

## STATEWIDE ADR COMMISSION

### Meeting Notes

3.4.16 1:30pm – 4:00pm

**Attendees:** Elizabeth Jeffreys, Staff & Statewide ADR Coordinator

Justice Nakamura	Judge Sánchez (PH)	David Smoak
David Levin, Chair	Phil Dabney	Susan Laughlin
Mary Jo Lujan (PH)	Susan Barnes Anderson	Mari Gish (PH)
Sharon Ortiz (PH)	Kevin Spears (V)	
Duane Castleberry	Laura Bassein	

**Guests:** Shannon Driscoll, AOC – Mag. Ct. Mediation Program Mngr.

**Absent:** Jennifer Foote      Torri Jacobus      Jeanette Rael  
Darcy Bushnell (s/l)      Sara Stevens

#### WELCOME & INTRODUCTIONS

#### ANNOUNCEMENTS & UPDATES

Chair David Levin previewed the agenda.

- **FY17 BUDGET.** Commission to have its first budget for FY17 of \$3,400 for office supplies, staff training & per diem (Elizabeth will provide a summary of per diem requirements to Comm.)
- **COMPLAINTS.** NM Mediation Association concern for handling of complaints about mediators addressed initially by Chair D.Levin, who reports (1) most complaints are not related to courts, (2) the court website will need to clearly direct complaints, and (3) the development of quality assurance measures is a topic in need of further research and discussion.

S.Ortiz added that some complaints are about court-connected mediators. Susan Barnes Anderson suggested that the State Bar ADR Cmte be approached on the issue. D.Smoak said that each court should identify a person to receive complaints. S.Ortiz reiterated the importance of addressing the issue.

- **GUIDELINES.** Chair D.Levin reports that NM Supreme Court staff attorney(s) are reviewing now.

*Other announcements bypassed (Access to Justice Commission, Commissioner Interviews by Chair, Website, Toolbox, Scholarships, Training & Events) due to time concerns.*

#### ROLE OF THE COMMISSION

Chair D.Levin summarized his handout, reporting on the Role of the Commission. He stressed that the Commission can act by vote, and can provide proposals or resolutions to the NM Supreme Court. On Monday, he and J. Nakamura will meet with Artie Pepin, Director of the Administrative Office of the Courts (AOC).

#### DATA TO SUPPORT INITIATIVES

Chair D.Levin stressed the need for data to support the credibility of ADR. J. Nakamura emphasized that data can provide the reasoned support for any budget request, and that requests should not be arbitrarily decided. The benefits of ADR can be supported by data, for example to show cost savings by comparing time to resolution/disposition of mediated cases vs. non-mediated cases.

E.Jeffreys expressed concern for the lack of good reliable comparative data, noting that the NCSC work load study in 2011 (?) created controversy within the courts. S.Barnes Anderson expressed confidence in the Metro Ct. data. J.Nakamura suggested starting with smaller data sets, such as the Metro Ct. data, and possibly going back to pre-Odyssey data if needed.

Chair D.Levin asked that the data gathering be given priority and that the Commission identify meaningful measures for data sets. E.Jeffreys wondered if the Legislature would demand more time-to-disposition or other measures if they were provided the small data sets. J.Nakamura responded that the Legislature would be told that the ability to generate additional data sets is necessarily limited because the data has to be hand-gathered. S.Barnes Anderson shared that the Metro. Ct. has data available for ADR reports, while recognizing the concern for use in judicial performance measures.

S.Driscoll shared that she felt able to gather data for the Magistrate Ct. Mediation Program (MCMP), and that the MCMP is in critical need of support. J.Castleberry suggested that data could also reflect the scope of services, such as the number of court settings offering the service as well as the cost savings in costs and in time, similar to the use of data by the Drug Courts.

L.Bassein shared that she is comfortable with the data gathering approach for smaller studies, but was concerned for expanding the approach to District Courts or to family courts because the analysis would require an increased number of variables to consider and more complexity. J. Nakamura agrees and stated that the intent for data collection needs to be clear at the outset. L.Bassein stressed the need to provide simple, straightforward data reports. Chair D.Levin suggested that the initial efforts be restricted to the limited jurisdiction courts. S.Driscoll added that the Metro Ct. data could not be readily compared to the Mag. Ct. data, since the work of the courts is different.

S.Barnes Anderson asked if there is value in testimonials as well. Several responded that it is useful to gather testimonials and provide them with the data.

J.Castleberry offered his full support in providing data, but expressed concern for pursuing the fee increase for the Mag. and Metro courts, since the Governor has traditionally expressed a dislike of fees. Chair D.Levin said that the outcome can never be predicted. J.Nakamura stated that while the pursuit of fees may not be successful, the same data could support the need for a FTE position to replace a fee-based position. She suggested that the Metro & Mag ct programs attempt to gather useful data and report their findings to the Commission. L.Bassein said that even though much of the data must be hand-gathered, there could be some comparative information available on Odyssey (ex. filing dates & case closure dates to determine time-to-disposition).

