

Statewide ADR Commission
Mtg. Minutes
4/17/15

Called to Order by Co-Chair Justice Chavez at 9:30am

Attendees: Hon. Edward Chavez, David Levin (phone), David Smoak, Mary Jo Lujan, Susan Barnes Anderson, Hon. Mark Sánchez, Hon. Duane Castleberry, Jeanette Rael, Laura Bassein (phone), Philip Dabney (phone), Darcy Bushnell, Sara Stevens (phone).

Elizabeth Jeffreys, Coordinator

Louise Baca Sena, AOC (phone)

Absent: Sharon Ortiz, John Feldman, Mari Gish, Tori Jacobus, Kevin Spears, Susan Laughlin, Ty Trujillo.

Introductions:

Elizabeth Jeffreys, new statewide ADR coordinator, introduced herself, presented binders to Commissioners containing key reference documents, spoke about the Commission's central directive to "develop, organize and monitor ADR", and asked the Commission to develop 1-year and 5-year plans with those directives in mind. She suggested that the Commission review the documents in the binders, including the NCSC Ct. ADR tab containing the 2010 survey of ADR programs existing in the court at that time, which notes specific interest in ADR development by some of the courts.

She also noted that the Commission is operating on the (reasonable) assumption that it is focused on ADR in the state courts, but that symbiotic relationships may be formed with other courts in the state, perhaps to share mediator pools and training opportunities.

Note: Probate and municipal courts are not "state courts".

Justice Chavez shared that he has communicated with municipal courts, and that ADR is of interest to them in part because their cases tend to involve strong relationships between the parties – a condition known to be amenable to mediation.

David Smoak, in response to specific court interest in ADR development, asked if there were any surveys of Judges to identify interest in programs. Justice Chavez said he was not aware of any.

Hon. Castleberry thought that the 9th J.D. Ct. pilot program, studied by the Commission's subcommittee and presented by Hon. Sánchez, might be well received by other courts.

The Binders contain:

- A list of the courts of New Mexico, includes the Municipal and Probate Courts.
- The 2011 NM Supreme Court Order that formed and directed the Commission.
- Current Roster of Commissioners.
- The NCSC "10", Ten ways to advance ct.-annexed ADR in NM.
- The NCSC Report (2011), cited by the Order, with strategic directions (p.51-64)
- The NCSC Ct. ADR Review (Appx. A of Report), reflecting 2010 Ct. ADR Programs
- District Cts., providing summary of Appx. A, census and ct. stats, ct. descriptions
- Magistrate Cts., (currently empty tab, David Levin may fill later)
- Map of NM state courts (District, Magistrate and Metro Courts)

[Binders will be mailed to the Commissioners that were unable to attend the mtg. in person]

Announcements:

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Co-Chair David Levin provided a 16-page handout to accompany his updates.

House Bill 385, ADR Fee Sliding Scale progressed smoothly through the Legislative process, with the help of Co-Chair Justice Chavez, who met individually with various members of the Legislature to address their specific concerns. The Bill died on the floor in the last days of the session, as the Senate was consumed by other matters. The Bill will undergo small revisions and be presented before another Leg. Session.

Website Toolbox is a primary focus now that the Leg. Session is over. There are 60-70 pages of documents to serve as a reference manual. A “quick start” section will be developed with the basics, with links to more information. The plan is to go live ASAP.

Mag. Ct. Pilot Programs are operating in Clovis, Taos, Las Cruces and the ‘central corridor’ of Los Lunas/Belen/Bernalillo. These programs may serve as a template to replicate ADR programs in other cts. in NM.

Metro/Mag. Ct. Rule new rules and forms implemented to address the problem of holding ct. cases open indefinitely after a settlement agreement is reached for purposes of retaining the ability to enforce the agreement. The practice thwarted efforts to track the time saved by mediated agreements.

Susan Barnes Anderson will share the packet she’s assembled to disseminate this information to practicing attorneys affected by the rules.

Odyssey & ADR Program Mngmt The denial of the SJI grant may have a rosy side – the grassroots (“homegrown”) development of procedures by knowledgeable and dedicated individuals in the Clovis and Las Cruces Mag. Cts. specifically designed to address the local needs. JID is assisting to find the necessary expertise to fulfill this project.

Note: Commissioners are encouraged to review the Odyssey data points reflected on page 16 of the handout and provide feedback, as these points can be modified/changed.

Veto of Mag. Ct. Funds by the Governor places increased strain on scarce resources. While the Mag. Ct., AOC and Supreme Court struggle to address the needs, there is concern expressed for the impact on jobs. The Commission will be kept updated on any resulting impact on the Mag. Ct. Odyssey as well as other ADR projects.

