

# AN ETHICAL APPROACH TO ELDER MEDIATION: THE ROLE OF THE CERTIFIED SOCIAL WORK CASE MANAGER

Marcie D. Cooper, LCSW, C-ASWCM

Social work case management is a growing field of practice particularly for social workers providing services to the geriatric community. Resources for older adults are now in great demand and will continue to grow as the aging population increases. While options for the geriatric community have become more specialized, the choices for resources and services can be confusing and overwhelming to the consumer. As in other areas, social workers are here to help.

The National Association of Professional Geriatric Care Managers recognizes NASW's specialty certification of Certified Social Work Case Manager (C-SWCM) and Certified Advanced Social Work Case Manager (C-ASWCM) as accepted credentials for membership in their professional association. Social work case managers provide assessment, evaluation, care-planning, and advocacy for older adults, their families, and health care providers. Professional geriatric care managers are busy delivering elder care services throughout the country. An innovative opportunity for certified social work case managers is now emerging in the field of elder mediation.

Elder mediation is a newly conceived method of dispute resolution for families in conflict. Designed to assist in resolving disputes between older adults, their families, and others, elder mediation was born from the need to provide families with an alternative to court involvement. As this area of alternative dispute resolution has grown, it has become apparent that the person who is most at risk, the older adult, is oftentimes not represented. This vulnerability arises when the parent, due to physical frailty and/or cognitive impairment, is unable to fully participate in the mediation process. When the dispute is between the adult child or other relatives regarding the elder's needs, and the person with the most at stake has limited

capacity, it is crucial that there be a voice for the at-risk older adult. Here is the need and opportunity for the social work case manager: to advocate for the best possible outcome that addresses the needs, hopes, and desires of the vulnerable elder.

The kinds of conflicts that are appropriate for elder mediation are those that traditionally have been decided in a court of law. These include matters with a legal basis (decision-making capability, guardianship, real estate issues, estate resolution); family disagreements (living arrangements, driving, second marriages or partnerships, neglect); community disputes (landlord/tenant, maintenance of property, pets, wandering); and bioethical matters (medical treatment, end-of-life issues, advance directive interpretation).

Elder mediation is a process of maintaining the family unit and resolving disputes within the context of the family system. Elder mediation offers an alternative to court involvement and, at its best, preserves relationships among participants that may have divergent goals.

## The Elder Mediation Process

Mediation is a process in which an impartial third party, called a mediator, facilitates communication between parties in conflict. The mediator's goal is to assist and encourage disputing parties to reach a voluntary and mutually acceptable agreement. In elder mediation, family members voluntarily agree to the process, and agree to the inclusion of any other participants. They might choose to include the children's spouses, grandchildren, other relatives, parents' friends, caregivers, medical providers, pastors and lawyers (D. Vanarelli, Esq. 2007). Surprisingly and unfortunately, in many cases, the person at the center of the dispute, the

older adult, is not present at the mediation due to cognitive deficits and limited capacity. The social work case manager's role, then, is to ensure that the best interests of the older adult are the focal points of the mediation process.

In an ethical model of elder mediation the needs, concerns, and desires of the older adult are represented by the social work case manager. An evaluation is completed by the social work case manager or other mental health professional to assess the capacity of the individual to participate in the mediation process. If it is determined that the older adult can participate in the mediation process in any fashion, the social worker acts to ensure that the client is given ample opportunity to participate and be heard. If it is determined that the older adult lacks the cognitive skills to fully participate in the process, the social work case manager acts as an advocate for the older adult.

A detailed plan of care is formulated and presented in the mediation based on the social work case manager's recommendations. The plan of care addresses the medical, psychological, social, safety and spiritual needs of the client. The social worker helps the parties generate and explore options and exchange information with the goal of arriving at an acceptable, ethical solution.

### **Who Is the Mediator?**

Some state court systems require specialized training or relevant experience for mediators who practice in state- or court-funded mediation programs. In most states, a person can offer private mediation services without taking a class, passing a test, or having a special license or certification. Many private mediators have some training and experience and are associated with mediation organizations and programs. Social workers interested in pursuing this field of practice should consult with their state regulatory agencies to determine the certification requirements for mediators.

Professionals who have been attracted to this emerging field include attorneys, human service

professionals, psychologists, social workers, life coaches, and business entrepreneurs. The *NASW NEWS* (September 2006) article "Mediation: A Natural for Social Workers" provides a framework for understanding the commonality between the social worker and the mediator, especially with respect to the need for conflict resolution skills and impartiality.