S.Barnes Anderson and S.Driscoll will start gathering and reviewing data of Mag. & Metro Cts. Chair D.Levin asked for a Data Cmte. to be formed to assist. S. Barnes Anderson adds that R.Rambo may have data to share from the Ct. of Appeals. P.Dabney adds that the ABA may provide a source of useful data from other jurisdictions outside of NM. K.Spears offered his full support, including his experience with the Legislature. He notes that data can be compiled but he's not sure what the results will be. He cautioned against comparing cases of different types. He encouraged asking for changes to fees, since there's little to no state funds available to support services. He will ask Ben Cross to generate data.

**DATA CMTE: David Levin, Shannon Driscoll, Susan Barnes Anderson, and Sharon Ortiz**

## BUDGET FY18

Chair D.Levin notes that all budget requests must become a part of the Unified Budget, and that the Commission shares a complex relationship with other entities, and must work in conjunction with them. The Commission must decide on concrete budget items that may be formally passed. In addition, statutory changes can be proposed. For every initiative solid reasoning must be offered in support. The Commission is in a new stage of growth with its first consideration of budget priorities for ADR. He encourages open dialog and discussion.

J.Nakamura suggested a page be provided in the Unified Budget Book to reflect the use of ADR throughout the court system. Support and work will be needed to create a presence for ADR of this magnitude. J.Castleberry added that the Commission will need clarity and focus to retain control over the amounts that are dedicated to ADR so that the funds are not moved to support other areas of court functions.

Chair D.Levin summarizes the Budget Handout, stating that there are ten (10) recommendations of the Budget Cmte. to the Commission. He focuses on the items that recommend Comm. action.

### Commission's Operating Budget

The \$3,400 is a recurring fund for the Commission. The Commission must decide if more funds will be needed for Administrative Expenses, Travel Expenses or Staff.

### **Does Comm. want a Full Time Employee (FTE) as staff?**

L.Bassein requests more information on the need for a FTE. E.Jeffreys states that there is not currently a staff person paid out of the Commission's budget, since it does not have funds. Her position is paid from the Children's Court Mediation Program (CCMP), and she spends approx. 20-30% of her time on Commission work, although it varies with the activities. Her position is strained, and AOC has for years unsuccessfully requested a .5FTE to assist with the CCMP work. In addition, she now supervises the Mag. Ct. Mediation Program Manager position. The vision would be to expand ADR and develop a structure at AOC similar to that of the Drug Courts. So, the CCMP would get back their FTE, and the new FTE would serve the Commission as well as oversee the CCMP and the MCMP Managers.

J.Castleberry asked for clarification on the request of the ADR Commission vs. that of the CCMP. Chair D.Levin said that the Comm. can develop its own budget request and can also decide to support the requests of other ADR entities in the courts, such as CCMP. The support of the Commission may be powerful for other entities. E.Jeffreys offered that the Commission could vote on a .5FTE, as that would likely be supported. Chair D.Levin said there would not be a final vote taken today.

L.Bassein wanted to know why the CCMP request for a .5FTE failed. E.Jeffreys responded that other priorities set by the Sup.Ct. can push the .5FTE request out of consideration, as the various court requests compete through the Unified Budget process. She was not sure of the reasoning in prior years, as she has been here only a year.

J.Castleberry asked if money could be requested to support the travel of volunteer mediators. S.Driscoll said that's contemplated in her budget request, which would cover the Mag.Ct. Mediators.

D.Smoak offered that one of the recommendations from the NCSC Report of 2011 was to permanently staff the ADR Comm. L.Bassein said that Elizabeth's position is permanent and serves the Comm. She said that the Commission needs to decide what ADR should look like and have a vision. D.Smoak said

that other states have more than one FTE serving ADR needs for the courts. L.Bassein expressed that the discussion was muddy, and needed clarity. D.Levin offered that the discussion was muddy because it was the first effort of the Commission to discuss budget needs. D.Smoak said that it took years for the Comm. to issue guidelines, and that the work would have been quicker and more effective if the Commission had a full time dedicated staff to assist. S.Barnes Anderson added that the Commission is considering needs for FY18 and *beyond* for funding measures like an FTE. Chair D.Levin asked for the discussion to move to the next item.

Mediation Scholarship – the Budget Cmte. did not recommend action of the Comm. M.J.Lujan asked if UNM Law ever waives the fee for the courses & L.Bassein thought not, adding that the relationship between JEC and the Law School is tricky in terms of payments. The cost is \$895/course.

Chair D.Levin ends the discussion and skips to the few action items in the budget list.

