

Statewide ADR Commission Meeting
Friday, October 4, 2013
Juvenile Justice Center, Albuquerque, NM
Minutes

The meeting was called to order by Co-Chair, David Levin.

Update on Mediation Week (October 13 – 19)

- The Supreme Court issued a Proclamation declaring October 13-19, 2013, as MEDIATION WEEK in New Mexico, commends the efforts of the individuals and organizations that make mediation and mediation programs available to the citizens of New Mexico, and encourages the courts to recognize those individuals and publicize their mediation programs during Mediation Week. It will be sent to Court CEOs and District Court judges on Monday.
- Commissioners' were encouraged to arrange speaking engagements in acknowledgement of Mediation Week. Both Judge Sanchez and Judge Castleberry indicated they had arranged local speaking engagements.

Report from Pilot Project subcommittee

- Judge Sanchez reported that the pilot program in the 9th Judicial District was well planned and executed. David Levin and Celia Ludi also reported that lessons learned included how to create collaboration between local courts and state agencies; the need to work on measurable outcomes in order to show legislature how much money can be saved; the need for experienced local mediators or a pool of mediators that can be dispatched to different parts of the state. It was also noted that courts outside the Rio Grande corridor participated, expanding the reach of ADR.

Report from Marketing/Education Subcommittee

- David Smoak reported on plans to move forward with creating the DVD that courts could use to educate litigants about ADR. He notes that court personnel as well as parties. It was suggested to present a training session at the Judicial Conclave and Magistrate Judges training, and that IPL is another setting where training of court personnel takes place.

Report from Rules Subcommittee
& Letter from John Feldman to Commission

- John Feldman addressed the Commission regarding his letter and proposed Rule. The letter is attached. John Feldman emphasized party self-determination, the need to use the National Standards as the guideline with courts developing their own local rules. Commission members responded with different points of view, only a few of which are summarized here: there is much in common with the revised rules and John's point of view regarding local autonomy and self-determination of parties; courts need a starting place which is what the rules offer; that the National Standards were incorporated into the rules and there is no need to append them. After the discussion, the Commission deferred taking action on the letter until after reviewing the Rules proposed by the Rules subcommittee. John Feldman left the meeting to attend another commitment
- Celia Ludi presented the work of the subcommittee in their revision of the rules. The rules address mediation and settlement facilitation. Once decisions have been made on these rules, other forms of ADR can be addressed. In this version of the rules, commentary was included and expanded. Instead of going for a one size fits all rule, the commentary is there to explain the intention of each part of the rule. Each section of the rules were addressed and commented on.
- The Commission, after discussion, unanimously voted to adopt proposed Rules 29-101 and 29-102 and their Committee Commentaries without amendment.
- The Commission unanimously voted to adopt proposed Rule 29-103, subject to the following amendments and subject to approval of the additional commentary:
 - Move Paragraph D to Paragraph B(9), renumbering B(9) to B(10) and relettering Paragraph E to D and Paragraph F to E;
 - Change "may" to "should" in Paragraph C(2);
 - The Commission also directed the Subcommittee to draft additional commentary regarding the new Paragraph B(9) regarding allowing attorneys to be present at mediations if the parties request it.
- The Commission unanimously directed the Subcommittee to review proposed Rule 29-104 and change "should" to "shall" wherever appropriate, particularly in Paragraph A(1) and A(2) and Paragraph E. The Commission unanimously voted to adopt proposed Rule

29-104, subject to approval of these changes and to the following amendment to Paragraph F(2) as follows:

- (2) Consistent with standards of impartiality and preserving party self determination, and only if requested by the parties, a mediator ~~should not~~ may offer a personal or professional opinion ~~intended to coerce the parties, unduly influence the parties,~~ but may not insist upon a particular resolution, decide the dispute, or direct a resolution of any issue.
- The Commission also directed the Subcommittee to propose a plan to gather informal comments to the revised Rules by March 1, 2014.
- The Commission expects to be able to submit finalized Rules to the Supreme Court after March 1, 2014.
- The Commission unanimously declined to adopt the Rule proposed by John Feldman

The meeting was adjourned.

Attachments:

1. Draft Rules
2. John Feldman's letter
3. Annual Report
4. Pilot Program Draft Report
5. Mediation Week Proclamation

Meeting Attendees:

Members Present:

Justice Edward L. Chavez, Co-Chair

Susan Barnes Anderson

Paul Briones

Darcy Bushnell

Judge Duane Castleberry

John Feldman

Mari Gish

Jeff Griffith

Bruce Hall

David Levin, Co-Chair
Susan Laughlin
Celia Ludi
Judge Mark Sanchez
David Smoak
Mary Jo Lujan

Staff Present:

Marsha Lichtenstein

Guests Present:

Torri Jacobus
Laura Bassein
Sharon Ortiz
Louis Moore
Louise Baca-Seba
Jeannette Martinez
Jeannette Rael
Karen Martinez
Laurie Knight

Note: These minutes were initially prepared by Marsha Lichtenstein and were revised by David Levin and Celia Ludi.