

Community Dispute Resolution Programs Operational Guidelines

Amended 11/01

The Community Dispute Resolution Program is an effort to utilize, when appropriate, voluntary dispute resolution processes instead of traditional and formal judicial processes for disputes of the kind that are common in neighborhoods, such as those involving neighbors, relatives, landlords and tenants, consumers, and like disputes concerning relations within a community.

The qualifications of mediators and arbitrators are designed with the assumption that volunteers will serve as neutrals for these limited categories of disputes. Centers are encouraged to select volunteers who represent the diversity within communities and who come from a wide range of cultural, educational, and employment backgrounds. It is recognized that voluntary dispute resolution may be appropriate for many other categories of disputes and separate development of that potential by other programs, both public and private is encouraged.

1.00 DEFINITIONS

- 1.01 **Center** – Community dispute resolution center which emphasizes the use of volunteer neutrals in providing dispute resolution services and does not attempt to resolve disputes which are identified as exclusions in Minn. Stat. 2001, § 494.03 and in § 5.01 of these guidelines.
- 1.02 **Mediator** – Impartial person or persons who facilitate the voluntary resolution of a dispute.
- 1.03 **Settlement Agreement** – A written document that sets forth the settlement of the issues and the future responsibilities, if any, of each party.
- 1.04 **Dispute Resolution** – A process voluntarily entered by the parties to a dispute to resolve the dispute through agreement or a third-party decision.
- 1.05 **Certification** – The process through which a Center becomes eligible to receive court referrals in accordance with Minn. Stat. 2001, § 494.015, etc., (Community Dispute Resolution Program) and these guidelines.
- 1.06 **Court Referral** – Any action by a court or by any part of the criminal justice system suggesting use of the services of a Center.

- 1.07 **Criminal Justice System** – This includes law enforcement, the prosecution, the defense, the courts, and corrections.

2.00 GENERAL PROVISIONS

To be certified, a Center must comply with the following provisions:

- 2.01 Provide dispute resolution processes when the participants voluntarily agree.

Commentary: A Center must make every effort to ensure that participation is voluntary in order to preserve the legal rights of the parties to the dispute and to enhance the opportunity for the successful settlement. During the initial interview and in the introductory letters to the parties, it shall be stressed that participation is voluntary, and unless the parties agree otherwise, either party can withdraw from the process at any time. Each party should be informed that the dispute resolution process will not replace the judicial process, but that it is an attempt to settle the dispute out of court and, if no mediation or arbitration agreement is reached or if a subsequent need arises, either party may return to court.

- 2.02 Provide dispute resolution in a simple, informal format for a prompt resolution of certain civil or criminal matters. If a Center receives referrals of criminal cases, the program must have the approval of appropriate criminal justice authorities. It must meet with appropriate representatives from within that system and mutually develop and agree to written rules of procedure which govern all aspects of the dispute resolution process, from referral and intake through the enforcement of the settlement agreement. The rules must ensure that the legal rights of defendants or potential defendants are protected and that agreement to participate is voluntary and has been secured in a non-coercive atmosphere. The rules must also ensure that the requirements of the criminal justice system are met and that the legal rights of victims are protected.

Commentary: The requirements of the criminal justice system will vary depending on when the dispute is referred. If referred after a complaint is filed, for example, the system will have different procedural requirements than if the dispute is referred to a Center before a complaint has been filed. Such variations should be contemplated in the development of the rules.

- 2.03 Provide dispute resolution at a convenient and neutral place and at a time as convenient as possible for the parties, including nights and weekends.

2.04 Respond to the particular needs of the participants, including but not limited to, offering dispute resolution in languages other than English and offering facilities accessible to handicapped participants.

Commentary: For example, if the facilities at a Center are not accessible to a person with a disability, the Center shall accommodate that person by scheduling sessions, etc., at a facility, which is accessible.

2.05 Provide dispute resolution for all clients regardless of the ability to pay.

Commentary: A Center is not prohibited from charging a fee to participants when appropriate. However, services must be provided to indigent parties without cost. A Center will define “indigence” using federal legal assistance income and family-size guidelines. If a Center charges a fee, its fee policy shall be written and provided to the parties to the dispute.

