

STATEWIDE ADR COMMISSION

Meeting Notes

4.15.16 1:30pm – 4:00pm

Attendees: Elizabeth Jeffreys, Staff & Statewide ADR Coordinator
Justice Nakamura, N.M. Supreme Court Liaison

David Levin, Chair	Susan Barnes Anderson	Jennifer Foote
Laura Bassein	Torri Jacobus	Phil Dabney (Phone)
Judge Castleberry	Sara Stevens	Mari Gish (Phone)
Sharon Ortiz	Darcy Bushnell	Kevin Spears (Phone)

Guests: Shannon Driscoll, AOC Magistrate Court Mediation Program Manager

Absent: Susan Laughlin (S/L) Jeanette Rael David Smoak (travelling)
Mary Jo Lujan Judge Sanchez (travelling)

I. Welcome & Introductions

II. Announcements & Updates

- A. The RFP is posted for the Regional Coordinator position(s) for the Children’s Court Mediation Program [handout]
- B. The N.M. Supreme Court requested comments from the Commission on the proposed Collaborative Law rules. Laura and David drafted comments for Comm. to review.
- C. Mediation Guidelines were reviewed by counsel for the N.M.Sup.Ct., and suggestions and comments were offered.
Volunteers: Laura, David, Susan Barnes Anderson, Darcy (editing), and Elizabeth.
- D. Marketing Cmte., Meeting to discuss mediation awards set for 5/4/16 at noon at the Second Judicial (Rm 244)
- E. Chair Levin shared that RSI would like information about the Veteran Courts and mediation services in the courts. Elizabeth will follow-up.

III. Budget Planning Process Overview [Chair Levin]

Overview: various state court entities make recommendations to the Budget Cmte., the Budget Cmte. makes recommendations to the Chief Judges Council (CJC), then the CJC makes recommendations to the N.M. Supreme Court. Reference the chart in the Unified Budget Book from last Legislative session.

Chair Levin & J.Nakamura met with Artie Pepin, AOC Director, and Oscar Arevalo, CFO, about the budget process for the Commission. Funding for the Commission is integrated in the AOC budget, under the Court Services Division, which is headed by Louise Baca Sena. So far the Commission’s budget for staffing (Elizabeth’s position) has been funneled through the Children’s Court Mediation Program budget.

Justification of budget requests. When proposing budget items it is important to show that ADR is valuable – that time and money will be saved by the courts and/or the public. For example, you can demonstrate that the time to disposition is shorter when mediation is used, thereby saving money for the courts.

Chair Levin met with Louise Baca Sena last week to discuss what is needed in terms of justification. The Commission will need resources to further develop court-connected ADR. Ideally a 3-5 year concrete plan should be developed to demonstrate the need for resources. The Commission will expend staff resources as well. There is a need to reach out the Judges and CEO's to find out what's working and what's needed.

Next Steps: 1). Recommendations will be finalized in collaboration with the AOC. For example, to develop a structure for the growth of a 1.0 FTE for the Commission. Louise Baca Sena provided a list of questions to consider when preparing the budget justifications. 2). Participation will be needed to support proposals in the meetings that occur throughout the budget process.

Today's meeting will focus on budget proposals that will be considered, discussed, and then voted upon.

Many activities are tabled for the Spring, which is almost upon us. For example, visiting the District Courts, and learning about the interviews that Chair Levin conducted with each Commissioner.

IV. Data Reports, Magistrate and Metropolitan courts

Metropolitan Court [Susan Barnes Anderson]

There are no official numbers for the data, and Susan is not authorized to provide official numbers yet. There were some inconsistencies discovered with Odyssey data input that will need to be addressed through training. However, it appears that for general civil cases the average days to disposition for non-mediated cases is ... [longer].

J.Nakamura asked what the starting point was for measuring the time to disposition. Susan responded that she used the date of referral for mediated cases and the date of filing for civil cases, but she can go back and measure both from the date of filing. She believed that the benefits of mediation would still be remarkable.

A case closes once agreement is reached, but there is a need to note that the cases may have a later enforcement action filed in court.

