

MONOGRAPHS

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ARTS RESOLUTION SERVICES: A NATIONAL MEDIATION PROGRAM FOR THE ARTS

by Alma Robinson, Executive Director, California Lawyers for the Arts

When the composer called the mediation program, she was close to tears. The agency staff member assigned to work on the production of her commissioned piece had hung up, she said, and she could see her work for the last two years going down the drain. In fact, the agency director said that they were finished—his staff only wanted to use the mediation process to find a way to terminate the relationship. Things had just been too difficult....

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A mediation session was scheduled with the agency director, program coordinator, musician and her manager. At the meeting, the participants explored the issues with the assistance of two mediators who helped them sort out the possibilities of continuing or quitting the project. After three hours, the four participants agreed on steps necessary to complete the project. Key points about investigating funders' requirements, contact persons and letters of support were written into an agreement, which was signed at the end of the session. Three months later, the new piece premiered to the ovations of a wildly enthusiastic audience.

California Lawyers for the Arts (C.L.A.) began its alternative dispute resolution program in 1980, when a group of concerned board members decided that the adversarial nature of litigation was not the best service for most conflicts in the arts community. Some 550 resolved cases later, C.L.A. has developed a new national project, Arts Resolution Services, with collaborating art/law organizations in Texas and Washington, D.C.

As a result, local arts agency leaders now have a substantive resource available for direct services or referrals when confronted with disputes such as: misunderstandings between artists, problems arising in regranteeing programs, disputes between collaborating organizations, conflicts between staffs and boards or between agency personnel. Alternative dispute resolution processes have also been adapted for use in facilitating meetings developing collaborative ventures, managing organizational change and gathering community input as part of cultural planning processes.



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With funding from the National Endowment for the Arts' Challenge Program, C.L.A. began implementing a plan to develop a national mediation network to assist the arts community with new problem solving approaches in 1990. Working collaboratively with Washington Area Lawyers for the Arts (WALA) and Texas Accountants and Lawyers for the Arts (TALA), C.L.A. is providing technical assistance as they establish new mediation programs. Both organizations have established local committees of their Boards of Directors to develop program policies, funding, outreach and volunteer training programs.

Since receiving grants from their state arts councils and private foundations, both TALA and WALA have hired program coordinators who handle intake, develop cases and set up mediation processes. Staffs from the three organizations also collaborate to design processes to manage inter-state conflicts and other disputes which are more national in character.

A total of 65 volunteer mediators, including artists and arts administrators as well as attorneys, were trained in Houston and Washington in 1993. Additional mediation training programs will be offered in Fort Worth and Washington in 1994, while C.L.A. is planning to hold a training for facilitators in connection with a conference on cultural adaptations of military bases.

With a panel of volunteer mediators trained and in place, both TALA and WALA have begun resolving cases without the adversarial forum of the litigation system.

In cases where litigation has already begun, persons who may have worked closely on a project no longer speak to each other; public knowledge of the dispute harms the reputation of all involved; and the solution usually fails to meet the needs of the parties. Because litigation usually produces winners and losers (sometimes, it is said, because of the costs and time involved, there are no winners in litigation), the possibility of ever working together again is usually eliminated.

In contrast, mediation is future oriented. Rather than concentrating on blame and "facts" from the past, the mediation process offers the parties the opportunity to invent new processes allowing them to continue to work together—or to terminate the working relationship with mutual respect. While allowing sufficient time for the

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NALAA staff, write or call

NALAA

927 15th Street NW, 12th Floor

Washington, DC 20005

tel 202.371.2830

fax 202.371.0424

participants to express their feelings about what has occurred, the mediators encourage them to listen to each other. The stage is then set to help the participants to invent options and work together to design a solution which will work for all concerned.

Arts agencies across the country can use Arts Resolution Services to design processes which are tailored for various arts-related issues. According to Jane Lowery, TALA's Executive Director, "The process is driven by the needs of the participants. The mediation could pause long enough to get separate, neutral experts who are needed to help the organization in a non-adversarial way. At the outset, you never know where the process will lead. But the great thing about the mediation process is that it's flexible enough to allow the participants to discover and then solve the issues that are most important to them."

Instead of the public exposure of the court system, the mediation process is confidential. All participants are assured that neither the mediators, nor the program staff will discuss their dispute. In fact, the situations described in this article have been slightly altered to protect the identity of the participants.

