

**Innovative Ways to Increase the Number of Clients Served  
Without Increasing Your Budget or Staff**

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Developing a pro bono mediation project can leverage your program's resources and increase the number of clients served. Additionally, mediation provides an alternative to pro se litigation for people who cannot obtain representation -- and in some scenarios, a win-win form of dispute resolution that can bring more positive outcomes than litigation. Learn how to set up, administer and manage a pro bono mediation project from a variety of programs with experience utilizing innovative models of pro bono mediation delivery.

**Topical Outline:**

- I. The Usefulness of Mediation In Serving the Low-Income Population
  - a. Addresses the needs of low-income individuals who may not otherwise have access to legal services
  - b. Allows the parties the chance to be heard
  - c. Favors those intimidated by the judicial process
  - d. Enables parties to become active participants in resolving their own disputes. Generally, in litigation, parties play a passive role if represented by an attorney.
  - e. Promotes voluntary participation -- no party is forced to participate
  - f. May lead to a quicker resolution than litigation due to informal procedure
  - g. Allows parties to come up with more creative and alternate solutions not available within the court system.
  - h. Permits more individuals to obtain service in isolated areas
  - i. Provides flexibility for parties in setting up the mediation, i.e., time and possibly location
  - j. Enables those having a weak legal argument or no legal argument to still resolve their dispute through mediation
  
- II. The Importance of Partnering
  - a. Creates legitimacy
  - b. Promotes cooperation within the field of mediation and legal services
  - c. Increases available resources
    - i. Source of potential mediation trainers
    - ii. Source of referrals for both organizations
      1. Example of partnership with community mediation programs in Placer and Yolo counties.
    - iii. Source of potential volunteer mediators

- d. Beware of turf battles
  - i. The issue of a pro bono mediation program providing service in an area that has community mediation programs that charge fees or receives DURPA funding.
- e. Partnering with ADR related organizations -- funding opportunities
  - i. Work with JAMS and National Association for Community Mediation (NAFCM)

### III. The Mechanics of Establishing a Pro Bono Mediation Program

- a. Example: Community Legal Services in Phoenix, Arizona
  - i. Establishing a link to the mediation community
  - ii. Creating an administrative process to
    - 1. Screen cases for mediation
    - 2. Obtain the parties' consent to mediate
    - 3. Find a qualified mediator
    - 4. Schedule the mediation
    - 5. Monitor effectiveness of the mediator/mediation
  - iii. Recruiting and training volunteer mediators
  - iv. Identifying a program administrator
  - v. Finding funding sources
  - vi. Getting the word out
    - 1. Educating pro bono counsel about the benefits of ADR
    - 2. Educating clients about the benefits of ADR
- b. Example: Tennessee's Efforts
  - i. History of court involvement in pro bono mediation efforts in Tennessee
    - 1. Pro Bono mediation requirements (Rule 31)
    - 2. Low-cost vs. pro bono mediation (Rule 38)
  - ii. Collaborative projects between the Tennessee Bar Association and Tennessee Alliance for Legal Services to further pro bono mediation services
    - 1. Memphis Area Legal Services pro se court project
    - 2. Legal Aid of East Tennessee pro se divorce clinic project
    - 3. Coordination of outreach/recruitment activities
  - iii. Unbundled legal services and pro bono mediation projects
- c. Example: Atlanta Volunteer Lawyers Foundation
  - i. Mediation paid for by the Court
    - 1. Confirming the Value of ADR to the Court
      - a. Reduced Cost
      - b. Retained Control
    - 2. Staffing the ADR Program
    - 3. Drafting an Effective Local Rule
- d. Example: Senior Legal Hotline's Mediation Department
  - i. Appoint a director
    - 1. Someone who has mediation experience or a strong desire to learn about mediation.
  - ii. Establish connections within the mediation community
    - 1. Gets the program's name out

2. Make contacts within the mediation community for guidance
3. Build pool for potential mediation trainers
4. Potential referral source(s)
5. Possible pool for volunteer mediators
- iii. Create the backbone for the mediation program
  1. Determine what cases are suitable for mediation
  2. Create necessary agreement forms, waiver forms, settlement agreement template forms, etc.
  3. Recruit volunteer mediators -- SLH's use of law students
  4. Train mediators -- use of mediators in the community
  5. Train legal aid staff about mediation-how to recognize a possible dispute where mediation is an option
- iv. Search for funding
- v. Get the word out
  1. Fact sheets -- people may have no idea what mediation is
  2. List serve -- inform other programs, i.e., senior legal service programs
  3. Press release
- vi. Database
  1. Address any potential ethical issues, i.e., firewall
  2. Record keeping

#### IV. Maintaining a Successful Program Once Established

- a. Continue increasing presence in community
- b. Continue to recruit volunteer mediators
- c. Continue to train and provide supervision for current mediators
- d. Continue to educate clients
- e. Establish and maintain record keeping procedures
- f. Receive input from everyone involved with the program
  - i. The program director
  - ii. Mediators -- mediator report
  - iii. The parties -- evaluations
  - iv. Legal aid staff
  - v. Outside mediators in the field
- g. Develop long-term fundraising options
- h. Show your appreciation for the time volunteers put in
- i. Ensure consistent flow of referrals for mediations -- no mediations = no mediators
- j. Avoid pitfalls experienced by other programs

#### V. The Ethical Implications of Mediation as Part of Zealous Advocacy for Clients

- a. ABA Model Rules of Professional Conduct 1.3
- b. National and state ethical guidelines for an attorney acting as a zealous advocate.
  - i. When should mediation be discussed with a client? When not?

- ii. Who makes the decision to go to mediation, the client or the attorney?
- c. ADR options
- d. The role of a mediator -- What does it mean to be neutral?
- e. Creating a firewall -- SLH's mediation department housed within the SLH
  - i. Separate database
  - ii. Cases not discussed between advocate and mediator
  - iii. Written disclosure to second party
  - iv. Making it clear with both parties the role of the mediator
- f. Wearing two hats -- wearing the advocate hat in one case and the mediator hat in a completely separate case
- g. The involvement of attorneys in a pro bono mediation
- h. A mediator protecting the interests of both parties who are not represented by an attorney
- i. Starting early: law school mediation programs

**Website Links:**

1. ABA Section of Dispute Resolution, Pro Bono Committee  
<http://www.abanet.org/dispute/probono.html>
2. ABA Model Rules of Professional Conduct:  
[http://www.abanet.org/cpr/mrpc/mrpc\\_home.html](http://www.abanet.org/cpr/mrpc/mrpc_home.html)
3. *Expanding Your Horizons through Pro Bono Mediation*, complimentary on-line ABA-CLE audio program  
<http://www.abanet.org/cle/clenow/probonomediationreg.html>
4. JAMS Foundation [http://www.jamsadr.com/j\\_found/j\\_foundation.asp](http://www.jamsadr.com/j_found/j_foundation.asp)
5. Legal Services of Northern California, Senior Legal Hotline  
<http://www.seniorlegalhotline.org>
6. *Manual for Legal Services and Pro Bono Mediation Programs*  
[http://www.abanet.org/dispute/credits\\_toc.html](http://www.abanet.org/dispute/credits_toc.html)
7. National Association for Community Mediation (NAFCM): <http://www.nafcm.org/>
8. Rules of the Tennessee Supreme Court 31 and 38: <http://www.tsc.state.tn.us>
9. Tennessee State Plan: <http://www.tals.org>