

STATEWIDE ADR COMMISSION

Meeting Notes

1.20.17 10:00am – 12:30pm

Metro Ct., ABQ

Attendees: Elizabeth Jeffreys, Staff & Statewide ADR Coordinator
Justice Nakamura, N.M. Supreme Court Liaison
David Levin, Chair Judge Jeff McElroy, Vice Chair
Susan Barnes Anderson Mary Jo Lujan
Laura Bassein Jessie Lawrence
Cynthia Olson Jennifer Foote
Sara Stevens (P) Mari Gish (P)
David Smoak Sharon Ortiz (P)
Kevin Spears (P)

Guests: Shannon Driscoll, AOC Magistrate Court Mediation Program Manager

Absent: Phil Dabney Judge Castleberry
Judge Sánchez Torri Jacobus

I. Welcome & Introductions

Chair Levin welcomed the newest Commissioners: Hon. Jeff Foster McElroy, Jessica Eaton Lawrence, and Cynthia Olson. Each introduced themselves. Justice Nakamura spoke to the importance of the Commission’s work in advising the N.M. Supreme Court and in assisting to develop, expand and improve ADR in the state courts.

II. Announcements & Updates

- a. **Retirement of Chair Levin.** – This is David Levin’s last mtg. with the Commission: He resigned effective 1/31/2017 to enjoy full-time retirement. He is excited about the turn of events with the Commission, and shared on a few reflections from his time as Co-Chair with Justice Chavez. He shared that bringing dispute resolution to NM is a process, not an event. There is a need for continuous change to maintain the dynamic and provide necessary renewal. Already Judge McElroy, Commission Vice Chair, has engaged his energy and leadership in a meeting with Chief Judges Council regarding the proposed sliding scale fee bill (HB131). Yesterday at the State of Judiciary, we learned that Chief Justice Daniels is going to turn the chair to Justice Nakamura. It is an exciting ‘next phase’ of development, and it’s a really good thing. David remarked that it’s “about time we have Cynthia Olson on the Commission, as she’s trained almost every mediator that works in the courts”.
- b. **New Leadership.** Justice Nakamura extends thanks to Chair Levin and to new Commissioners. She anticipates a new Order and Roster will be issued soon to finalize the new leadership.

- c. **FY18 Budget.** \$50k was requested on behalf of the Commission for FY18, and that is now before the Legislature, but it's 'tucked in' with the AOC's budget in the Judiciary's Unified Budget. A funding increase is unlikely because the whole state budget is in crisis. The legislature is still trying to balance the current (FY17) budget, and the Commission might encounter a 1% cut.
- d. **Sliding Fee Scale Bill (HB131).** Most districts presently collect \$15 fee on civil cases to support ADR, but it is not sufficient. Districts need to maximize use of existing budgets and try to grow and develop programs. The proposed legislation, HB 131, is **sponsored by Representative Sarah Maestas Barnes**, and you can follow its progress on-line. The bill is currently assigned to two house committees: State Government, Veterans and Indian Affairs (Chair Georgene Louis; Stephanie Cockrain is the analyst for cmte, which meets Tues./Thurs.) & House Judiciary (Chair Gail Chasey). We are trying to get it heard Thursday in the first committee, so we can quickly get it to the House Judiciary, which gets busy. In 2015 went to similar committee and didn't get any opposing votes until it received just one on the house floor. It's good to have a full hearing. The first committee is likely to be friendly, so it's good to get the word out there about the benefits of the bill. *Elizabeth will send out the names and contacts for the committees so that Commission members can support the bill. She will send out talking points and alert the Commissioners when the bill is scheduled for hearings.*

Vice Chair McElroy visited with Chief Judges to describe bill and encourage support. The Judges will prepare a history of fund use, inventory of programs, and provide stats regarding time/cost savings and other benefits. Some Judges may actively testify. Santa Fe Judge Sylvia LaMar has offered to assist. The statistics from the Mag & Metro courts can be used to show the benefits of ADR, and used to convey that the goal is to replicate those successes. The bill is an opportunity to educate people. Emails can be an effective tool, and is not a huge commitment. Kevin Spears offered to contact Rep. Roch.

