OVERVIEW OF THE
COURT OF COMMON PLEAS MEDIATION PROGRAM

The Court of Common Pleas Mediation Program began in 2001, serving as an alternative dispute resolution ("ADR") resource for the Court. This program provides a way for litigants to resolve disagreements without the necessity of a trial. The program is managed by the Mediation Officer, who oversees mediations for criminal, civil, disputed restitution and community cases.

MEDIATION IN GENERAL

The mediations are voluntary and the information discussed during the process remains confidential. The sessions are facilitated by a trained mediator, who attempts to fairly resolve the dispute and satisfy the needs of the participants. All participants are given an opportunity to express their feelings about the case and the facts as they see them. The mediation offers the parties a safe forum for reviewing options and enables the parties to develop their own settlement terms in a mutual agreement.

The mediator's role is to clarify misunderstandings and ambiguities, to provide a new perspective on disputed issues, and to explore options for mutual agreement. It is in the participants' best interest to use an impartial, certified mediator to help conduct focused, amicable settlement negotiations to avoid the time, expense and risk of litigation.

All parties must agree to mediation and be present for the mediation conference. Before the mediation conference begins, the parties and the mediator must sign a written consent to the mediation. The Agreement to Mediate declares the confidentiality of the mediation conference and states the rights and obligations of the parties.

The mediation conferences are informal proceedings. The mediator will assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator is not permitted to impose a decision or any penalty upon the parties. The mediator may terminate the conference if parties are unable to agree. The termination will be without prejudice to either party in any other proceeding. If the parties reach a settlement, the Mediation Agreement is signed by all the parties and the mediator. The Agreement sets forth both the settlement of issues and the future responsibilities of each party. Once signed, the Agreement is binding.

PENDING COURT CASES

CRIMINAL CASES

Mediation is available through the Court's mediation program for criminal cases. In these cases, criminal misdemeanor charges have been filed and are pending in the Court of Common Pleas. If the case is successfully mediated, then a *Nolle Prosequi Without Prejudice* is entered and the charge(s) are dropped.

For criminal cases, the Mediation Officer reviews cases from the arraignment calendar to determine eligibility. Cases are also referred to the Mediation Officer by Judges, the Deputy Attorney General on behalf of the Department of Justice, the Assistant Public Defenders, Attorneys, and the parties themselves. Occasionally, cases are referred from trial calendars. Once a case has met the criteria for mediation, the case is referred to the non-profit agency for scheduling, the Delaware Center for Justice ("DCJ") in New Castle County. Criminal cases in Kent and Sussex Counties are referred to The Center for Community Justice ("CCJ") in Milford. **The case remains on the regularly scheduled event calendar and the parties must attend all scheduled court hearings while mediation is attempted.** If mediation is not successful, the case will proceed with criminal prosecution.

DISPUTED RESTITUTION

In additional to pending criminal matters, the program handles cases after a criminal defendant has pled guilty or been found guilty of a crime and restitution has been ordered as part of the sentence. The Investigative Services Office determines the amount of restitution owed. If either party disputes the amount or nature of the restitution, a mandatory mediation hearing is scheduled. This reduces the number of restitution hearings that are scheduled to be held before a judge.

CIVIL CASES

Further, the program mediates Civil cases. Mediation can either be requested on the Case Management Worksheet, which is sent to the litigants after the last responsive pleading has been filed, at the pre-trial conference or by simply contacting the Mediation Officer (contact information below). Provided both parties agree to mediation, the case shall be scheduled for a mediation conference. Mediation has been very beneficial for these types of cases because of the time and money saved compared to litigating the matter. Mediation also allows the parties the ability to creatively structure an agreement which is mutually satisfying. Mediation is a process and not all civil cases settle at the initial mediation session. The Mediation Officer will continue to work with the parties to help facilitate a settlement agreement. If the parties do not reach a settlement after the initial mediation session, the case thereafter shall be scheduled for trial.

COMMUNITY CASES

The program also handles Community Cases. These are matters where the parties are having a dispute, but no criminal charges or civil litigation have yet been filed. These cases are often referred to the program by an investigating police officer.

Since the program began in 2001, over 11,000 cases have been referred to mediation and the program currently has an 89% cumulative success rate.

For more information contact:

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