Darcy notes that it's important to clarify the various components when presenting the data, and to provide clarifying statements for each data set (mediated and non-mediated). She was concerned about removing the cases with 100+ days from one data set only (mediated cases). Susan responded that the reason the collections cases take longer in mediation was because of the frequent involvement of out-of-state counsel. She's not sure if there's a comparative need for additional time for non-mediated cases, but she notes that there was still a notable benefit for mediation even without extracting that group from the data set.

Laura asked if the vast majority of cases are sent to mediation. Susan wasn't sure. Laura asked if it wouldn't help to know the number of cases and the types of cases that are referred to mediation. Susan clarified that the cases she reviewed were general civil cases, and she

excluded from both data sets the eviction and restitution cases, and also excluded cases for which there was no answer filed.

David suggested that a handout be prepared to discuss the data collection and analysis as part of a brown bag session. Susan noted that the process was more difficult than she anticipated, that there was inconsistent data input into Odyssey that complicated the process. J.Nakamura asked if similar data reports could be provided for both the Magistrate and Metro courts. Susan said she's working on it. She reports that in the last months she's noted a 70-85% agreement rate in mediations at Metro Court. Laura would like to see the total number of cases filed, the number of those that are referred to mediation, and the number of cases that are mediated. J.Nakamura finds the data compelling. Darcy stressed a need to describe the differences in the data.

Shannon notes that Curry Co. Magistrate court has a much faster time to disposition for non-mediated cases because the court is smaller and more rural, so the comparative data is less compelling. If similar data is provided that could permit a comparison between the Metro Court and the Magistrate Courts, information would have to be provided to explain the differences.

David observed that we're learning how to make the data useable and that the Commission can think about developing a plan to improve data reliability and reports.

Susan provided a second report to compare post-judgement data to post-mediation data. Again, the numbers were unofficial. She also notes that the data she's presenting is from 2015, for both reports. ... She will need to look at each case to check the validity of the numbers, and one of the issues is that an enforcement action may not arise until years after the judgement or agreement, and not in the same year. Laura offered that if the numbers could be provided as percentages the data might be easier for people to absorb. Shannon offered in her findings that about 30% of mediated cases do not return to court for enforcement, which is similar to the Nation data on compliance rates.

Susan offered that Judge Sedillo might provide a testimonial as to the value of mediation in the Metro Ct., as he was initially concerned that the request for data was related to a proposal to decrease funding for mediation services and was alarmed at the thought.

Susan said that it's reasonable to conclude that mediation offers savings for the court, but that it's hard to get a dollar amount. She tips her hat to the IT folks who pulled together to help gather the data. J.Nakamura said that she's impressed with the initial efforts.

Magistrate Courts [Shannon Driscoll]

No comparative data was available for the Magistrate Courts, but Shannon may be able to gather some of it by hand. She provided handouts for Curry Co. and Dona Aña Co. Mag.Cts.

Laura, referring to the handouts, asked what the initiating point for the data. Shannon responded that the data was based on the date the case was referred to mediation. She could get the data from the date of filing, but she would need more information because sometimes months go by before cases are referred to mediation. So, she'd need to discover how long until a case is referred. She notes that the results she found were within the range of the national

data. Susan Barnes Anderson noted that the same is true in Metro Court – that it may be months (at pretrial) before a case is referred to mediation.

The cases returned for enforcement were about 25% of mediated cases in Curry Co., and about 22% in Dona Ana Co. Susan did not gather compliance/enforcement data for Metro Ct.

Darcy said that the data presented was a good foundation on which to build. David said that we can identify what could be accomplished with additional resources to devote. Susan asked how we could in addition present testimonials and other qualitative data. Elizabeth will share how the Children’s Court Mediation Program presents qualitative data and testimonials.

Susan again noted that the data she shared today is not official, and that she is still waiting on the official numbers and authorization. She also reiterated that she reviewed cases from 2015.

Judge Castleberry appreciates the efforts and wonders what factors were used to measure time to disposition and time to referral for the general civil cases. Susan responded that closure of a case was measured by either a judgement or dismissal of the case. For mediated cases, closure was measured as the time of the filing of a stipulated agreement or dismissal.

J.Nakamura commended the reports.