In some instances, the social work case manager is not the mediator. In these cases, the social work case manager can support the mediation by providing a care management assessment and formulating a plan of care that is used in the mediation process. The social work case manager brings objective and professional guidance to a situation that is often fraught with emotion and disagreement. By recognizing the importance of the social work case manager and the plan of care, the mediator can use the skills and recommendations of the social worker to assist the mediation participants in generating options that will best serve the older adult.

I was recently introduced to a family that was in the midst of a bitter dispute between two adult children who shared power of attorney regarding their elderly parents' ability to take care of themselves. The adult children were embattled. They each sought primary guardianship for their parents, and they had retained separate attorneys to seek control of the financial and personal affairs of the parents. I was asked to enter the fray by the attorneys representing both children as a 'neutral' to develop a plan that would outline the care needs of both parents and recommend services that would provide for the highest quality of life in the least restrictive setting.

An attorney mediator was retained and I was brought in to assist in the mediation process. The plan of care laid the framework for the continual care of the parents. Although both parents lacked full capacity for self-care, they did express the desire to remain in the home where they had lived for 37 years. The issue was resolved by allowing the parents to return to their home with live-in care provided by a licensed home health agency. A financial advisor was brought in to

manage the bill-paying and report to the children. A professional geriatric care manager was hired to monitor the plan of care and ensure that the parent's needs were met. The ultimate decision was that the two children maintained ultimate decision-making power but the day-to-day needs were managed by professionals. If this case could not be resolved through the mediation process, each child was prepared to petition the court to become the parents' legal guardian. The result could have been an acrimonious process, potentially leaving the family in tatters. The mediation provided an opportunity for all parties to be heard, respected, and involved.

Not all cases are appropriate for mediation. There may be family members, including the older adult, who refuse to participate. The emotional wounds may be so deep that individual counseling would be more appropriate before a non-confrontational meeting can occur. The goal of mediation is to avoid personal family decisions being made by an outsider, be it a judge or court-appointed attorney or guardian. But there are times when mediation is not possible or it fails and the dispute must be resolved in a court of law.

## Bringing Ethical Principles to Elder Mediation

As a fundamental ethical ideal, autonomy represents the individual's ultimate right to make choices in life. The *NASW Code of Ethics* addresses this issue through the principle of self-determination (Section 1.02). The social work case manager develops a plan and goals based on this ideal of self-determination.

The social work case manager provides an evaluation to assess the extent to which the older adult has the capacity to participate in the mediation process. If it is determined that the older adult has limited capacity to participate, the social worker's role is to provide the parties with the voice of the older adult and to act as an advocate to uphold the principle of autonomy.

If it is determined that an elder person lacks the capacity to fully participate in safe and

appropriate decision-making, the social work case manager enters the mediation process to ensure that no harm is done. Using an ethical model of elder mediation, the mediator is considered neutral and the social work case manager is an advocate for the best interests of the older adult.

In traditional mediation, such as divorce mediation, the parties may agree on a resolution without full knowledge of the facts and without an understanding of the risks associated with decisions that are made. In elder mediation this could have dire consequences. The medical, emotional, safety, financial, residential, social, and spiritual needs of the person most vulnerable must be considered. The social work case manager brings these issues to the forefront.

An ethical approach to elder mediation encompasses the social work value of the importance of human relationships. In elder mediation the hope is to preserve the family unit while articulating the needs of the person most at risk. The social work case manager in an ethical model of elder mediation realizes social work ideals in their purest form.

**Marcie D. Cooper, MSW, LCSW, C-ASWCM, is an instructor at Rutgers University, New Jersey in the gerontology certification program and a co-founder of The Elder Mediation Center of New Jersey. She may be reached at [marcie@gratefulcare.com](mailto:marcie@gratefulcare.com).**

## References

- Donahue, W. H. (2002). *Reconcilable differences: A consumer's guide to divorce mediation*. Philadelphia: S. Kilkenny Publishing.
- Jonsen, A. R., Siegler, M. & Winslade, W. J. (2002). *Clinical ethics: A practical approach to ethical decisions in clinical medicine*, 5th ed., New York: McGraw-Hill.
- Stoesen, L. (2006, September). *Mediation a natural for social workers*. NASW News, Washington, DC: National Association of Social Workers.
- Vanarelli, D. (2008, February). *The principles of collaborative law*. Retrieved from [www.nydailynews.com/topics/Family%20Law](http://www.nydailynews.com/topics/Family%20Law) on October 9, 2008.