2.06 Provide the parties to the dispute referral information regarding nonprofit entities or public agencies when the services of a Center are not appropriate.

Commentary: A list of referral entities and agencies should be available for Center personnel.

2.07 If a Center refers disputes to the private sector, it must develop a written policy for naming such referrals.

2.08 Provide to the parties to the dispute, in advance of the scheduled session, a written statement describing the dispute resolution process and its voluntary nature and

- (1) a brief description of the dispute;
- (2) a statement explaining that the neutral cannot be a witness in subsequent judicial or administrative proceedings and that communications during the dispute resolution process cannot be used in judicial or administrative proceedings; and
- (3) a statement explaining the binding or non-binding effect of the settlement agreement.

Commentary: A Center should ask the participants to sign a statement that they have received and understand this information.

2.09 If arbitration is the chosen dispute resolution process, in advance of the scheduled session, a Center must also provide the parties to the dispute with a written statement that they may call and examine witnesses.

Commentary: Items 2.08 and 2.09 do not imply that parties are prohibited from calling witnesses to a mediation session but, given the process of mediation, parties should not be encouraged to call witnesses to mediation.

2.10 Provide impartial, trained neutrals that shall seek informally to facilitate negotiation by the parties themselves to achieve a voluntary resolution of the issues or who issue a third-party decision when the parties agree it is appropriate to do so. A neutral must disclose to the parties to the dispute any conflict of interest of which he is aware and he shall not participate if the parties object.

2.11 Develop written procedures and policies governing the methods of dispute resolution it provides.

Commentary: If mediation is offered, the Center should ensure that it is conducted informally. Although it is not customary to present witnesses, the parties should be allowed to present documents or records. It is recommended that direct involvement of attorneys be discouraged, although no party should be denied the right to have an attorney present or to consult with an attorney.

If arbitration is offered, the formalities should be kept to a minimum and strict rules of evidence should not be followed. Hearings should be conducted by the arbitrator in a manner that permits a fair and complete presentation by the parties. Usually the complaining party presents its case first, although the burden of proof should not be on one side more than the other. Witnesses may be presented and cross-examined.

2.12 Provide to the parties to the dispute during or at the conclusion of the dispute resolution process, a written agreement or decision, signed by the parties and dated setting forth the settlement of the issues and future responsibilities of each party. The written agreement at the end of a mediated dispute will indicate the agreement of the parties as to the binding effect of the agreement. The written agreement to arbitrate executed by the parties prior to entering into arbitration will contain the agreement of the parties as to the binding effect of the arbitrator's decision.

Commentary: To preserve the confidentiality of the process, the settlement agreement should specifically relate to the above and it should not contain surplus information that arose during the process.

2.13 Not indicate or state in its advertisements or promotions to the general public that it has received certification from the state and a neutral shall not make any reference to state certification.

3.00 CONFIDENTIALITY OF COMMUNICATIONS

Any communication relating to the subject matter of the dispute by any participant during dispute resolution shall not be used as evidence against a participant in a judicial or administrative proceeding. This shall not preclude the use of evidence obtained by other independent investigation.

Commentary: This language is contained in Minn. Stat. 2001, § 494.02. “Any communication” does not refer to the settlement agreement itself. “During dispute resolution” shall mean from the point of the initial intake of the dispute through the completion of the dispute resolution process.

4.00 COMMUNITY DISPUTE RESOLUTION DATA

4.01 All files relating to a case in a community dispute resolution program are to be classified as private data on individuals, pursuant to Minn. Stat. § 13.02, subd. 12, with the following exceptions:

- (1) When a party to the case has been formally charged with a criminal offense, the data are to be classified as public data on the individual, pursuant to Minn. Stat. § 13.02, Subd. 15.
- (2) Data relating to suspected neglect or sexual abuse of children or vulnerable adults are to be subject to the reporting requirements of Minn. Stat. §626.556 and § 626.557.

4.02 A Center shall maintain files for a minimum of six years.

Commentary: A Center shall maintain files in a manner which protects the privacy of the parties to the dispute and of any other persons involved in the dispute. In most instances, the maintenance of a data sheet or a summary of the case from which the Center may compile information for evaluation, along with a copy of the settlement, will be sufficient.

