

STATEWIDE ADR COMMISSION

Meeting Notes

12.2.16 10:00am – 12:30pm

State Bar, ABQ

Attendees: Elizabeth Jeffreys, Staff & Statewide ADR Coordinator
David Levin, Chair Justice Nakamura, N.M. Supreme Court Liaison
Susan Barnes Anderson Mary Jo Lujan (P) Mari Gish (P)
Laura Bassein Torri Jacobus Sara Stevens (P)
David Smoak Jennifer Foote Phil Dabney (P)

Guests: Shannon Driscoll, AOC Magistrate Court Mediation Program Manager

Absent: Kevin Spears (travelling) Judge Castleberry
Judge Sánchez Sharon Ortiz

I. Welcome & Introductions

Chair Levin welcomed the group and “with great delight” recognized Justice Nakamura’s relaxed presence and offered congratulations on her success in the November election. Chair Levin asked that the Commission use the meeting to review the past year and look forward to upcoming year.

II. Announcements & Updates

- a. **Mary Jo Lujan** was selected as GSD Supervisor of the Year (Round the Roundhouse, Vol. 28, Issue 9) with recognition of her work w/ADR in NM. The article noted that her mediation program has saved the state thousands of dollars in risk reduction.
- b. **Guidelines for Court Connected Mediation** were submitted to the Sup.Ct. for review, and may be on the justices’ December 7th agenda. Commission appointments are also on the 12/7 agenda.
- c. **ADR Symposium.** Mary Jo Lujan reported on a successful Symposium with 165 attendees over 2 days. The Commission’s annual report offers a breakdown of judicial attendees that completed trainings through GSD. Some members of judiciary were presenters at the event. This was the 1st year the Symposium offered human resource continuing education credit. The goal is to offer CLE credits for next year – E.Jeffreys offered to assist. The Symposium received a lot of good feedback, particularly regarding the quality of the presentations. Unfortunately, many were unable to attend this year because of budgetary restrictions. Some requested that there be more than one event in a year, but the Symposium is a lot of work. Even though it is just once in the year, it helps to sustain people throughout the year. Next year will be the 10th annual Symposium.

The Commission discussed ideas for collaboration and sustaining the efforts: court could assist with remote training for one day of symposium; commission could support efforts, but need to align w/mission; and maybe use a webinar service. Commissioners noted it was nice that people can attend ‘cafeteria style’ without having to commit a full day. Mary Jo Lujan said that

attendance needs to be accurately tracked for continuing education credits, regardless of the forum. There was a request to tape the event, but the Santa Fe Community College is also faced with limited finances and so it didn't happen. Chair Levin remarked that the Symposium is so important to the entire state and to ADR, and the Commission should talk more about how to expand and support the efforts. A Commissioner asked how many of the attendees were judges, and from what courts. Mary Jo Lujan responded that the information is not readily available, but she could try to research the data if needed.

- d. **Metropolitan Court Mediation's 30th Anniversary** Susan Barnes-Anderson reported that the celebration in October went well and was without a hitch. There was lots of energy, and the event was impressive on a number of levels. It was especially tremendous to see the staff recognized. Chair Levin recognized a strategic value to the celebration. There were a lot of people (maybe 100?), including Chief Justice Daniels, Senator Cisco McSorley, and Retired Judge Tommy Jewel. The event reinforced the value of mediation and of mediators and the work that they do. There was value for the whole state to celebrate and move forward. The event reinforces the momentum and awareness of the value of ADR. Refreshments were generous, and the set up was lovely. Laura Bassein said the event offered an important social networking opportunity for the extended ADR community. From a bird's eye view, she saw nice interactions with people that have been involved with each other, and with ADR, for a long time.
- e. **Excellence in ADR Awards.** Chair Levin reported that Louise Baca Sena's retirement celebration was touching. The event allowed everyone to recognize the work behind the scenes and the value of her role in the development of court-connected ADR. [Reference handout, Awards Program Working Group, 6/16]. Chair Levin reported that the goals on the handout were accomplished.
- f. **FY17 Budget, FY18 Budget & Legislative Requests.** E.Jeffreys reported that the current budget may be cut 2-3%, as state revenues are still below expectations, and the current FY17 budget for the state is still not balanced. The FY17 budget of \$3,300 has been used to cover ½ of E.Jeffreys' computer expenses (her old one crashed and could not be recovered), and per diem. Even if the budget is cut the 2-3%, sufficient funds are available to cover per diem for attendance at meetings. *Note: Please contact Elizabeth if you are interested in receiving per diem.*

