I. Background

A. On November 17, 2011, Sandy Ballard, the Dauphin County Bar Association Public Services Coordinator and Co-Chair of the PA Bar Association (PBA) Legal Services to the Public Committee, asked the PBA ADR Committee to join that committee in establishing a PBA Pro Bono Mediation Program in partnership with the PA Legal Aid Network. The purpose of the proposed program is to have PBA (attorneys) members available to mediate appropriate disputes referred by legal services organizations or pro bono attorneys representing low-income Pennsylvanians.

B. Cheryl Cutrona, Esquire, Executive Director of Good Shepherd Mediation Program in Philadelphia, was appointed by the PBA ADR Committee to work with Sandy Ballard, as the Legal Services to the Public Committee representative, to determine the impact on community mediation centers. Cheryl conducted a survey of the Community Mediation Centers to determine how many of them provide the kinds of mediations that the PA Pro Bono Mediation Program might provide, and related issues. The survey found that most of the Community Mediation Centers 1) offer free services for low-income Pennsylvanians, and 2) offer mediation for the same general type of issues.

C. On March 13, 2012, the PBA ADR Committee agreed to support the proposed Pro Bono Mediation Program with the proviso that they work with the Community Mediation Centers to ensure that such a program will not conflict with or adversely impact the delivery of services they provide.

D. The ADR Committee Chair Steve Yusem appointed Cheryl Cutrona to Chair an Ad Hoc Legal Services Subcommittee. The Subcommittee also includes Sam Milkes, Executive Director Pa Legal Aid Network (PLAN), Sandy Ballard, Dave Trevaskis, Ed Blumstein and Sally Cimini.
II. Process Outline: We suggest the following two-track model to implement the PBA Pro Bono Mediation Program.

A. Track One – for Pro Se / Unrepresented People
   1. We will share information about the opportunity with all public interest legal services providers (Legal Services) and bar association Lawyer Referral Services (LRS) employees in Pennsylvania.
   2. The information will include the name and contact information for all of the Community Mediation Centers throughout Pennsylvania which is available in the directory available at www.pamediation.org.
   3. The information provided will also include a list of situations that are appropriate and inappropriate for mediation (e.g., domestic violence).
   4. PBA and PLAN will encourage Legal Services and LRS employees to refer callers (especially callers who are unable to obtain representation) to their local Community Mediation Center.
   5. The Legal Services and LRS would only refer the caller to the Community Mediation Center. Each Community Mediation Center would handle the request (including fees) as they would any other caller.

B. Track Two - for Parties with a Pro Bono or Legal Services Attorney
   1. We will share information about the PBA Pro Bono Mediation Program opportunity with all Legal Services and Pro Bono (PB) Programs who provide services to low-income Pennsylvanians.
   2. With the agreement of the parties in the case*, any Legal Services or PB attorney, would be able to [complete an online mediation request form from the PBA website – if we can do that] or send an email which would include
      a) The city,
      b) Type of dispute,
      c) Deadlines, if any,
      d) Attorneys names, and
      e) Parties names (for a conflict check).
   f) A Legal Services or PB attorney may also ask Sandy or Cheryl to reach out to the opposing party’s attorney to request their agreement to mediate the issue.
   3. Sandy and Cheryl will review the request to make sure it is appropriate for mediation. If appropriate, the request is sent as an email to the PBA ADRC attorneys who agreed to provide free mediation and all the Community Mediation Centers in the geographic area.
   4. Whoever responds first gets the pro bono mediation assignment, contacts the parties’ attorneys, and schedules a roughly two-hour pro bono mediation. There would be no fee for this service.
5. After each assignment, a feedback form will be sent to the mediator to determine if the mediation was held and whether an agreement was reached.

6. We do surveys, etc and adjust as needed.

III. Information on Mediation – For additional information, you may want to look at *A Manual for Legal Services and Pro Bono Mediation Programs* by Joan F. Tobin and the ABA Section of Dispute Resolution - A guide for designing and implementing a mediation program.

**Example**-- Here is an example of how the program can work from a Dauphin County Bar Association. Of course, the procedures and results will vary with each circumstance, the example is offered to give you a sense of how mediation can help our clients.

**Can You Resolve Your Pro Bono Case More Efficiently?**

Pro bono mediations can be especially helpful in contentious custody cases. The family law mediators prefer to do the roughly two-hour mediations without attorneys present. However, we can arrange for attorneys to be present also. We can schedule the pro bono mediation without delaying the hearing or other court deadline.