5.00 EXCLUSIONS

A Center shall not accept the following disputes for resolution:

5.01 Any matter involving violence against persons.

Commentary: “violence against persons” means physical violence.

- 5.02 Any dispute involving incidents arising out of situations that would support charges of assault (Minn. Stat. § 609.221–609.2231), criminal sexual conduct (Minn. Stat. § 609.342–609.345), or infra familial sexual abuse (Minn. Stat. § 609.3641–609.3644), or incest (Minn. Stat. § 609.365), or any other felony.
- 5.03 Any matter involving a person who has been adjudicated incompetent, unless the incompetent person is accompanied by a competent advocate.
- 5.04 Any matter relating to guardianship, unless the respondent in a guardianship is represented by an attorney, guardian ad litem, or other representative appointed by the court.
- 5.05 Any matter relating to conservatorship, unless the respondent in a guardianship is represented by an attorney, guardian ad litem, or other representative appointed by the court.
- 5.06 Any matter relating to civil commitment, unless otherwise permitted in 5.03, 5.04, or 5.05.
- 5.07 Any matter involving neglect or dependency.
- 5.08 Any matter involving termination of parental rights (Minn. Stat. 2001, §§ 260C.301 to 260C.328).
- 5.09 Any matter involving maltreatment of vulnerable adults (Minn. Stat. § 626.577).
- 5.10 Any matter involving the patients and residents of health care facilities' bill of rights (Minn. Stat. §§ 144.651–144.652).
- 5.11 Any dispute involving marriage dissolution (Minn. Stat. Ch. 518), whether or not an action is pending, except for post-dissolution property distribution matters and post-dissolution parenting time matters.
- 5.12 Any dispute arising under the Uniform Child Custody Jurisdiction Act (Minn. Stat. Ch. 518A), whether or not an action is pending.
- 5.13 Any dispute involving domestic abuse (Minn. Stat. Ch. 518B), whether or not an action is pending.
- 5.14 Any dispute arising under the revised Uniform Reciprocal Enforcement of Support Act (Minn. Stat. Ch. 518c), whether or not an action is pending.
- 5.15 Any dispute involving public assistance eligibility.

These exclusions shall not restrict the present authority of the court or departments of the court from accepting for resolution a dispute arising under the Marriage Dissolution Statute (Minn. Stat. 2001, Ch. 518), the Uniform Child Custody Jurisdiction Act (Minn. Stat. 2001, Ch. 518A), and the revised Uniform Reciprocal Enforcement of Support Act (Minn. Stat. 2001, Ch. 518C).

These exclusions shall not restrict the present authority of the court or departments of the court from referring disputes arising under the Marriage Dissolution Statute (Minn. Stat. 2001, Ch. 518) and the Uniform Child Custody Jurisdiction Act (Minn. Stat. 2001, Ch 518A) to for-profit mediation.

6.00 TRAINING

6.01 General Provisions

To be certified, each Center will ensure that mediators, arbitrators, and intake personnel are trained in accordance with these guidelines. These guidelines apply to volunteers only and are not to be regarded as standards for the professions of mediation and arbitration.

The project director of each Center shall have the ultimate responsibility for selecting those volunteers who will act as mediators and arbitrators and who will perform intake functions. In evaluating and screening mediators and arbitrators, the project director is encouraged to seek and to consider information and critiques from trainers, experienced members of the mediation and arbitration pools and parties to the dispute.

(1) Mediation

- (a) Each Center must provide neutral mediators with at least twenty-five (25) hours of basic training in conflict resolution techniques. The project director can waive this basic training requirement for individuals who have been volunteers in another community mediation project, but this waiver shall not include the apprentice phase of the training program. Further, each Center must provide mediators with at least six (6) hours each year of ongoing training. The following is not intended to be all inclusive nor to limit the training to the identified topics. Twenty-five (25) hours for the basic training and six (6) hours for the ongoing training is a minimum requirement and it is assumed that additional training will be added.

Forty hours (40) of training in family law matters must be completed by mediators before acceptance of post-dissolution property distribution matters and post-dissolution parenting time matters.