The FY18 budget includes a request for \$50k for the Commission. J.Nakamura was instrumental in getting the request included in the budget plan. That request is wrapped up with the other requests of the Judiciary in the 'unified budget' and so we will not know until the session's underway whether the request will ultimately survive. It is unlikely because it does not appear that there is any money available for the state, due to declining revenues.

The proposed legislation to increase the fees of the Magistrate and Metro court mediation programs did not survive. The request to move the Magistrate Court mediation program's position from fees to state general funds also did not survive.

The proposed legislation regarding the **sliding scale fee** was initially dropped, then revived, and has been rewritten without any change to the substance. Chair Levin will send out the latest draft. The Legislative Finance Committee (LFC) did not ask about the proposed bill, and may need more education. Not clear how it will travel through this session, but last year it made it through interim committees on to the floor. Last year, Representative Larry Larrañaga had

recommended that Senator Maestas Barnes carry it. A Republican sponsor may be helpful in getting support. Chair Levin will check the process and will report. There were questions about the process, and a thought that the bill goes through Courts and Corrections subcommittee and then gets assigned to a sponsor. D.Smoak shared the prediction that oil prices will be up through the summer to \$50/barrel. However, concern was expressed that the state's budget may be based on \$80/barrel, so Opec's change in production may not help much – we'll have to see.

- III. **Scholarship Cmte.** The Commission voted at the last meeting on the composition of the scholarship committee. Chair Levin believed the intent was to have 3 commissioners, the chair & the liaison serve on selection cmte. However, the 'verbage' of vote did not reflect the intention. Justice Nakamura was not present at the prior meeting, and shared that she does not feel a need to be involved. Chair Levin asked to modify the prior vote so that the committee would be comprised of the chair and 3 commrs. , or 4 commrs so that there's a tie breaker. L. Bassein clarified that she attends the scholarship committee meetings as representative from the JEC. She stressed that JEC would need to be involved to ensure proper use of JEC funds, and asked for clarity in the structure that a member of JEC must be present in decision making.

VOTE

Chair Levin asked that the prior vote be modified as follows: **"a committee will be established to select the recipients of the scholarships. The committee may have up to 5 members: the chair, a representative of JEC, and balance should be filled by commissioners."** MOTION by D.Smoak, SECOND by Jennifer Foote. **VOTE: All voted in favor.** December decision(s) due the week of Dec. 12. Committee Members: Jennifer Foote, Chair David Levin, Laura Bassein (JEC), and Torri Jacobus.

The Commission has offered the scholarships for 5-6 years now, and a new fiscal year starts in July, but its not yet clear whether there'll be funds available. The JEC has \$10k reserved for scholarships, and it's never been completely used up. JEC is flexible and can address issues as they arise. Chair Levin stressed the appreciation for JEC's support in training judiciary on ADR. Bassein there's always a thought that there could be other ways to use the funds for the same purpose. E.Jeffreys offered that a survey of those trained over the years could be of value to see how the training has impacted their lives/work. D. Smoak shared that when the JEC did training for the Magistrate Courts there was an unbelievable impact by JEC's training – particularly with the improved quality of Mag. Ct. judges work. L.Bassein will assist in setting up a Dec. mtg. for the new committee after this meeting.

- IV. **Data Committee.** Shannon Driscoll's putting in time & effort to make the data effort successful. There is a lot of court involvement, with representatives from the District Courts. Shannon Driscoll shared that the representatives of the District Courts are engaged, and there is good turnout. One court has no ADR & has not attended. Everyone recognizes the need for good data, and the need to have Odyssey (the courts' statewide data system) function for ADR. The team's first effort is to review approximately 160 ADR codes in Odyssey. It appears that half of the codes are not being used (still need to confirm w/JID). The committee has broken into

smaller groups to identify the ADR codes in current use, and determine whether there's consistency in the use of codes, or a need for such between similar court services. Good ideas were shared about what data should be collected (ex. How often interpreters are needed/used). What's amazing is that some courts are just starting to recognize the scope of ADR – for example, that ADR includes the mortgage foreclosure settlement programs. There is a plan to create uniform forms, and to include the codes on the forms if possible. The committee members will be meeting in small groups for a few months, then reconvene in April as a larger group (after the session). S.Driscoll will provide updates to the Commission on the progress of the committee.