### **Will the Comm. Support an Increase to the Mag.Ct. & Metro Ct. Mediation Filing Fee?**

The increase for inflation alone would bring the \$5 fee up to about \$12, but an additional increase to \$15 would allow the Program as it currently exists to be financially sustainable. There's a handout provided on the issue.

S.Laughlin wonders if the timing of the proposal is right when the Governor is known to dislike fees. S.Driscoll shares that the MCMP may not outlast the Governor, as it recently lost \$100,000 and it generally operates at a \$50,000 deficit. S.Laughlin asked if other approaches were considered. S.Driscoll said she's also asking for her position to move to state general funds from the fees, similar to S.Barnes Anderson's position at Metro. S.Barnes Anderson notes that this is the first time that the Mag. Ct. & Metro Ct. Programs are working in solidarity, and that the fees have not increased since their origination 30-years ago.

S.Barnes Anderson and S.Driscoll will provide a formal proposal to the Commission.

L.Bassein encouraged them to work in coordination with the AOC when asking for changes to staffing. J.Castleberry asked for clarification about the Commission's role when the request involves a court entity. Chair D.Levin explained that the Commission can play a supportive role, and can vote on whether to support other initiatives to give those initiatives more weight as they move through the Unified Budget process. He asked if the Commission supported the proposal as a general matter and there was an affirmative response.

### **Will the Commission Support a Sliding Scale Fee for the District Courts?**

Chair D.Levin was asked to explain the proposal, and he said that currently the Dist.Ct.s do not have authority to establish a fee without a statute and without the support of the Supreme Court. A change in statute would create such authority so that fees could support the operations of the ADR services. Courts would still need the permission of the NM Supreme Court to proceed.

L.Bassein asked to see the proposed language again and requested that there be collaboration so that there's continuity in any changes to fees or statutes. Chair D.Levin stated that all requests will go through the unified budget process, which assists in that coordination, but that there is still a need to package the requests properly at the outset.

D.Levin will prepare the proposed language for the Commission to consider in offering support.

### **Will the Commission Support a Change in Funding from Fee-Based to State Court General Funds for the MCMP Manager's Position?**

As described by S.Driscoll earlier, the MCMP fund currently operates at about a \$50,000 deficit every year, and her position is paid out of the same fee-based fund.

P.Dabney asked if this proposal was an alternative to the proposal to increase fees. S.Driscoll said that both proposals were needed to provide financial stability and to allow for growth of services into additional courts. P.Dabney asked if it was politically appropriate to propose both, and was given an affirmative response. S.Barnes Anderson added that J.Nakamura was successful at guiding the Metro Ct. and that it is reasonable for the Commission to rely on her guidance as well. She added that her own position was originally supported by filing fees.

L.Bassein cautioned that state general funds carry risks when cuts are needed to the state budget, and that filing fees are not similarly affected. E.Jeffreys stated that the \$100,000 recently lost in the MCMP fee-based fund was a result of needing to support other basic functions of the Mag. Cts. because of the .6% cut. So, the fee-based funds can be similarly impacted by budget cuts.

S.Barnes Anderson advised that the Commission refer to "services" rather than "programs" when asking for increases, as the Legislature is more receptive to expanding services and more inclined to cut programs. Chair D.Levin ended the discussion in the interest of time.

### **MEDIATOR AWARDS**

D.Smoak wrote an analysis of the Awards that were given in 2015, and summarized that the Commission needed to start earlier, broaden participation, and address some policy matters going forward. Overall he reported that there was a big, positive impact with the activity, and that the recipients were thrilled, shocked and touched. He agreed to take on the work again, and will contact the members of his cmte. He added that the 2<sup>nd</sup> JD reported "hundreds" of mediators, and that changes may be needed in the awards process to allow for more than one nomination by the larger courts. L.Bassein suggested that awards could be given in categories. E.Jeffreys noted that at the prior meeting J.Castleberry [*correction to this record: J.Sanchez previously raised this issue*] had questioned whether the awards were an appropriate function of the Commission. S.Barnes Anderson said perhaps the NMMA could take over the task. D.Smoak said that the Commission awards carry significant value in part due to the relationship to the NM Supreme Court. P.Dabney agreed and said it is the appropriate role of the Comm. to support statewide ADR. He reiterated the need to start early and to develop a plan. D.Smoak thought the press could be better utilized in the process.

### **Final Notes from the Chair**

Chair D.Levin reflected that it takes a different energy for the Commission to be action oriented, and that he is not disappointed that some proposals are half-baked since it is the first time the Commission has considered a budget. The process will become easier as we grow. The Commission has an opportunity in this process to give recognition and stature to ADR and to the initiatives of court-connected ADR services.

S.Driscoll requested that the Commission consider the Budget Cmte's recommendation to discuss needs for training, workshops and speakers. E.Jeffreys noted that P.Dabney has done some work on a speaker and could provide a proposal to the Commission at the next meeting. The meeting adjourned.