



About Mid-South CJAM:

Mid-South Community Justice & Mediation Center, Inc., also known as Mid-South CJAM, is a 501(c)(3) nonprofit community mediation center that currently maintains a list of thirty-eight (38) trained, volunteer Rule 31 Supreme Court Listed Mediators. Our trained, volunteer mediators provide mediation services based on income and ability to pay. Since we provide our services to the public regardless of ability to pay, if persons cannot afford mediation, we provide our services free of charge. We provide

What is Mediation?

Mediation is a voluntary process (unless parties are involved in a court case and a judge orders mediation, which might happen in some cases) in which people agree to use a neutral, professional Rule 31 listed mediator, to facilitate a mutually beneficial, legally binding resolution of their dispute. Mediators cannot force parties to settle disputes. Mediators do not provide legal advice. However, they facilitate settlement and, if mediation is successful, and the parties sign a Rule 31 mediation agreement at the conclusion of mediation, the agreement is enforceable in a court. Attorneys can be involved but aren't necessary.

What Types of Disputes Can Be Mediated by Mid-South CJAM?

Almost any dispute may be appropriate for mediation. Here are some of the typical cases that Mid-South CJAM can handle through mediation: This list is not intended to be exhaustive:

- ❖ Landlord/Tenant (including nonpayment of rent by tenant and landlord's failure to maintain the rental property);

MID-SOUTH CJAM

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a safe environment for dispute resolution at the earliest stages of conflict. This service is provided as an alternative to the judicial system at any stage of conflict. We also initiate, facilitate and educate the community on restorative and collaborative community relationships to effectuate positive changes in our community. We seek to increase public awareness and educational activities about the values and benefits of mediation and restorative practices.

Mediation is a less expensive, time-saving alternative to court. In mediation the disputing parties have the chance to settle their differences in a safe, confidential and efficient manner. Mediation helps people get what they need, whether it's settlement of a landlord and tenant issue, peace and quiet, family unity, a financial settlement, or just a chance to be heard. Mid-South CJAM is committed to offering mediation, in addition to offering conflict resolution training and restorative practices training, to promote peace in our community.

- ❖ Neighbor to Neighbor Disputes (such as noise, children fights, dog bites, slip and falls, etc.);
- ❖ Property Damage and Property Loss;
- ❖ Civil Matters (debt disputes, personal and business disputes, personal injury, etc.);
- ❖ Breach of Contract (including homeowner/contractor disputes);
- ❖ Consumer/Merchant Issues;
- ❖ Co-Worker Conflicts;
- ❖ Child Custody and Visitation Disputes;
- ❖ Divorces;
- ❖ School Conflicts (student to student conflicts, etc.);

Mediation and Restorative Practices Differences, Similarities,
and Use of Restorative Practices During Community Mediation.

By: Linda Nettles Harris, Nettles Harris Law Firm (Contract, ED Mid-South CJAM) (October, 2019)

1. MEDIATION DEFINED

2. TYPICAL MEDIATION SETTING

- Statement of the Problem (Restorative Practices (RP) Similarity)
- Joint Sessions or Caucuses (RP Similarity)
- Information Gathering (RP Similarity)
- Bargaining/Settlement Options Discussed (RP Similarity)
- Agreement/No Agreement (RP Difference)

Source: <https://www.tncourts.gov/programs/mediation/resources-public>,

3. CONSIDERATION: SIMILARITIES OF SOME LISTED BENEFITS OF MEDIATION/

Among Others, TNCourts.gov website mentions:

Parties keep control over the resolution of their own problem.

Mediation promotes better relationships through cooperative problem-solving /improved communication.

<https://www.tncourts.gov/programs/mediation/resources-public>.

4. PARENTS GUIDE TO MEDIATION (TNCourts.gov) Mediation:

Encourages direct communication between the parents.

Explores creative ways to solve problems.

Promotes cooperation.

Preserves the strengths of an ongoing relationship as parents.

The Mediator:

Will provide each party with a full opportunity to effectively express his or her interests.