Typically, an arts professional will be asked to serve as a co-mediator with an attorney or accountant. Newer trainees are asked to work with more experienced mediators. Although mediators do not decide the outcome, they are matched with situations where their backgrounds will help them understand the issues presented or give the participants a feeling that their point of view will be heard. For example, mediators sent to assist with a case involving male-female conflicts in an arts organization may include a female labor lawyer and a male artist from the same arts discipline.

In California, C.L.A.'s alternative dispute resolution program has assisted in the resolution of more than 550 cases involving contracts, cultural diversity, personnel relations, space sharing, damaged and lost property, artistic content and censorship, copyright and other intellectual property issues. Local arts agencies have used the program to resolve such problems as re-granting programs, personnel issues and lost or damaged artwork. Agency leaders, who are often asked to mediate conflicts brought to them by third parties, have also been consistent sources of referrals for other arts organizations, community art centers and affiliated groups.

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Unlike the other collaborating organizations in Arts Resolution Services, C.L.A. offers "arbitration" as well as mediation. In arbitration, the third party issues a binding decision, or award, which takes the place of a court judgment. However, the large majority of the cases handled through the California program are mediation cases, where the burden is on the parties themselves to decide the outcome; the mediators simply facilitate the listening and negotiating processes.

In addition to mediation, all three organizations offer conciliation, or "shuttle diplomacy," by staff or volunteer mediators for instances when the parties cannot meet at a face to face mediation session. Often, when the parties are in different locations, conciliation by phones or correspondence is the only effective way to help them negotiate their issues and work out agreements.



The October 1993 Arts Mediation Training Session
at the Reid Foundation in Washington, D.C.
Photo Credit: Janet Fries, 1993.

In setting up mediation sessions, the case coordinators negotiate mutually acceptable times and locations. All collaborating organizations offer lawyer referral services for mediation participants requesting advice about their legal rights and responsibilities at any stage during the mediation process. Although attorneys may be available to advisor their clients, most participants do not bring lawyers to the mediation sessions.

The broad benefit of the program has been demonstrated through increased cooperation and productivity in the arts community. Through experience, arts organizations are

returning to the conflict resolution program at earlier stages for more effective results. Several organizations have used mediators to negotiate the terms of collaborative projects in advance or to design meetings for community input needed to plan a concept or process.

Ruth Cogen, Executive Director of WALA in Washington, DC, commented that through the mediation program, WALA clients receive immediate help. "It begins with the first phone call," she said. "With intake, the process of negotiation begins and people begin dealing with their problems in a different way. They begin to clarify their options and move towards resolution of one kind or another." In many

cases, the initiation of mediation through staff contact results in exchanges of previously unknown information which lead the parties to conciliated agreements.

An arts agency in the Baltimore area ran short of funds and fired the director without notice, which they felt entitled to do under his contract. Salary checks were stopped without warning. At the request of the director, the board of directors agreed to mediation. As a result of the information communicated by WALA's mediation coordinator in the process of scheduling the first mediation session, the board was made aware of the hardship to the executive director, held a meeting of the finance committee and made good on the delayed salary checks. Although the mediation did not take place, the problem was effectively resolved through staff conciliation.

Another advantage of mediation is that it is cost effective. Each side to a controversy typically pays fees ranging from \$25 to \$50 for each mediation session, or if the problem is resolved through staff conciliation.

INTER-STATE CONFLICTS

Conciliation by mediation program staff has also been used effectively to resolve inter-state, and even international conflicts. Because of the nature of the art business, many situations have connections to more than one state. By way of phones, faxes and letters, resolutions have been negotiated between:

- a San Francisco artist and a gallery owner in Paris, France;
- a playwright in Los Angeles and a theatrical company in Tennessee;
- a Chicago artist and a Texas art collector; and
- a Los Angeles writer and a publisher in Fort Lauderdale.

Through on-going collaboration, staff at the three participating organizations discuss case management to ensure that inter-state conflicts, as well as local ones, can be resolved through mediation.

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A national arts service organization scheduled a conference a year in advance in a major city. Due to an "act of God" circumstance, the event was not well attended so the organization lost money and could not pay its bills. When a creditor threatened to sue, the agency approached the Arts Resolution Services network for assistance with negotiations regarding payment. Board members felt that the organization would be pushed into bankruptcy if it was sued. Through telephone conciliation by program staff in several cities, a payment schedule was worked out with the conference center.

An expanded structure is being set up, with a national toll free number to field calls and counsel arts agencies across the country. Administrative services for inter-state cases, where ever they originate, will be coordinated through the Arts Resolution Services network. For example, program staff will be able to conciliate a dispute between a New York artist who calls about a problem with a gallery in Chicago.