While mediation can help you resolve your pro bono case more efficiently, it also empowers the parties to create their own solutions, as the following Success Story demonstrates:

Neither parent could speak of the other without their voice getting louder and their blood pressure rising. Yet, when the same parents spoke of their seven-year-old daughter, they were equally proud parents who bragged of their daughter’s intelligence, school performance and polite behavior. Both parents loved their daughter dearly. On this, and only this, they could agree.

Both parents participated in the Custody Conference on September 24. According to the seasoned Conference Officer’s report, “Parents exhibit a total inability to communicate.”

How could a custody case with such stubborn, angry parents possibly settle at a two-hour Pro Bono Mediation? Nothing short of a miracle would work. Yet, on October 26, one month after the heated Custody Conference, the parents came to an acceptable agreement and settled the case at mediation.

Corky Goldstein served as the mediator. Both parents were represented by counsel. Corky did most of the talking; showing his sincere respect for both parents and his skill at humbly encouraging the parents to focus on their daughter’s future. Corky asked questions of both parents while they were in the room together and at private, confidential sessions with each.

The attorneys rarely spoke empowering the parents to create their own solution. The solution that the parents, not the lawyers, would need to accept and implement every day
After the mediation, neither parent walked out of the room with a smug smile and swaggering gait. Neither parent felt that they had “won” but neither felt as if they had lost. The parents left with a Custody Agreement, their pride intact and hope for their daughter’s future.

**What Is Mediation?**

Mediation is defined as a process where an impartial third party, who is acceptable to the disputants, intervenes to help the parties resolve the dispute. The neutral third party

- Facilitates discussion of the issues,
- Assists the parties in hearing one another’s perceptions and versions of the truth,
- Helps to identify the interests and needs of both sides,
- Explores alternative ways to resolve the dispute,
- Guides the parties in choosing a workable and mutually acceptable resolution.

The outcome is dependent on the parties’ willingness to agree on what they will do to solve the problem. The mediator is the expert on the process of mediation, while the parties are experts on the information and the solution that will work for them.

**The Mediation Process (from ABA web site)**

The following will be familiar to every trained mediator; however there are some differences in the steps that are taught by mediator trainers. The steps below presume a single mediator serving in the role of the neutral.

The mediator meets with all parties in a room that allows for privacy and safety. A brief description of the process is given; ground rules are set; and confidentiality is explained.

Each party is asked to explain how s/he sees the problem situation, and what s/he would like to see happen to solve the problem.

The mediator asks clarifying questions, and works with the parties to reframe their position statements into interests (needs that are universal and positive in nature -- respect, adequate funds to replace or repair something that was damaged or destroyed, apologies for actions or statements that have hurt someone, etc.).

The mediator asks the parties to consider the needs of everyone, and come up with options for meeting those needs. Willingness to be flexible and acceptance of the other’s interests are encouraged.

All options that have been generated are reviewed and evaluated in terms of how adequately they will solve the problem.

If reached, a written agreement documents the outcome.

If an agreement is not reached, the parties are informed of their options for getting their needs met in some other way (leaving the matter where it is, using an arbitrator, pursuing the case in court, etc).

The parties are thanked for their participation and attempts to work out an agreement, and the session ends.
Advantages of Mediation

1. Parties will not be pressured to agree to anything they do not feel adequately addresses their interests and needs.
2. Attorneys can review a proposed agreement before the parties sign it.
3. The mediator will check that the parties have all the information they need to make informed decisions.
4. Unlike many court hearings, the mediation session is open-ended, and parties may take all the time they need to discuss options before considering an agreement.
5. The benefits of involving parties directly in the decision-making process when the dispute affects them should be stressed in talking with mediation detractors. The population that is served by pro bono/legal services agencies derives benefits beyond the solving of the individual problem in mediation. Having the mediator model good problem-solving techniques and provide guidance on managing conflict can help people in other areas of their lives.
6. At the option of the parties, an agreement reached through mediation can be translated into an order of court through a stipulated agreement.

B. Mediation offers several advantages for Legal Services and PB attorneys. For example, mediation
1. Is cheaper and faster than the traditional legal process,
2. Provides the parties involved with greater participation in reaching a solution, as well as more control over the outcome of the dispute.
3. Is less formal and has more flexible rules than the trial court.
4. Can reduce attorney caseloads and provide clients with a quicker resolution.
5. Can increase the number of clients served by moving cases off an attorney’s desk more quickly.
6. Resolves problems at an earlier, less-expensive stage before the problem escalates.