Susan Barnes Anderson expressed that a court was concerned about impact of ADR reports on the Legislature. What if a report that lots of cases are successfully resolved through ADR led legislators to conclude that fewer judges are needed. J.Nakamura provided assurance that there are ways to address the concerns. Courts can be recognized as successful when ADR is successful – it's not that the sole measure of success is to have a lot of judges. Caseloads may be shrinking generally, but Metro's civil cases are going up. J.Nakamura shared that criminal cases are actually a better measure of the funds needed. We need to grow, and to meet the needs of the community. Judges are expensive, they come with monitors, and other people. J.Nakamura added that the courts are not currently asking for more judges. What if the judges appear to be doing less work in terms of the number of cases, when in fact the workload has increased? For example, there could be fewer cases but more jury trials, more complexity, and more litigants involved. The data should be provided with a thoughtful analysis.

E.Jeffreys added that there's also a concern for the reliability of data – Justice Vigil asked JIFFY to create connection between the data gathered by the court and CYFD's data, but our data may not be reliable. If the clerks have 160 ADR codes to choose from when they enter an event, they may each pick something different. Once a report is run, it's a public record, so repairs to the system must be done in a proper order.

The Commission inquired about the plans of the committee. *How is JIFFY & JID involved?*

S.Driscoll responded that at this point the group is just trying to get clarity on the current use of the Odyssey system. The group will work towards a unified message to JID regarding the codes that need to be obsoleted (hidden from view). Greg Saunders, head of JID, and Karen Mitchell, Chair of JIFFY, are both aware of committee's initial efforts. *What are the timeframes?*

S.Driscoll said that it's going to take at least 18 months. There are other activities that are taking up the members' time (the Legislative session, high vacancy rates, etc.). *Is it possible to set up a timeframe for the whole project?* S.Driscoll said that a timeframe could be set. Susan Barnes-Anderson said that each court could respond to directives on projects, such as identifying codes, to improve efficiency. *Would it be helpful to have Comm. request an interim report of cmte?* S.Driscoll did not think that was needed. The group is self-motivated, and is responding to requests and timelines. *Will the cmte be ready for JIFFY in 18 mo?* Maybe, maybe not. The need for JIFFY is to approve and prioritize projects so that JID can develop the ability to run reports in Odyssey. The group will need to decide what reports to set up (# cases, # settled/not,

etc.). The Commission can help with those decisions. The committee will need to work with codes, forms, reports, process, etc., and different groups will be involved at different times. Chair Levin observed that there are both formal and informal tracks. It's important to work informally throughout to ease the strain when it comes time for the group to present to JIFFY. He acknowledged that it's also good to have representatives of all courts involved with the plan so that there's a unified voice. Karen Mitchell, JIFFY Chair, can help with the process, although the committee is not ready now to present any proposal to JIFFY. It is important to have a JIFFY rep. engaged early on. S.Driscoll would like to start developing a timeline, and will approach Judge Mitchell about when she thinks it's best to get JIFFY involved. Chair Levin and Justice Nakamura are willing to coordinate the meeting.