OTHER CRITICAL ISSUES FACING THE ARTS COMMUNITY

While Arts Resolution Services has helped many artists and arts agencies resolve routine business issues, the network can also help to manage discussions about the broad policy issues which affect artistic expression and the vitality of the arts community as a whole. The following issues, described with examples from past work, have reached a crisis point in several areas around the country:

CULTURAL EQUITY ISSUES

Increasing tensions have been experienced in the arts community as a whole as available funds and other resources have not kept pace with the demand of a growing number of arts organizations. Arts communities in several states, including Texas, New York and California, are witnessing financial competition, often heightened by ethnic tensions, between large-budget and small-budget organizations, as well as competition for space and other resources. In several instances, mediators have been used to facilitate the discussion and resolution of such controversies.

C.L.A.'s mediation staff was asked to facilitate the first joint caucus of the prominent and large-budget organizations at a 1988 Congress of the California Confederation of the Arts. With over 200 participants, the group identified issues, discussed feelings,

brainstormed and developed a list of possible next steps—an adaption of the typical mediation format in a large group situation.

Volunteer mediators were asked to facilitate a retreat for the San Francisco Board of Supervisors Cultural Affairs Task Force. At the conclusion of the day-long session, the publicly appointed members, who represented the full spectrum of interests in the local arts community, agreed on a principle of cultural equity. Subsequent meetings of the Task Force, which had been hostile and procedural, became more amicable and substantive. Eventually, the Task Force developed a consensus about recommendations for a new Cultural Equity Endowment.

CULTURAL FACILITIES ISSUES

Conflicts about the use of facilities have also reached the boiling point in several communities.

The controversial transfer of Hunters Point Naval Shipyard in San Francisco had positioned members of the surrounding community against the artists who occupy relatively cheap studio space in the yard. More than 300 artists, mostly white, lease studios at the enclosed facility; the surrounding Bayview community is largely African American. Mediation staff helped to design a conference on the future of the arts at the Shipyard. At the planning workshop, which drew more than 100 participants, small group sessions were designed to encourage direct interaction between community representatives and the artists.

Mediators were provided to facilitate and record the breakout and plenary sessions. They helped to focus discussion on the needs of the local community, resident artists and businesses and helped develop ideas around future uses. By the end of the day, several new programs were under discussion, including a possible collaboration between the Bayview Senior Citizens Center and the San Francisco Opera and new arts training programs for youth from the Bayview community. Conference discussions were later summarized in a report which presented planning strategies recognizing the needs of both interest groups.

FREEDOM OF EXPRESSION DISPUTES

Political controversy about the content of government funded art projects has inhibited some private arts funding and has had a negative effect on public funding. With absolute positions on both sides of the issue, i.e., freedom of expression and anti-obscenity, there has been little opportunity to negotiate mutually acceptable guidelines on constitutional principles. Efforts to control the work of individual artists also creates political controversy at the local level as arts agencies try to meet the complicated needs of constituents while upholding principles. Two examples demonstrate that some of these controversies can be resolved through mediation, which is voluntary and private, before they can be exploited politically.

Mediation staff assisted an artist work out an agreement with a small town District Attorney when he threatened to remove the artist's work from a public space because he found it offensive. The work was allowed to remain mounted through duration of the show. In the second example, mediation program staff helped an artist whose painting was removed by the General Services Administration (GSA) from the Federal Building in San Francisco in reaching an agreement with GSA to remount the piece.

Sometimes such controversies involve misunderstandings about the intent of the work which could be resolved at an early stage through mediation between the parties most directly concerned. In other instances, mediation could help to establish mutually agreeable boundaries prior to the production of an artistic work, such as a play being prepared for a grade school audience.

Even if mediation does not resolve all of the issues involved in such situations, it can help to reduce the level of hostility so that rational discussion can take place.

ECONOMIC DISTRESS

In the wake of the economic recession, many public arts funding agencies are freezing grants and contracts committed to arts projects. As a result, many artists have found themselves in contract disputes with suppliers, producers and other artists. Bankruptcy and civil courts generally offer little relief in such situations.

Alternative dispute resolution offers a number of processes which can be creatively applied to conflict situations affecting large-scale public policy issues as well as disputes affecting local arts agencies in their work.