<https://www.tncourts.gov/programs/mediation/public-information/parents-guide-mediation>.

5. WHAT IS RESTORATIVE JUSTICE?

For purposes of this presentation, we will consider restorative justice from the preceptive of Howard J. Zehr, a noted author of several articles and books on restorative justice and Professor of Restorative Justice at the Center for Justice and Peacebuilding, Eastern Mennonite University, Harrisonburg, Virginia, USA. Former Director of the Office on Crime and Justice for Mennonite Central Committee U.S.

In 2008, he was appointed to the Victims Advisory Group of the U.S. Sentencing Commission.

<http://wiscomp.org/pubn/wiscomp-peace-prints/2-1/Howard%20Zehr%20Paper.pdf>.

6. ZEHR ON RESTORATIVE JUSTICE

Restorative justice originated in the 1970s, as mediation or reconciliation between victims and offenders. In the United States and Europe, the best-known form of restorative justice is what is often called victim offender-mediation (VOM), led by a trained mediator or facilitator. In a VOM, victims and offenders come together in an encounter that allows questions to be asked, stories and feelings to be shared and, in some cases, restitution contracts to be negotiated. Howard Zehr: Commentary: Restorative Justice: Beyond Victim-Offender Mediation. <https://heinonline.org>. and Source: Howard Zehr: *Doing Justice, Healing Trauma: The Role of Restorative Justice in Peacebuilding*, Peace Prints: South Asia Journal of Peacebuilding, Vol. 1, No. 1, (Spring 2008).

As Zehr notes, one ne significant difference between restorative justice and mediation is that restorative justice is usually applied in situations where there is a legitimate structure, such as a legal or disciplinary system, to name wrongdoing. That is, restorative processes often begin with a clearly identified wrong and “offender.” This is one reason for the discomfort with using the term “mediation” in the restorative justice field. Zehr identifies restorative justice as a conflict transformation approach that allows wrongdoing to be

named and addressed, and provides a concept of justice appropriate for the interaction. Zehr says: “many fields that we often see as somewhat separate or even competing – justice work, conflict resolution, human rights advocacy, trauma healing and so on – might actually be conceived as part of, and contributing to, the overall work of building a peaceful and just world.” He suggests this is, perhaps, the most important agenda ahead for those in the conflict transformation and restorative justice fields.

Source: Howard Zehr: *Doing Justice, Healing Trauma – The Role of Restorative Justice in Peacebuilding* Peace Prints: South Asian Journal of Peacebuilding, Vol. 1, No. 1: Spring 2008.

<http://wiscomp.org/pubn/wiscomp-peace-prints/2-1/Howard%20Zehr%20Paper.pdf>.

7. RESTORATIVE PRACTICES and RESTORATIVE JUSTICE: DISTINGUISHED BY INTERNATIONAL INSTITUTE OF RESTORATIVE PRACTICES (IIRP)

Restorative Practices (RP) not limited to formal processes, such as restorative conferences or family group conferences; and range from informal to formal. Rather, informal restorative practices include affective statements that communicate people’s feelings, as well as affective questions which cause people to reflect on how their behavior has affected others. Restorative practices aim is to develop community and to manage conflict and tensions by repairing harm and building relationships, which in turn identifies both proactive (relationship building and community building) and reactive (repairing harm and restoring relationships) approaches. Source: <https://www.iirp.edu/restorative-practices/defining-restorative>.

8. WHAT DOES A FAIR RESTORATIVE PRACTICES (RP) PROCESS LOOK LIKE?

The three principles of a restorative practices fair process differ somewhat from mediation. They are:

Engagement — involving individuals in decisions that affect them by listening to their views and genuinely taking their opinions into account. (similar to mediation).

Explanation — explaining the reasoning behind a decision to everyone who has been involved or who is affected by it. (somewhat different from mediation)

Expectation clarity — making sure that everyone clearly understands a decision and what is expected of them in the future. (different from mediation).

