked tirelessly on refining the forms, obtained security and liability information about the identified site for the program, and developed the tools for the evaluation.

A critical stage in this project was the development of a relationship with Legal Aid of North Carolina (LANC), working with them to secure referrals, and enlisting their help in developing a relationship with the non-LANC represented clients. Without the consent of the “other” party in these cases, the mediation process could not proceed. Janet McCauley Blue provided a list and brief descriptions of 10 potential cases to Judge Morgan. Judge Morgan and Gullick began this process with a letter to counsel sent on NCBA letterhead provided by Deidre Lewis, staff liaison to the Dispute Resolution Section. In addition to the letter, both had some telephone contact with the counsel and, ultimately, McCauley Blue also spoke with them during this process.

At this point in the process, the plan and partnerships were established and all that remained was the convergence of mediators and cases. Unfortunately, this most critical piece was the part that did not materialize as envisioned. A number of barriers, described below, resulted ultimately in only one case of the original 10 and participants in that case were unavailable on the planned day. Although the committee was disappointed, they believed that the plan, forms, and partnerships developed were too valuable to forget.

Project Plan

This project was the contribution of the members of the Dispute Resolution Section of the NCBA towards the inaugural 4ALL state-wide public service day; mediation services were offered free (pro bono) in recognition of the responsibility of the legal profession to offer services to North Carolina citizens of lesser means.

The basic structure of the program:

- **Date:** Free mediations offered in Greensboro on Saturday, April 5, 2008 beginning at 10:00 a.m.
- **Mediators:** Cases mediated by North Carolina Dispute Resolution Commission certified mediators. These mediators provided their names to committee members and were added to a list of volunteers who were willing and available to participate. Some mediators on the list were invited by committee members.
- **Partners:** The principle partner in this effort was the Greensboro LANC office. Other partners were sought with regards to: finding suitable locations for the mediations to take place (space in the Bardolph Center made available by Senior Resources of Guilford & Family Life Council); organizations who may be interested in working with the program if it continued (Conflict Resolution Program, University of North Carolina at Greensboro & Mediation Services of Guilford County, One Step Further, Inc.)
- **Sustainability of the program:** This pilot program was to serve as a model for similar offerings in other urban and in rural areas of North Carolina. This was to be achieved through an evaluation of the program completed by faculty and graduate students from the Conflict Resolution Program at the University of North Carolina at Greensboro.

Role of Community Partners

Partnering with LANC was critical to the development of this program. Their liaisons were a vital resource not only in terms of case referrals, but in helping to promote the project to their staff attorneys and with the opposing attorneys. If this program were to continue in the future or become a model for similar projects elsewhere, collaboration with a local LANC office is essential.

A fortuitous result of developing this project was meeting, developing and in some cases, deepening relationships with community partners. Committee members generally drew on their personal networks of community contacts. During the course of the project, members met with staff from Guilford County Schools, Guilford Technical Community College, Senior Resources of Guilford, Family Life Council, One Step Further, and UNC-Greensboro. Ultimately, space was secured at the Bardolph Center in downtown Greensboro through

a partnership with Senior Resources of Guilford and the Family Life Council. An interesting point about all of these organizations is that they are all community based, educational or nonprofit institutions, who are familiar with the serving the needs of populations either in conflict or underserved.

Although not all of these organizations were involved in the final plan, the immeasurable influence of projects like this on community awareness of mediation and the Dispute Resolution Section of the Bar Association is important. It is probable that existing connections with these organizations could be maintained and if this project were to be modeled elsewhere, it would be essential for those involved in developing the project to use their own community networks and ensure that the organizations involved would be supportive of the project.

Evaluation of Project

Since no mediations took place, there was no data available for the results of the mediations; however, this was only one aspect of the evaluation. Information was available from committee members and project partners on their beliefs and experiences about the project and on the potential for moving this project forward.

Strengths of the Project

Conversations with project partners and committee members highlighted several strengths of this project.