The 1990 collapse of a month-long cultural festival in San Francisco produced a number of emergency calls to C.L.A. In addition to contract issues presented by individual artists, technicians and arts organizations, members of the local arts community had questions about the structure of the organizing body and the decision to stop the festival in the middle of its first season.

Two mediators from C.L.A.'s mediation panel facilitated two large meetings with the board and staff of the festival. While asking about the festival's structure and lines of authority, arts community members had an opportunity to "be heard" and express their grievances directly to the organization's leadership. While airing their emotional distress, the participants discussed the events in an orderly way.

In addition, the mediation staff helped sort out the large number of claims against the city which resulted. Eventually, many of the artists affected were paid by two city agencies. Recently, a mediator with an insurance background was able to negotiate a settlement with an insurance company to provide additional money for unpaid claims remaining before the Bankruptcy Court.

As seen from these examples, alternative dispute resolution offers a number of processes which can be creatively applied to conflict situations affecting large-scale public policy issues as well as disputes affecting local arts agencies in their work. Clearly, the arts community—and the public at large—can benefit from a greater use of facilitated discussions between artists, public institutions, arts organizations and community groups when such situations arise.

MANAGING ORGANIZATIONAL CHANGE

Organizations which need to change direction or realign their personnel may find it difficult to do by themselves. Through processes tailored for the needs of each situation, mediators have often been used to facilitate discussions of key staff and board members in a neutral environment.

A statewide arts service organization in Texas was having personnel and reorganization problems as a result of rapid growth in its budget and staff size. While some staff members felt that the founder's role had changed, others felt that the organization lacked administrative capability. Mediators from Texas Arts Resolution Services met with the

staff and key board members several times to discuss ways to restructure the organization and resolve personnel conflicts.

Individual artists and arts organizations have saved time, money and creative energy by participating in alternative dispute resolution processes rather than going to court.

Alternative dispute resolution is a growing field with a wide range of applications including family conflicts, neighborhood problems, school playgrounds, insurance settlements, environmental issues, business disputes and public policy decision processes. Many of these situations take place in the arts context, where disputes over artistic property and copyright may be analogized to child custody or space sharing to neighborhood disputes. Community planning issues sometimes have direct bearing on arts policy development, such as the Hunters Point Shipyard situation.

Individual artists and arts organizations have saved time, money and creative energy by participating in alternative dispute resolution processes rather than going to court. Through its voluntary nature, mediation offers the opportunity to have a dialogue leading towards a mutually beneficial agreement. Other important features are the confidentiality of the service, where, unlike the court system, the issues are never discussed publicly, and the short amount of time required to schedule a hearing (generally four days to two weeks, depending on the parties' availability). Finally, the participants are given the opportunity to have a full hearing on the issues, with many mediations taking as long as four hours and several sessions.

The best testimonial to the value of the mediation process is that many participants have used it previously. Furthermore, an increasing number of arts organizations are requesting mediators to enter into the transaction prior to the eruption of a dispute in order to help manage change, negotiate agreements and avoid damaging confrontations. For local arts agencies, mediation is an invaluable management tool which, when applied creatively, can enhance the working relationships within organizations and between collaborators. ▼



San Francisco Teenagers learning negotiations skills as part of a summer job training program.
Photo Credit: Isabelle Moses, age 15, a volunteer with the program, 1993.

YOUTH CONFLICT RESOLUTION AND THE ARTS

Mary Brake, C.L.A. Mediation Coordinator, San Francisco

As an outgrowth of its mediation program, California Lawyers for the Arts has begun to explore ways to involve the arts in addressing the social issues, particularly unemployment, violence and gangs, affecting many youth in our cities. Through grants from the San Francisco Mayor's Office of Children, Youth, and Their Families, a new funding agency, and the Mayor's Office of Community Development.

C.L.A. facilitated the placement of 50 low income teenagers for summer jobs at 17 San Francisco arts

organizations. This project was followed by an after-school cultural enrichment program coordinated with six collaborating arts education providers who are serving more than 600 at-risk children from diverse ethnic communities. To enhance these placements, C.L.A.'s mediation staff has been involved in providing training in conflict resolution, including negotiations and communications skills through role plays and other demonstrations.

The conflict resolution training for youth involved in art enrichment activities is being developed with instructors' input and is specific for each site allowing for the age of participating youth, the arts activity involved and the presenting needs of the group. For instance, a session on recognizing feelings was developed for six to eight year olds taking part in after school movement and performance classes. After a brief exercise using their feeling vocabulary, the children developed and acted out short skits displaying their feelings.

