CHAPTER 11
Mediation and Alternative Dispute Resolution

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INTRODUCTION

Sociologists know that conflict is an integral part of social life. We also know that a key issue is how conflict is handled. Disputants may practice denial and avoidance, may continue an acrimonious ongoing argument, or resort to either violence or litigation. For example, teens may get into fights that could escalate from words to fists to weapons. Divorcing couples may be drawn into bitter long-term legal battles over child custody and support or division of marital property. Parents of a learning-disabled child may be drawn into a conflict with a school system over education for their child. Workers and management, environmental activists and developers, neighbors, community groups, and governments, as well as ethnic groups and nations may find their interests at odds and find themselves in the role of opponents in a conflict.

The purpose of this chapter is to provide an introduction to mediation as an alternative approach to dispute resolution and a practice option for clinical sociologists. The chapter begins with some basic definitions followed by a discussion of mediation models. The third section presents a generic description of the conduct of a case, and the fourth section offers a discussion of interaction and mediation strategies. The fifth section describes applications: divorce/family mediation as a microlevel intervention and peer mediation in schools and victim–offender mediations as mesolevel interventions. The last section will touch on becoming a mediator.

Definitions

Social conflict can be understood as opposition on the basis of competing interests, different identities, or differing attitudes (Schellenberg, 1996:8). If conflict is an inevitable part of social life, what are disputants’ choices? Denial and avoidance have already been men-
tioned. On the other hand, one of the parties that has greater power or other resources may be able to impose their will or cause the other party to surrender. Or, the parties may engage in an adversarial process such as litigation or appeal to authority or tradition to have their dispute settled. More recently, disputants have alternative dispute resolution (ADR) options to assist them in resolving conflicts.

ADR is considered a nonjudicial collection of processes for dispute resolution without having a court decide and without violence. There are a variety of such methods for managing conflict and finding creative ways to resolve disputes. These methods include arbitration, settlement conference, consensus building, neutral case evaluation, collaborative problem solving, and mediation. The forms share characteristics that differentiate them from judicial proceedings: they give participants a more active role in conflict resolution, they are more private, faster, less expensive, and the decision-making process is more voluntary than imposed.

- **Arbitration.** Disputants present their positions with supporting argument and evidence to one or more impartial arbitrators who decide the outcome. Typically, arbitrators have expertise in the matter under dispute. In some cases disputants may submit to “binding arbitration” in which they agree or are required to accept the decision of the arbitrator (Maryland ADR Commission, 1999).
- **Neutral case evaluation.** Disputants submit their positions to a neutral person who has knowledge and experience with the issues and court experience. The neutral person expresses an opinion on how the court is likely to decide, which may encourage disputants to reach an out-of-court settlement (Maryland ADR Commission, 1999).
- **Settlement conference.** Disputants present their positions to a knowledgeable third party who suggests ways to settle the dispute without a trial. The third party usually can give informed opinion about how the court is likely to decide or how similar cases have been decided. The facilitator can also provide advice and suggestions for settlements (Maryland ADR Commission, 1999).
- **Consensus building or collaborative problem solving.** A neutral party brings stakeholders together and facilitates discussion of a common problem, issue, or matter of public policy. This approach is often used when there are more than two sides and/or the sides are represented by various groups as well as individuals. The goal is for all parties to develop options and reach a mutually agreeable solution (Maryland ADR Commission, 1999).
- **Conciliation.** This is the “shuttle diplomacy” idea. Disputants try to reach agreement but do not meet face to face. They negotiate through the neutral third party who acts as a go-between and who does not judge or offer or impose a solution (NIDR, 1991).
- **Mediation.** A trained neutral third party facilitates communication between disputants and helps them reach a solution to the dispute that is mutually acceptable. Parties speak for themselves and make the decisions. Mediators provide no advice, legal or other, and make no recommendations but use their skills to facilitate the process of interaction. Problem solution is left up to the parties to the dispute (Maryland ADR Commission, 1999).

**History**

The Chinese have a history with mediation that goes back to Confucius who emphasized harmony as a desired condition. When harmony is disturbed by conflict, it is best restored by compromise and persuasion using intermediaries if necessary. In the United States in 1947, the