Hon. Mark Sánchez presented (5-page handout) **“Addendum to the Concluding Report of the Pilot Program Subcommittee”**, a study of the **9th J.D. Ct’s new Domestic Relations Mediation Program**. Credit given to subcmte members: Susan Barnes-Anderson, Duane Castleberry, Mari Gish, David Levin and Sara Stevens, as well as Celia Ludi and Ben Cross. The study concludes that, “[m]ediation contributes to longer lasting results and the consumption of less time in court”, which amounts to a cost savings. The subcmte recommends that District Courts increase the use of similarly well-designed programs utilizing attorney-mediators.

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Susan Barnes Anderson commented that, apart from cost-savings, the Metro Ct. Judges frequently acknowledged that the benefits of mediation on the parties extends (“bleeds out”) to the larger community.

Susan Barnes Anderson announced a successful, fun and well-received **speech to the Kiwanis Club**, and encouraged the use of **video conferencing in mediations**.

Teleconference (TC) She recently observed a teleconferenced mediation that took place in Las Cruces and involved a mediator in Santa Fe. Teleconferencing may be of special benefit to rural areas where mediation programs are hard to sustain due to low mediator pools and limited experience/expertise. The use of TC could provide access to remote co-mediators, mentoring opportunities, training, and other services. In addition, there are cost savings in per diem and other travel expenses.

She also notes that Metro Ct. is currently heavy with debt collection cases.

Co-Chair Justice Chavez asked if the Mag. & Metro Ct. utilized volunteer mediators and, if so, what if any impact was anticipated by the proposed **Sliding Fee Scale Bill**. Yes, the courts utilize vol. mediators and Jeanette Rael offered that passage of the Bill might address the attrition, if there was money available to pay the mediators.

ADR Training (April 30) for attorneys who participate in mediation in lower jurisdiction courts will help clarify the role of attorneys and provide guidance on beneficial involvement of attys.

David Smoak , as Chair of the Marketing/Education Cmte, stressed the importance of trainings and education. He noted the impact of education on Mag. Ct. Judges where a single training improved demeanor and reduced the incidence of code violations, including exparte communications. He also envisioned the use of kiosks offering a computer within the court to assist and educate those in need.

Featured Presentation:

Mary Jo Lujan, Bureau Chief of the Office of Alternative Dispute Prevention and Resolution, Risk Management, presented an overview of the mediation program run by her office, the successes and challenges of the statewide ADR program, resources and opportunities for collaboration between her office and the Commission. [PowerPoint & handout – brochure]

Overview. The OADPR operates under statute to provide access to mediation services to all risk management covered entities with the purpose of saving money and reducing claims costs. The Office employs three FTEs, and maintains a pool of volunteer mediators, many of whom are state employees and some of whom are retirees. 95% of the requests for mediation are to address employment related conflicts. The Office further serves to centralize resources, assist other state ADR efforts (policy & program development, collaboration), as well as to offer presentations and trainings.

Success. In FY14 the mediation services provided by OADPR saved the state \$3.2 million in claims costs (using an average cost of \$45,000/claim). Employment conflicts are widely

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amenable to mediation, and the OADPR can resolve conflicts that may not form the basis of a legal claim but that are disruptive or otherwise costly to the organization. The OADPR is housed in Risk Management where it receives broad support, including access to data that helps to inform and support the program.

Challenges. The Rio Grande corridor is well served and resource rich, but there is no travel funding and it is difficult to build/maintain mediator pools outside of the corridor. A video conferenced mediation is planned for next week, and more may follow to improve access to remote/underserved areas. The mediator pool is not as diverse as it could be in language, culture, experience and education, and there is some natural attrition. Sometimes OADPR encounters resistance to participation by individuals and/or their parent organizations.

Resources & Opportunities for Collaboration.

Mediators are sometimes shared with the federal executive branch, the metro court and community pools. However, the OADPR mediator pool is largely comprised of employees of the agencies served, who volunteer during paid work time, so the pool is not openly shared. When mediators are shared, there's a need to orient them to the local process/forms.

Training opportunities can be shared, and some available seating is expected for 3 40-hour trainings that will take place shortly in Albuquerque, Santa Fe and Las Cruces. A few seats are offered specifically to lower-income court personnel (contact Mary Jo Lujan for more info.). OADPR could use more mentors to assist in oversight and training of new mediators.

Outreach is accomplished through a website, newsletter, email 'blasts', and a very successful yearly Symposium that provides opportunities for networking and continuing education.

ACTION ITEMS:

Develop, Organize and Monitor Court-Annexed ADR. The Coordinator stressed that the Commission needs to focus on fulfilling the primary duties named in the Supreme Court Order, as defined and informed by the NCSC Report. In order to design a 1-year and 5-year plan, the Commission must decide on the activities it will undertake and the extent of its involvement. She provided a list of considerations for the Commissioners to contemplate, and encouraged each to review the NCSC Report with particular attention to the recommendations outlined in Ch.V, "New Mexico ADR Tomorrow: Strategic Directions" (p.51 of the Final Report).