(Kim & Mauborgne, 1997)

Source: <https://www.iirp.edu/restorative-practices/defining-restorative>.

9. MAJOR DIFFERENCE BETWEEN MEDIATION AND RESTORATIVE PRACTICES?

Mediation is designed to help with resolution of a conflict (a disagreement of an argument) one party feels entitled to something and the other party may not feel that the other party is entitled to anything. The parties have goals, values or beliefs that they believe are fighting for. The mediator does not act as if one party is right or wrong.

Restorative Practices is used to address a harm or restore a relationship (assumes someone has been wronged).

10. NOLL’S CONCEPT OF RESTORATIVE MEDIATION

Douglas E. Noll, Esq.. nationally recognized author, speaker, and lecturer on advanced peacemaking and mediation theory and practice has referred to the combination of “Restorative Justice” and Mediation as Restorative Mediation. Source: <https://www.mediate.com/articles/noll6.cfm>.

11. NOLL’S VIEW OF RESTORATIVE MEDIATION

Restorative mediation

1. Injects restorative justice principles into the mediation process.
2. The mediator helps the parties:
 - Acknowledge injustices and wrongs,
 - Work to make things right for all sides,

- Focus on a future without a reoccurrence of the dispute.
3. Rebuilding trust is a paramount objective.

Restorative mediation goes beyond just settling a case or resolving a dispute. A successful restorative mediation will reconcile the interests of the parties and will reconcile any underlying injustices.

Restorative mediation can be applied in virtually any dispute that is amenable to mediation. It is a powerful process for restoring relationships and building strong, safe communities.

Source: <https://www.mediate.com/articles/noll6.cfm>.

12. WHERE MIGHT RESTORATIVE PRACTICES BE USED IN MEDIATION?

- Where the focus is to resolve a conflict, dispute or misunderstanding (Community Mediation); or
- Where use of a restorative approach is appropriate.

“Community mediation programs and actors have even more in common with RJ, to my thinking, with strong emphases on relationships and a ‘clean’ process—as you say, “process may be as important – or more important – than the outcome.” Howard Zehr. In mediation, perception of fairness is important (RP Similarity).

13. CONSIDERATION: USING RP COMMUNITY MEDIATION

Restorative Practices helps parties identify their perspectives and to understand how they view issue(s).

Use of Restorative Practices affective statements can assist parties in determining their needs;

My husband is a narcissistic. (Reframe - Using an affective statement or restorative inquiry)

What happened?

How were you affected? Or Who was affected by what happened?

What were you thinking at the time?

What have you thought about since?

What will it take to make it right? (adding considering where you are now might help parties keep a realistic viewpoint).

The goal is getting to the root of thought and assuring a party that the process may not be perfect; but will try to make things as right as possible for all parties.

14. GOALS WHEN RP ARE USED DURING COMMUNITY MEDIATION

Having the what happened conversation (helps parties verbalize what they perceive as the problem).

The feeling conversation (explores the emotional impact and allows for reframing by asking affective questions). The facts, and the consequences (asking who was affected or harmed or how were you affected or harmed can lead to accountability acceptance). The future (how do you think you can reach an agreement to make things right in light of where you are today).

15. POTENTIAL RESULTS WHEN MEDIATION IS RESTORATIVE

Injured party does not feel like his or her injuries were reduced to dollars;

Asking restorative questions presents parties with the opportunity to take personal responsibility for their actions; Negotiation is set in the context of “making things right,” rather than a distributive negotiation;

Since parties are encouraged to consider “what do you think it will take to make things right” bitterness of negotiation over things that cannot be valued is avoided. Source: <https://www.mediate.com/articles/noll6.cfm>

16. SUMMARY

Community Mediation Practice that includes Restorative Practices techniques may help the parties deal with UNDERLYING FEELINGS and may produce a stronger agreement and more satisfying outcome through the use of:

Consensus building and reframed issues and resolution of the initial dispute through:

Use of Restorative Inquiry;

Use of Restorative Language; and,

Use of Restorative Conversations