Darcy wondered if it would be important to check the time from the filing date to the time of referral of a case to mediation. Susan responded that it might be good to have that data, but it also might be difficult to gather because there are numerous paths by which a case may travel before a referral. Some would be pre-screened and referred, some are brought to mediation by party request, some are referred by a judge, etc.. Shannon noted that it would not be difficult to gather that data for the Magistrate Courts.

David suggested that the discussion be tabled until Spring, so that the budget items can be addressed. Susan reiterated the need for training for clerks, to help ensure good data entry into Odyssey. Darcy added that there were protocols developed for the transition from FACTS to Odyssey that may be helpful for approaching training for clerks. Susan noted that Metro had a system different than FACTS. Torri added that the District Court has similar challenges. David again asked to defer the conversation so that the budget issues could be addressed. He suggested that a summit may be helpful to address the data issues.

V. Commission’s FY18 Budget Items [handouts]

- A. Operating Expenses. There will be a recurring amount of \$3,400, beginning in July (FY17). No additional recommendations were offered by the Budget Cmte. Elizabeth explained that no vote is needed to continue this budget, as it is recurring.
- B. Staff. The recommendation is for a 1.0 FTE to staff the Commission. [Handout]
- C. Contract. There was no recommendation by the Budget Cmte. for contract funds.

STAFF – Proposal for 1.0 FTE Position for Commission

Judge Castleberry asked how we can keep the proposal for staffing clear to avoid confusion. Elizabeth explained the background of her position. In the first year of the Commission's formation a request was put forward for a 1.0 FTE at the AOC to split time between the Children's Court Mediation Program (CCMP) and staffing the ADR Commission. So, technically there was a .5 FTE for the Commission, but the funding is in the CCMP budget since the Commission has not had a budget. David added that the Commission has half of Elizabeth's time.

J.Nakamura clarified that the Commission needs only to be clear about what is needed, so the request can be simply for a 1.0 FTE devoted to staff the Commission. The AOC can address any of the complexities of that request. She added that the justification must be based on economic need.

Laura expressed concern that the Legislature has previously denied a .5 FTE for CCMP. J.Nakamura offered that having data will help to justify the request. Darcy added that it will be easier to gather data and provide reports when the Commission has someone fully devoted to the work. Laura suggested that it would be good to provide the background of the Commission's work and the accomplishments since 2012. That when the NCSC study was developed, there were no FTEs devoted to ADR at the AOC. Now there are two FTEs, Elizabeth and Shannon. Judge Castleberry supports the effectiveness of that approach.

VOTE: Darcy encouraged support for a devoted 1.0 FTE staff for the Commission. David stated that he understood Darcy's statement as a motion. The motion was seconded by Judge Castleberry. There was no further discussion so a vote was taken. **Torri abstained. The vote was unanimous in support of a 1.0 FTE to staff the Commission in FY18.**

VI. Commission's Support for Legislative Initiatives

Sliding Fee Scale Legislation [Handout]

Darcy identified a need for edits. She pointed out that the purpose could be clarified, that there may be a need to clearly define "parties", that there may be some concerns with the use of "shall" vs. "will", etc.. She offered to assist with edits.

Judge Castleberry asked if the fee would apply to both parties. David responded with an explanation of the intent. For example, if Taos wanted to provide mediation services for custody and property cases, it may want to impose a fee that could be allocated between the parties according to each party's ability to pay. The N.M. Supreme Court would need to approve a rule to permit the services. Currently, there was no legal authority in the statutes to permit the District Courts to impose a sliding fee to support the services.

J.Nakamura cautioned that, as the Commission considers the development of fee-based services, the Legislature may be influenced in deciding whether to provide state general funds for services that could be fee-based. Shannon responded that the needs in the Magistrate Court and Metro Court are distinct from the needs of the District Court. The District Court handles more complex cases. J.Nakamura asked if there were funds for mediators in the District Courts, wouldn't the volunteer mediators in the other courts leave for paid work. Shannon noted that this is already an issue.

David noted that when the legislation was first submitted, people liked that there was an option to fairly split the costs between the parties. He also pointed out that the Bill would allow the District Courts to decide on the development, and there would still be a need for the Supreme Court to approve rules.