Ct. CEO Survey. The Coordinator was directed to do a survey of the Court CEOs to inform the Commission of existing Ct. ADR programs, using the 2010 NCSC survey (Appx. A, Final Report) as a guide. In addition, the Courts will be surveyed on whether there is a local rule to allow for the collection of fees to support ADR programs, and how those funds are collected and used. The Commission is also interested in any specific interest the Courts may have in developing new programs. The survey will be used to help inform and direct the Commission's activities.

DEVELOPMENT. The Commission is directed to develop Ct. ADR, but has not defined the extent or focus of that activity. The Coordinator suggested that the Commission may wish to assist Courts in creating a local rule and rudimentary ADR program so that a fee may be collected in order to assist program development, as well as aid the passage of the Sliding Fee Scale Bill.

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Justice Chavez said that the fee is designed to support existing programs that must be operational (not just on paper), so start-up funds are difficult to obtain. Judge Castleberry noted that ADR programs must be part of the unified budget in order to be promoted, since no one is able to lobby for programs outside of the unified budget. The magistrate courts do not create individual budgets and depend on the AOC for this service. He suggested that requests be made within the unified budget for funds to start programs. Susan Barnes Anderson shared insight that the Legislature is comfortable cutting funds for *programs* but is reluctant to cut funds for *services*, so attention must be paid to the semantics. Judge Castleberry added that the Legislature seems fond of *problem-solving* court programs. Justice Chavez noted that, in his experience, the Legislature is generally receptive to the use of ADR in the courts. The Commission's discussion on the developing ADR in the courts focused on the **need for funds**.

ORGANIZING. The Coordinator suggested that the Commission's current activity centered on organizing statewide resources by use of technology, including improvements to the Odyssey system, making the website toolbox useable and accessible, and providing other shared resources on-line. In addition, the proposed Rule was making progress, and the Commission is exploring opportunities to collaborate with other ADR organizations. Justice Chavez asked when the **toolbox** would be operational. The Coordinator shared that the current website was limited in capacity, so a search engine could not be provided, but that plans are underway to obtain a new JID contractor within the year to provide a site with greater capabilities. David Levin is working hard to get the materials ready and the Coordinator hopes to have the documents accessible on-line before the June meeting. Darcy Bushnell suggested that a "quick start" be prepared for Judges so that they could receive by e-mail whatever was specifically needed for their court, with links to additional information. This would be in addition to the 'cheat sheet' contemplated by David Levin, which would be a more general/generic guide.

MONITORING. The Commission is directed to monitor existing Ct. ADR programs, but has not decided on the method or the extent of this activity. The survey, above, will aid in identifying existing programs that may be monitored. Judge Sanchez indicated that he would like to know the number of cases that are resolved, and what types of cases are addressed by the programs. Justice Chavez added that he would like to know the total number of cases that utilize the program, even if they are not resolved. He also indicated that it is best to capture data from Odyssey rather than to impose on the Courts to create reports. The Coordinator suggested that the Commission identify programs that currently issue reports so that they may review existing reports (for example, the annual report by the Children's Court Mediation Project). The reports may be useful for future efforts to organize programs by standardizing/organizing the substance and/or formats of the reports.

Committee Formation and Tasks

Rules Committee. Comments were received on the proposed Rule, and the Rules Committee will need to review, comment and propose any revisions. A new chair is needed. Susan Barnes Anderson said that she will continue her work on the Cmte, but is unable to be Chair. David Levin and Laura Bassein were also unable to Chair, but agreed to continue work. No one volunteered to Chair, and there were no new commitments to serve on the Cmte. The Coordinator said that she did not need a Chair, but she

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did need people to do the work. Justice Chavez will follow-up on the Cmte's activity, and indicated that he wanted their unfiltered recommendations.

Mktg./Edu. Cmte. David Smoak asked that a Co-Chair be provided to his Cmte. Justice Chavez will follow-up. The Coordinator asked that the Cmte. start to consider activities for Mediation Week (likely Oct. 18-24), and that there may be reason to hold another Summit or to otherwise 'launch' major efforts of the Comm., such as the Rules (if signed), the Toolbox and other resources made available to courts.

JEC. Rather than form a JEC Cmte., the Coordinator asked that the Commission vote to authorize the Co-Chairs to coordinate the selection process for the JEC scholarship. **VOTE:** A quorum was present, a Motion was made by Judge Sanchez, Susan Barnes Anderson supported the Motion with a Second, and a vote was taken: All were in favor of authorizing the Co-Chairs to select the JEC Scholarship recipients.

The meeting was adjourned at 11:40 am.