In contrast, the focus of a session for young people ages seven to 14 years involved in developing a showcase production was on how to work together as a group, listen to each other and use a variety of problem solving techniques rather than argue.

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For teenagers placed in summer jobs at arts organizations, a workshop schedule was developed to provide an overview of communications and negotiations skills using roleplays of arts-related problems. This program in being expanded by C.L.A. in the summer of 1994. ▼

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TIPS FOR SUCCESSFUL COLLABORATIONS
by Alma Robinson, California Lawyers for the Arts

In the current funding environment, local arts agencies and other arts organizations are increasingly being asked to collaborate to multiply the benefits of scarce resources.

Collaboration can be hazardous. Many collaborative projects wind up in disputes because clear agreements were not developed at the start of a working relationship. Often, goals and objectives are developed, but other details are left to be ironed out.

Based on past experience, mediation coordinator Mary Brake, who has counselled dozens of arts organizations at California Lawyers for the Arts' mediation desk in San Francisco, recommends that the participants in a collaborative project should clarify the following issues before finalizing the project's operations:

- Organizational roles and decision making process;
- The collaborators' needs and expectations;
- If any of the participants have any other conflicting projects;
- How the project fits in with other work commitments;
- Financial arrangements affecting contracts with third parties and royalties;
- How participants will be acknowledged in publicity materials; and
- How any possible conflicts will be handled.

Whenever possible, a short written agreement between the collaborators is recommended in order to clarify the important points of agreement and uncover any possible areas of confusion. For example, is there a need to consult others before making administrative decisions, such as hiring staff or consultants?

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In looking ahead, it is recommended that agencies consider outlining an evaluation process which will allow the project to be modified as circumstances change. Collaborators should recognize that change may occur, and that they should start out with "an openness to deal with change as it arises," according to Brake.

Finally, she suggests that organizations consider using a facilitator at initial meetings to clarify these issues in advance, in order to save time and avoid confusion later. Through its national network, Arts Resolution Services is developing a bank of mediators who can provide facilitation services in various locales.

Organizations can also agree at the outset to use mediation in the event that a dispute arises. A brief sentence such as the following example from the agreement between the participating organizations in Arts Resolution Services could be included in a contract, letter of agreement, or memorandum of understanding:

"All disputes arising out of this agreement shall be submitted to mediation in accordance with the rules of (an agreed organization or the following language) a neutral mediation service, selected through agreement of all the participating organizations." ▼

NALAA's 1994 ANNUAL CONVENTION, FORT WORTH, TEXAS

To provide more information about how mediation works, representatives of Arts Resolution Services will participate in a panel with role plays at the forthcoming NALAA Annual Convention in Fort Worth. A videotape, "Working it Out," which

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demonstrates the mediation process, will also be available at the Resource Area of the convention.

Mediators from locations outside Texas, Washington and California will be assigned cases, once they complete a required mediation training program. The next training program, which will be co-sponsored by NALAA, will be presented in Fort Worth on June 2-3, 1994 by the Texas Accountants and Lawyers for the Arts' mediation program. This program will be an opportunity for arts leaders from around the country to become involved in Arts Resolution Services as volunteer mediators, while learning how to manage conflict in their own workplace situations. NALAA members who wish to participate and become volunteers with the national mediation network should call TALA at 1.800.526.8252. ▼

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ARTS RESOLUTION RESOURCES

To discuss a possible mediation situation, or for information about Arts Resolution Services, you may contact the following affiliated programs:

▼ **Arts Mediation Service**

Washington (DC) Area Lawyers for the Arts
Barbara Frank, Program Director
1325 G Street NW, Lower Level
Washington, DC 20005
202.393.2826 Fax: 202.638.4885

▼ **Texas Arts Resolution Services**

Texas Accountants and Lawyers for the Arts
Jane Lowery, Executive Director
1540 Sul Ross
Houston, TX 77006
713.526.4876 or 800.526.8252 Fax: 713.526.1299

▼ **Arts Arbitration and Mediation Services**

California Lawyers for the Arts
■ *Contact in Southern California*
Nancy Loncke, Associate Director
1549 11th Street, Suite 200
Santa Monica, CA 90401
310.395.8893 Fax: 310.395.0472

■ *Contact in Northern California*
Mary Brake, Program Coordinator
Fort Mason Center, Building B
San Francisco, CA 94123
415.775.7715 or 775.7200 Fax: 415.775.1143

If you are not located near any of these regional offices, you may call the national mediation hotline at 800.526.8252, for information.

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