Laura expressed concern that the proposed legislation would expose that some services are in place in the District Courts even without a statute in place. Also, the legislation appeared to be drafted in a manner that would repeal the existing language that supports fees for ADR, and that could cause problems. We need to be careful that we're not taking steps backwards. David stated that was a good point. It's important to consider the politics of the moment, and to protect what we have as we move forward. He notes that these were not the issues raised in the prior legislative session, but they should be considered so that we are prepared for the next session.

Susan asked Torri if she had thoughts on the proposal, given her position with a District Court. Torri said that she'd need to give it more consideration, but as an initial impression it appeared to be a good concept. David noted that the Second Judicial programs exist under rules approved by the Supreme Court. Torri said she read the proposal to include "any program", which would include the Second Judicial's. David reiterated that the Court Clinic programs of the 2nd are already in compliance. Laura added that there is a statute to support the \$30 mediation fee for domestic relations cases, but there's still a need to get a rule approved by the Supreme Court. David noted that for consultations at the 2nd there was a sliding fee scale. Laura said that the payment for mediations at the 2nd was provided by the parties, because the 2nd doesn't charge a mediation fee. Sara noted that for the 4th Judicial in San Miguel she was able to trace back the fees charged over the years in order to provide data for the Supreme Court.

David noted that the draft of the legislation was provided by the Legislative Council Service (LCS), and that a problem was noted that required a rewrite. Darcy asked for a time frame for her contemplated edits. Elizabeth said that AOC's deadline was the end of May (26th), so she would need it ahead of that time in order to prepare. Laura asked why the legislative proposal would follow the unified budget process when it is not a budget item. Elizabeth responded that legislation follows the same path as budget requests – it is a vetting process. Darcy noted that the legislation could bring in a fee from every civil case filed. Laura again expressed concern that the language repeals prior language that provides for fees. David said that we can work on the language, but that the intent is to assist courts. Laura notes that the language appears to repeal the entirety of the existing statute.

David wondered how the Commission could move forward on the issue, so that a timely position could be reached. He suggested that the Commission vote on supporting the intent of the bill, with a directive to modify the language so that it would not conflict with the existing law. Judge Castleberry wondered if there may be some confusion between ADR funds. David responded that the domestic relations fund is a completely separate fund. Laura noted that the law has existed since 1986, with no amendments since 1994, so it's not likely to be a point of confusion.

Darcy said that the proposal as stated to the Commission actually differed from the bill presented. She wondered if all of the parties were to pay a filing fee. David responded that the

LCS expanded the statute to include a separate fee, but that it shows up in the same act. It was the drafting by the LCS. Whatever concerns are raised should receive consideration, and may require a redraft. J.Nakamura noted that the LCS will write up legislation, so we can go back if we have concerns. Also, there is a process of review, including analysis by AOC for the Fiscal Impact Reports.

David encouraged that action be taken today to support a bill to this effect be put forward with a recommendation that AOC work with LCS to get the language resolved. He added that this may be the first discussion on the substance of the Bill.

VOTE. Laura moved that the Commission move forward on legislation to maintain the existing \$15 fee while creating a sliding scale fee. Phil Dabney seconded the motion. The vote was of unanimous support. Laura and Darcy will follow-up to work on language edits.

VII. Magistrate and Metro Court Fee Increase [Handout] *(J.Nakamura exits)*

Jennifer wondered about the existing language of the statute, which provides for a fee on criminal actions in metro court as provided by court rule. Susan responded that she did not believe a fee was ever collected for criminal cases. Susan suggested that the proposal additionally strike through the criminal action language since there was no collection in place. She thought the language may be there to address a small set of “private criminal actions” that were once permitted. She suggested the words “and criminal” be stricken.

Torri asked about the provisions of the Metro Ct. rule. Susan thought it was just a reference to case types. Shannon noted that it was possibly a reference to the court’s authority to impose a lesser fee by rule. Judge Castleberry cautioned that any proposed fees may not make it through. David acknowledged that even in his meeting with the AOC Director there was concern for proposing fees, and support for the sliding fee scale legislation and change of the MCMP Manager position to state general funds as priorities.