(2) Intake

Each Center must provide volunteer intake personnel with the basic training of twenty-five (25) hours it provides for mediators under 6.01 (1) (a), except that the apprentice phase shall be specifically adapted to the training of intake personnel. Ongoing training should be provided as the project director deems appropriate.

(3) Arbitration

Each Center must ensure that arbitrators have satisfactorily completed the mediator training requirements as provided under 6.01 (1) (a) and have had sufficient experience as a community mediator. Further, the Center must provide arbitrators with an additional eight hours of training which specifically concerns the Community Dispute Resolution Program Guidelines which relate to arbitration, the role of the arbitrator, the conduct and procedures of the arbitration hearing, the decision-making process, the arbitration award, and other aspects of the dispute resolution process which are unique to arbitration.

6.02 Training Curriculum Content

The primary emphasis of the training curriculum should be on 6.02 (5)–(10) below.

- (1) The Required Training Curriculum for the Community Dispute Resolution Program shall include a history of dispute resolution as a problem solving technique.

Commentary: This material should include international, national, Minnesota, and local Centers' history of the use of dispute resolution processes.

- (2) The Required Training Curriculum for the Community Dispute Resolution Program shall include a review of the Community Dispute Resolution Program Guidelines.

Commentary: All details of the guidelines must be discussed with specific emphasis on confidentiality of communications, data

privacy requirements, reporting requirements of suspected neglect or abuse, and dispute exclusions.

- (3) The Required Training Curriculum for the Community Dispute Resolution Program shall include a description of the justice system as it relates to a dispute resolution centers' program.

Commentary: This material should include the role of the dispute resolution center and the Minnesota Court System. It should describe the referral process between the Center and the court, county attorney's office, law enforcement, attorneys and other referral agencies.

- (4) The Required Training Curriculum for the Community Dispute Resolution Program shall include definitions and distinctions of the varying roles of a neutral (for example: conciliator, mediator, and arbitrator).

Commentary: This material should describe the distinctions among the various types of dispute resolution. It should define the respective roles of the neutral and discuss impartiality, ethics, awareness of potential individual biases, and values clarification.

- (5) The Required Training Curriculum for the Community Dispute Resolution Program shall include a description of all intake procedures.

Commentary: This material should include all written forms used in the mediation process, intake criteria, the nature and types of disputes, legal issues, and a knowledge of all available referral resources.

- (6) The Required Training Curriculum for the Community Dispute Resolution Program shall include the necessary elements of the actual dispute resolution process.

Commentary: This material should include, but not be limited to, the following: structure of the mediation process (such as information sharing and clarification of issues), building trust, framing the issues, note taking, common ground, causes of conflict, conflict management, communication skills, (verbal and non-verbal), problems, domestic violence, child abuse), negotiating techniques, decision making, role of witnesses and attorneys, agreement building, writing formal agreements, follow-up procedures, and mediator evaluation.

- (7) The Required Training Curriculum for the Community Dispute Resolution Program shall include at least one (1) hour of training which concerns disputes involving violence against a person and the techniques and procedures used for recognizing, handling, and referring these matters.

Commentary: Minn. Stat. 494.015 states that these guidelines shall include standards for training neutrals to recognize matters involving violence against a person. The reporting requirements of Minn. Stat. §§ 626.556 and 626.557 must be included in the training. A Center is encouraged to identify individuals and organizations who are highly experienced with these matters and who would be available to provide assistance and expertise to the Center for use in its initial and ongoing training.

- (8) The Required Training Curriculum for the Community Dispute Resolution Program shall include the use of written and most current audiovisual material in the field of dispute resolution and role playing.

Commentary: Training should include the use of videotape and playback whenever possible, relevant films, slides, tapes, and written material in the field of dispute resolution. Each mediator should have the opportunity to role-play a simulated dispute.

- (9) The Required Training Curriculum for the Community Dispute Resolution Program shall include an apprentice phase for each mediator. As a minimum, this phase shall include: 1) Observing one (1) mediation session; 2) mediating with an experienced mediator in one (1) session, and after 1) and 2) have been completed; 3) acting as primary mediator in one (1) session, under the observation of an experienced mediator.