V. Annual Report. Chair Levin requested feedback on a draft of the Commission's Annual Report to the Supreme Court. The structure of last year's report was used, and Elizabeth put in details (ex. GSD's trainings). There are lots of ways to craft the report, and the request is for help with the tone, direction and substance so that a quality report is put forward. Commissioners had marked-up the draft and offered corrections, including to build a data section and then follow it with the financial crisis faced by the Magistrate Court Mediation Program. Chair Levin drafted the report with a policy focus, but can redraft with a focus on details and concerns. Chair Levin asked that work on the Annual Report commence in July. Jennifer Foote suggested that the Commission create a strategic plan for the year in January, and review progress intermittently so that the activities are aligned and ready to report at the end of the year. David Smoak shared his concern that some folks will undermine the efforts but saying the ADR services are not needed. Justice Nakamura recognized the issue and shared that early on the "drug court" was determined by some to be unnecessary because the offenders could be detained. However, developments helped to educate and build awareness of the benefits of drug courts. The same can be done with ADR, but the benefits need to be clearly identified and marketed. Mary Jo Lujan said that it's great to show the cost/benefit of services, and make the benefits easy to find in the report so that it can be used at budget hearings and before the legislature. If legislators go to visit with the Justices, they could easily pull the annual report and give it to them to quickly show the benefits of ADR. L.Bassein wants to review next version. Elizabeth will accept comments for the revision. Chair Levin appreciated the efforts to improve the report.

VI. Commission in 2017. The Dec. 7th N.M. Supreme Court agenda includes the new appointments to Commission. In addition, Chair Levin requested a vice chair to support the Commission. Last January (2016) the focus was on the budget(s), guidelines and data. Chair Levin asked that the Commission be reminded of projects that are sitting on the way side: DVD, ATJ handbook (that has no ADR component), etc. Judge Sanchez at last meeting asked for project to work on, and there are plenty of projects needing attention and support. Soon new members will join us, and we'll need to get them up to speed. The Commission discussed its size for the first time. E.Jeffreys shared that Justice Chavez at one point wanted the Commission to be a standard size (smaller). Chair Levin said that 4 candidates are interested in the Commission, and if there are four that want to put in work, then Comm. shouldn't turn down opportunity. Chair Levin made

recommendations for appointments to Joey Moya based on work interest of applicants. He acknowledged interest in a particular person to join the work, but said that the slots for the appointments would need to change (general member, representative member) to allow her to fit in. We can have workers and leaders that are not Commissioners involved in the work. We can invite them to volunteer. The Commission is designated to serve the Supreme Court, so it may not be appropriate to seek legislators to fill the spots in an effort to garner support for the budget requests. The Commission needs to get buy-in to help with data cmte. and to develop budget initiatives. The Commission needs to create alliances. E.Jeffreys shared that the Children's Court Mediation contact, Susan Laughlin, left and so there was a need for a representative of that program. Laura Bassein shared that the Commission doesn't need every program represented at table. She used to be Children's Court Mediation Program (CCMP) manager, and she currently works with CCMP issues in a different capacity, and has a voice and ear for the needs and work. Discussion regarding composition and size of Comm., process of court in filling positions. There is not time to make big decisions before the December 7th meeting, so maybe table this discussion for next year. There will be a change in leadership, as there will be a vice chair appointed. Chair Levin has learned from the past year, and is excited about next year. Leadership will be diversified and stronger. He would like to see each Commissioner lead some activity and be engaged. Let's enjoy our holidays and meet Jan. 20th with energy and focus. The Commission will need to develop a plan: How should we spend our time?

VII. 2017 Dates: 1/20, 3/10, 5/19, 7/14, 9/22, 11/16[R]; all at Metro except last will be at the boardroom State Bar, F 10-12:30pm.

VIII. Self-help/Mediation Services. Susan Barnes Anderson asked that the Commission consider working with the Access to Justice (ATJ) Commission to pursue court positions that provide self-help services and mediation services. She shared that Metro ct. has adequate staff, funding, and volunteers needed to run a quality program. She recognizes that there wouldn't be enough work to support a full-time mediation person in each court. However, there's also a need for a self-help office in each court, including in the Magistrate Courts. The two services work well together. So one person in each court could be designated for combined service: mediation & self-help. Maybe the Commission could work in conjunction with the ATJ to put forth a plan to show the benefits of this design. If two commissions join together in support, the benefits of cost and services could be identified and marketed and pursued. Chair Levin found the idea intriguing and offered that the Commission could explore the issue in 2017. Susan Barnes Anderson offered that the budget crisis should encourage courts to be innovative and find new ways to approach problems. Put on January agenda.

The Scholarship Committee will meet on 12/15 in the afternoon, Torri will try to arrange for a room.