Susan asked if there was value in putting it forward anyway, and to keep putting it forward. Shannon noted that she’ll need to put it forward either way, whether the Commission supported the proposal or not. Susan stated that it’s good to move both fees (metro & mag cts) together, and to coordinate. Judge Castleberry asked what the impact would be if only one fee increase was approved. Susan responded that it would serve as justification to go back with the request next year. Judge Castleberry asked if there was another way to pursue funds, other than by increasing fees. Shannon noted that she’s also asking for state general funds. Darcy supports the initiative, but questions whether strategically it’s the right year to pursue. Elizabeth noted that Shannon’s program is endangered, and may only have enough funds for a few more years. David stressed that we need to educate people that these programs are endangered. The Commission can be an advocate for court-connected ADR, and we need to win each level of the fight.

Judge Castleberry asked if we need a motion for each proposal, and if we could propose to strike language in the statute. David responded that we could vote for the fee proposal, and separately to strike the criminal language in the statute.

VOTE. Judge Castleberry moved in support of the proposals to increase the mediation fees for Magistrate and Metro Courts. Phil Dabney seconded the motion. Elizabeth read the proposals for the phone participants. **The vote was unanimous in support of the proposals.**

VOTE. Judge Castleberry moved that the language “and criminal” be stricken from the Metro Court statute as part of the proposal. Phil Dabney seconded the motion. Discussion followed. Laura asked that Susan please double check to ensure that a fee was not collected for criminal cases. David noted a friendly amendment that the vote would be conditioned on a finding that no criminal fees were actually collected. Judge Castleberry so moved. Phil Dabney seconded. **The vote was unanimous in support of a proposal to strike the words “and criminal” from the Metro Ct. statute, conditioned upon a finding that a mediation fee is not collected for criminal cases.**

VII. Commission’s Support for ADR Funding Initiatives

Use of State General Funds to pay for MCMP Manager Position [Handout]

Shannon notes that the current fees collected are insufficient to support her position. Laura asked what the response will be to any criticism towards a request for both fees and state general funds to support the MCMP. Shannon responded that either approach would sustain the program as it currently is, but would not allow for growth. She added that contractors are needed for the program to function well. She offers the Metro court mediation program’s structure for comparison, which has 3 FTEs paid from state general funds. The filings of all of the magistrate courts combined roughly equal the number of metro court filings, but the magistrate courts are spread across a large geographic scope. Additional funds are needed to support and sustain the quality of mediation services. Susan added that mediation programs in remote/rural courts tend to place a greater burden on the court staff, and depend heavily on a small pool of volunteers. Shannon agreed, and said that she believed that we’ll need to pay mediators because we can’t get volunteers to travel on their own time to courts that need services, even courts within a 20 minute drive, so quality is suffering. Laura noted that payment of mediators in the magistrate courts would require a change in statute. Shannon acknowledged the requirement, and said she’s researching possibilities, including payment of a stipend. Susan noted that the paid staff at the metro court actually do mediations (in addition to the volunteers). Judge Castleberry agreed that payment of expenses for volunteer mediators would go a long way.

Judge Castleberry moved for endorsement of the proposal for state general funds to support Shannon’s position as written in the proposal handout. Darcy asked Shannon if she was doing the work of 3 people, and Shannon responded affirmatively. David clarified that the proposal as written included funds for “support staff position”, which was not previously presented to the Commission and was not enumerated. He asked that there be separate votes.

VOTE. Judge Castleberry so amended his motion, striking the “support staff” language, so that the motion is for moving Shannon’s position from fees to state general funds. A second was offered by Phil Dabney. Discussion. Torri asked whether the funds would be routed through the AOC. Elizabeth answered affirmatively. Torri asked about the amount of the funds, and Shannon responded that it would roughly be \$90k. She asked if these would be ‘new’ funds,

and Shannon said yes. **Torri abstained from the vote. The vote was unanimous in support of the proposal to pursue state general funds to provide for the MCMP Manager position.**

VIII. Commission Meeting Dates for 2016

David requested that the Commission meet every other months on Fridays. Torri and Laura both noted difficulty in accommodating Friday afternoon meetings, and requested that meetings be held in the mornings. 9:30 – noon would work. Judge Castleberry noted that he has meetings in the region for three days in a row in the third week of every month.

J.Nakamura likely has the same obligations. Mari Gish noted that she's not available on the last Friday of the month. David and Elizabeth will work on a schedule to share. [Mtg. Adjourned]