- Providing a needed service.
- Speed at which the project was envisioned, designed, and organized.
- Utilizing the strengths of the group members to great advantage.
- Demonstrating that e-mail and phone conferencing can be effective ways of collaborating (good for statewide committees and helping those in remote locations).

The program also:

- Developed quality materials for use in the program.
- Identified a location that was accessible and neutral.
- Required little time commitment/ involvement from partners providing location.

Based on these results, it is clear that project partners were enthusiastic about the prospects of the program and felt included – not burdened – by the process. While committee members were very busy at different times, each member was able to utilize their particular strengths. The use of telephone conferencing facilities and e-mail was truly the only way that this project was able to take place.

Barriers to Conflict Resolution Day

Based on the experiences of this project, it appears that the principle barriers were (1) the original amount of cases and (2) the time frame in which participants had to mediate. The committee felt that if we had been able to start with a larger number of cases (e.g. 20 instead of 10) that attrition typically expected in mediation programs would not have been felt so significantly. Attrition occurred for a number of reasons including unwillingness to mediate, settlement prior to mediation, and scheduling date incompatibilities. The choice of a single date on which to hold the cases may have been as damaging to the project the limited number of cases, although without knowing more about the reasoning behind some of the decisions not to mediate it is difficult to tell if there was a single issue that had the greatest impact.

Experiences and impressions of project

The overall experience of this project is probably best summarized by an excerpt from an e-mail sent by Lynn Gullick to the committee members after the final decision to cancel the pilot project:

“...I am so grateful for your hard work and effort to develop this innovative mediation program. I believe we have learned many valuable lessons in the design and implementation phase. More importantly we have discovered how to partner with other organizations in order to develop a blueprint for the future. The time constraint of a one-time, one-day voluntary program was our biggest liability. I believe this group has a design

which can offer a real structure for future partnership between legal aid, private attorneys, pro-bono mediators, university conflict resolution programs and other community organizations to open a dialogue and resolve conflicts. The written material produced by this group is outstanding.” (Gullick, March 25, 2008)

Conclusions and Recommendations

Based on the experiences of this project, presented below are considerations and recommendations for future implementation and developing the sustainability of this and other projects. There are two possible models that could work with some differing considerations. One model would be for groups that follow the original plan for this group a “single day” model. The other model would be to follow a “continuous case” model.

Recommendations for all projects

- Have your referral source (e.g. Legal Aid, Hospital, nonprofit agency, business, etc.) explain the types of cases expected and let prospective mediators know. For example, in this project landlord tenant cases were most expected, but certain consumer/home repair cases would also have been appropriate.
- Expect attrition and have referral sources identify at least twice as many cases as you would intend to mediate to allow for case attrition. Identify 20 cases if you intend to mediate 10.
- Identifying a funding source to cover the costs of the meetings and/or travel necessary to establish project and contact with partner organizations. Items to consider: conference calls, use of alternate technology (e.g. Skype, Web based meeting applications),
- Establishing a process for or identifying a group member who can increase “buy- in” and participation of non-legal aid represented clients, attorneys, and prose clients.
- Include some element of mediator and program evaluation, possibly in addition to the required DRC forms. Demonstrating efficacy is crucial to obtaining or retaining funding for probono efforts.

For those projects who want to use a “single day” model

- Establish at least a four to sixth month time frame for obtaining cases. This should allow for attorneys and clients to plan far enough in advance to be available on a specific day.
- Find a location prior to recruiting cases that are suitable for the total number of cases (include breakout rooms, providing for breaks/snacks etc.).
- Ensure that the location is neutral or non-threatening for participants, accessible by public transportation, and accessible for those with special physical and health care needs.

For those projects who choose a “continuous case” model

- Offer multiple times and dates for mediations to take place.
- Continuous case model would appear to work best by providing referral sources with a list of mediators willing to conduct pro bono mediations. This situation may result in some mediators being called on to do this work more than one time each year.
- The continuous case model may require more administrative work on behalf of the pro bono mediators since they would be responsible for coordinating calendars and finding locations since these are two structural issues avoided by the single day model.