- (10) The Required Training Curriculum for the Community Dispute Resolution Program shall include an evaluation by the participants after the training experience. A list of trainees who have successfully completed the training must be compiled and signed by the primary trainers and the project director.

- (11) Each Center shall develop and record in writing:

(a) A schedule for training all volunteer intake personnel, mediators and arbitrators;

(b) A description of the contents of each segment of the training programs offered pursuant to these guidelines;

- (c) A description of the written, audio visual, and all other materials use in the training;
 - (d) The names and qualifications of the presenters of the training and the criteria and procedures used to select them.
- (12) The Required Training Curriculum for family law matters shall be in compliance with the General Rules of Practice for the District Courts, Rule 114.13 (c) relating to training for a family law facilitative neutral.

7.00 THE CERTIFICATION PROCESS

7.01 Application.

A Center shall notify the State Court Administrator in writing of its desires to apply for certification under Minn. Stat. 1984, § 494.01, etc., and these guidelines. The state court administrator shall then provide a Center with the necessary information, assistance, and forms to make such application.

7.02 Review and Certification

- (1) The State Court Administrator's Office shall review a Center's application and any other information it has requested the Center provide. This review may require that the State Court Administrator meet with the representatives of the Center either at the Center or at the State Court Administrator's Office.
- (2) The State Court Administrator shall:
 - (a) Inform the Center in writing that it has been granted certification for a period of one (1) year and thereafter until revoked by the State Court Administrator; or
 - (b) Identify deficiencies in the Center's submissions, recommend in writing the action necessary to correct the deficiencies and grant a reasonable amount of time to make the corrections; or
 - (c) After a reasonable amount of time has been granted and the Center has failed to correct the deficiencies, inform the Center in writing that certification has been denied and that the Center may not reapply for certification for six (6) months from the date of the denial.

Commentary: To be granted certification a Center will be required, as a minimum, to show that it is in compliance with these guidelines. All procedures, policies, etc., which are required by these guidelines to be recorded and developed in writing shall be contained in a procedures and policies manual which shall be maintained at the Center and the Center shall make a copy available to the State Court Administrator and the public, upon request.

Once a Center has been granted certification, the State Court Administrator shall inform the appropriate courts that a Center has been certified and is entitled to receive court referrals pursuant to Minn. Stat. 2001, § 494.01, et. seq.

8.00 REPORTING REQUIREMENTS

8.01 Each Center shall provide the following information to the state court administrator every six (6) months:

- (1) Operation budget;
- (2) Number of parties who contact the Center for service, and the referral source;
- (3) Categories or types of cases referred;
- (4) Number of parties served;
- (5) Number of disputes resolved;
- (6) Nature of resolution;
- (7) Amount and types of awards.

The State Court Administrator shall provide the forms to be used to submit such data.

Commentary: See Minn. Stat. 1984, § 494.01, subd. 1.

8.02 Each Center shall, upon request, make available to the State Court Administrator any other pertinent information required for research, evaluation, or other purposes.

Rules of Practice—District Courts

Rule 114. Alternative Dispute Resolution

(c) Family Law Facilitative Neutral Roster.

To qualify for the family law facilitative roster neutrals shall:

- (1) Complete or teach a minimum of forty (40) hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:
 - (a) four (4) hours of conflict resolution theory;
 - (b) four (4) hours of psychological issues relative to separation and divorce, and family dynamics;
 - (c) four (4) hours of the issues and needs of children in divorce;
 - (d) six (6) hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;
 - (e) five (5) hours of family economics; and,
 - (f) two (2) hours of ethics, including: (i) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.Certified training for mediation of custody issues only need not include five (5) hours of family economics. The certified training shall consist of at least forty (40) percent role play and simulations.
- (2) Complete or teach a minimum of six (6) hours of certified training in domestic abuse issues, which may be a part of the 40-hour training above, to include at least:
 - (a) two (2) hours about domestic abuse in general, including definition of battery and types of power imbalance;
 - (b) three (3) hours of domestic abuse screening, including simulation or roleplay; and,
 - (c) one (1) hour of legal issues relative to domestic abuse cases; and
- (3) Certify on the roster application that they have not had a professional license revoked, been refused membership or practice rights in a profession, or been involuntarily banned, cropped or expelled from any profession.