Vice Chair McElroy reports that the Chief Judges responded positively. Some courts would like to expand or create programs, and potentially combine efforts in smaller, more rural courts. Laura Bassein expressed concern with an increase in fees. VC McElroy clarified that the \$15 fee is not increased, but users of the programs will need to, in essence, reimburse for the cost of services. Laura Bassein clarified that now all district courts "shall" charge the \$15 fee. Elizabeth said there is a benefit in that courts would have start-up funds to initiate new programs. Justice Nakamura also expressed concern for the Governor's potential response to the fee. The Commission discussed the bill's language, and proposed a modification to remove the line-out at lines 21 & 22. The Commission was in favor of restoring lines 21 & 22, "in any judicial district that has established an alternative dispute resolution program." The Legislative Council Service can assist with the modified language. McElroy will contact the Sponsor about proposed change, and contact Stephanie Cochran (analyst) prior to Thursday.

Jennifer Foote asked for clarification about the application of the Sliding Fee Scale: It will be applied by party, so that individual resources are taken into account. Laura Bassein offered that

some parties are not charged a fee in domestic relations (DR) cases. Indigent parties may not be subject to fee, or would pay low amount. Laura Bassein noted the difference between DR cases and civil cases: that sometimes there are multiple parties to a civil case, and some parties may be corporations or partnerships. This must be considered in designing a scale. Elizabeth shared that the scale could be designed in different ways. There could be one scale applied at the state level, providing a percentage of payment rates for various income and dependents levels, or multiple scales in each district for each program. If the bill appears to be getting through, we would need to develop the sliding scale idea, maybe even before the Governor signs. A question was raised regarding the effective date of the bill, as may not be effective July 1, instead it may be some number of days following passage. *Post note: the default effective date is July 1st.*

- e. **Magistrate Ct. Mediation Program (MCMP).** (Shannon Driscoll, Program Manager). There is not yet a specific plan to address budget crisis for the program, other than to prevent further ‘dips’ into the fund, but there is a commitment from the court to support the program’s future. New Data Available (handout). Compliance rate is 88%, and the average time to disposition is improved by over two months. Metro runs about 79% compliance; and nationally the rates run from 50% - 80%. Can a dollar number be placed on savings? Not quite. *Shannon will send out talking points for Mag. Ct. Med.*. Can there be a figure for one-day operation of court? Not yet. Some data is available, but the definitions that are used are not clear. There’s a need to carve out the time spent on criminal cases. NCSC may have a national standard for measuring work time in court, or have some useful data for comparison. Failure to appear data is skewed by Dona Ana, where the scheduling calls aren’t consistently placed. Shannon will follow up. There’s a need to be careful with the detail in the data when presenting to Legislature. Susan Barnes Anderson notes that some collections agencies may be filing 200+ cases at a time. The Metro Ct. mediation process has shifted to address filings more effectively. People are having severe life consequences of debt and collections (evictions, garnishments, etc.). The mediation program offers relief (usually payment plans) that must be positively impacting economy. One case involved a man in debt with diagnosis of brain tumors. There was concern for the ‘domino effect’ that the debt collection would have on what was already a hardship in his life. Mediation saves the plaintiff’s costs of pursuit as well. These are great point to make to Legislators about success rate with these cases (over 85% of cases resolved). Mediation at Metro kicks in when an answer is filed. These cases are pre-screened out. How do you reach defendants that submit an answer equivalent to an admission of debt? It is difficult to reach defendants prior to the filing of an answer. Even if the answer is an admission, there is a benefit to the plaintiff (collections agency) to still set up a payment plan. In Mag. Ct., a case can still be mediated even if the answer is an admission. In Metro, the service papers have information about the mediation program, so defendants could contact the program before filing an answer. On the statistical report for MCMP, need to explain that the data does not include landlord/tenant cases or criminal cases. A majority of cases in Mag. Ct. are criminal. Most of the courts have 1 or 2 judges, although Dona Ana is larger. Generally, mediation is not available for eviction cases because of the tight statutory timeframe. The preservation of MCMP needs to be included in

Strategic Plan of the Commission. Chair Levin thanked Shannon Driscoll for her update, and noted that a year ago we were only thinking of having data, and now we have it.

- f. **Court-Connected Mediation Guidelines.** The Guidelines are still waiting on the Sup.Ct. review and approval. What were once proposed rules were revised and submitted as guidelines. The National Standards were considered in the drafting, but were not adopted as the guidelines. Not clear what the difference is between the terms 'standards' and 'guidelines'. What happens if the guidelines are approved? They will be posted on Commission's website. The goal of the guidelines is to provide quality assurance, education to courts and the public regarding what constitutes meaningful mediation and, there was intent to partner them with the toolbox to assist courts in the development of ADR programs and services, and to inspire ... so the guidelines would be part of a multi-dimensional approach. Trainings could be offered to judges on the guidelines. Laura Bassein provided historical background on the development of guidelines over about 5 years, and her hope is that they will eventually lead to the issuance of rules. In Drug Cts. there were proposed standards that were reviewed for what aspects would be mandated, which would be recommended, and which would be aspirational. Each paragraph specifies what level of expectation is attached (mandate, recommended, aspirational). All courts reviewed the drug court standards, then the Sup.Ct. considered and approved them. The evaluation of drug courts is now measured against those standards, with plans set in place to improve compliance in each court. The Commission can propose additional recommendations to the Sup.Ct. for the further development of the guidelines. The focus should be on quality assurance for mediation programs. Guidelines should solidify a statement of the aspirations and set the standard. The guidelines become the platform to work towards rules. The Commission can incorporate the development of the guidelines into rules in the Commission's strategic plan.
- g. **Adult Guardianship Mediation.** (Susan Barnes Anderson). There's a proposed bill in the works, but not much information is yet available. These cases are handled in the district courts.
- h. **2016 Annual Report.** (Chair Levin). Ready to submit? No new comments were received and deadline is passed. Should we replace the Magistrate Court's 2015 data with 2016 data? The Metro Ct. is not prepared to do the same. It is not unusual to have older data because year has to complete & then time needed to (hand-) gather & put data together. In the past, the Commission has not done a vote or approval to submit the annual report, but it's good to have some consensus prior to submission.

VOTE: Susan Barnes Anderson moved to approve 2016 annual report. Mary Jo Lujan offered a friendly amendment to change a word at the top of page 4, "revised" is changed to "proposed" (legislation). Second was provided by Cynthia Olson. All were in favor. **The 2016 Annual Report is approved.**

- i. **Data Committee.** (Cmte Chair Shannon Driscoll). No updates at this point. The committee is working behind the scenes, and will reconvene in April, after the legislative session. The Chief Judges Council had some discussion regarding data collection, and Greg Saunders is aware of

interest and activity of cmte. Shannon distributed a proposed timeline for the work. Judge Nakamura suggests earlier approach of Judge User Cmte. Judge Singleton will be retiring in the next year, and is interested in the project. Dist. Ct. Clerks have a 'users group', so we may want to approach them as well. Appreciation was expressed for the work of the data cmte, and for the development of a proposed timeline.

Note about remaining agenda items (Chair Levin).

- "FY19 Budget Proposals". It is time to think about what Commission might need for Fiscal Year 2019 (July 1, 2018 – June 30, 2019).
- "Strategic Plan for 2017/3year/5year". We don't have time to get into the details now, but the Commission needs to think about where we're headed, and may need a committee to address the topic as initial matter.

Audit of Existing Committees (Vice Chair McElroy). We need to audit what committees currently exist. We need to flush out what direction is needed, given what's been done and what's currently underway. It would be nice to have the activities articulated for the new folks so that they have the information to meaningfully contribute to discussion and plan. This is not a 15-minute activity, so we may need to save the discussion for the next meeting, or do some work in the interim. The budget needs will be easier to decide upon once there's a clear plan and mission.

Vice Chair McElroy said there is no need for a February meeting, but we can flush thoughts out prior to next meeting (March 10th), with the idea that we'll need to have concrete ideas by end of March to present to April's Budget Committee. Elizabeth can work with new folks and also design a survey to help guide the thought process on what direction to head and what funds may be needed.

Chair Levin added that the Awards and Mediation Week activities could use more clarity and direction. There are committees that have formed and disbanded with maybe unclear boundaries, so would be helpful to flush out, get clarity and organize going forward.

Cynthia Olson indicated that she has a company that offers mediation training, and she would like to offer scholarships. However, there is legal concern for any 'donations' to judiciary, so it is unlikely that the Commission would be able to accept. Elizabeth will present for legal review and report.

Certificate of Appreciation presented to Chair David Levin by Justice Nakamura. He is recognized for his leadership and contributions to the Commission as well as to the development of ADR in the state courts. The certificate is signed by both Justice Chavez, who previously co-chaired the Commission (2011-2015), and by Justice Nakamura, the current Liaison for the Commission (2016 - ?). Justice Nakamura remarked on the efforts over the years, and told Chair Levin, "You've been the cornerstone". The Supreme Court and Commission honors and recognizes David Levin as he transitions into full retirement. Thank you, David!!

Mtg. adjourned .