

Trends in State Courts 2013

25th Anniversary Edition



A nonprofit organization improving justice through leadership and service to courts.

IMPROVING ALTERNATIVE DISPUTE RESOLUTION IN NEW MEXICO

Cynthia Savage

ADR Expert, National Center for State Courts, Consultant

David Levin

Co-Chair, New Mexico Statewide ADR Commission

Court-connected alternative dispute resolution (ADR) is a valuable component of any high-performing court system. Many states struggle with how to best integrate ADR into their courts to maximize the benefits without exceeding constrained budgets. New Mexico took steps in 2010-11 to assess their court-connected ADR systems and restructure services toward more productive methods.

In 2010-11, with funding from the State Justice Institute, the National Center for State Courts (NCSC, 2011) conducted a comprehensive assessment of New Mexico's court-connected ADR programs in appellate, district, metropolitan, and magistrate courts to suggest practical strategies for improving ADR programs. NCSC spent nearly a year working with a 12-member, statewide ADR steering committee chaired by Judge Nan Nash of New Mexico's Second Judicial District Court. The analysis primarily focused on court-connected programs but also included executive-branch offerings, University of New Mexico Law School mediation training, and a statewide electronic Internet survey of lawyers, neutrals, judicial officers, and ADR program staff about their attitudes and opinions regarding ADR in general, and court ADR programs in particular.

To complement this data gathering, NCSC team members visited the court of appeals, each of the 13 judicial district courts, Bernalillo County Metropolitan Court, and several magistrate courts. They interviewed judges, lawyers, neutrals, and court staff about local programs and projects.

TREND

New Mexico is working to maximize the benefits of ADR for both the courts and the public. This article discusses how the state's court system has tackled the challenges presented by this goal.



Robert Boag, NCSC

Existing court-connected alternatives were making positive impacts throughout the state, but in many instances their full potential was unrealized. The assessment report offered ten ways to strengthen and improve court-connected ADR (NCSC, 2011: 51-76):

- *Appoint and staff a permanent, high-level supreme court ADR commission to provide leadership from the top to develop, organize, and monitor ADR programs throughout New Mexico's courts (the New Mexico Access to Justice Commission was a model for this recommendation).*
- *Leverage court programs through collaboration with other New Mexico organizations.*
- *Maximize internal court system resources to enhance ADR programs (for example, promote more widespread judicial commitment through in-house education).*
- *Structure new and expanded ADR initiatives in short-term, intermediate, and long-term phases and in pilot projects.*
- *Enhance ADR training, management, and operations through technology.*
- *Nurture different approaches in large- and small-court jurisdictions. One size does not fit all.*
- *Publicize and market a "multi-door courthouse" concept, but limit advertising to what can be delivered.*
- *Give self-represented litigants adequate access to court-connected ADR through development of mutually beneficial strategies and initiatives by the ADR and access-to-justice commissions.*
- *Increase the number and quality of ADR neutrals and court programs.*
- *Upgrade services through long-term, dedicated funding (through general-fund core support or a specific surcharge attached to filings).*

"Government does not fail for lack of ideas, government fails for lack of execution of the ideas."

*- New Mexico
Supreme Court Justice
Edward L. Chavez*

These ten recommendations were in harmony with the court's access-to-justice goals and overall five-year strategic plan and enhanced the courts' reengineering efforts to increase efficiency. The recommendations built on prior work done by the New Mexico courts and lessons learned from a review of national court-connected ADR programs, as well as prior analyses of current ADR programs in the New Mexico courts.

LESSONS FROM THE ASSESSMENT

During the study, NCSC learned several valuable lessons about what aspects of the assessment process worked well and what challenges needed to be overcome. These lessons could help other states interested in conducting similar assessments.

Two key elements helped the assessment succeed and helped ensure implementation of the recommendations. First, the local steering committee, combined with autonomy for NCSC project staff, was critical to structuring and implementing the assessment so that it was appropriate for the courts, other ADR-related organizations, and individuals in New Mexico. This combination also helped promote buy-in for the resulting recommendations. The challenges of working with the committee were primarily logistical, as committee members worked throughout the state. Project staff met with the committee about once a month, beginning with video-conferencing then changing to teleconferencing. Staff met

in person with most of the committee about two months into the project, which helped build rapport and trust.

Second, the in-person site visits to all judicial districts by NCSC project staff were particularly important for gathering accurate information, including a deeper understanding of New Mexico's cultural and geographic diversity and how this mix affected different districts' range of possibilities

for designing and implementing ADR programs, which are mostly locally operated and vary as to quality and sophistication. The logistical challenge was addressed by having the project staff split up and conduct many site visits individually, rather than having the entire team visit every site.

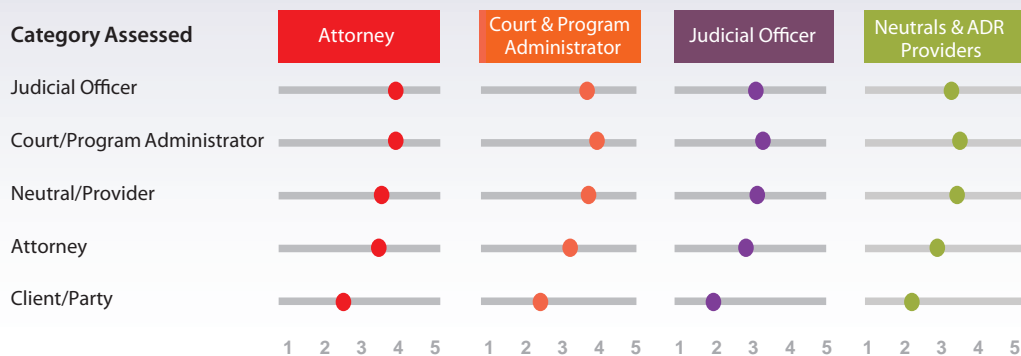
Internet surveys provided important information but were a challenge to design and administer. Challenges included identifying appropriate groups, limiting the number of questions, and securing participation. Ultimately, four separate surveys were distributed, targeting different categories of responders: attorneys, neutrals/providers, judges, and nonjudicial court staff managing ADR programs. Respondents with dual roles, such as attorneys also serving as

Results Table for an ADR e-Survey Question

What KNOWLEDGE do these groups have about ADR in your jurisdiction?

Average Score by Respondent

(1=very low level of knowledge; 5=very high level of knowledge)



neutrals, could complete more than one survey to report differing perspectives, if they wished. Anonymity was ensured to encourage candid feedback. Ultimately, the surveys generated less participation than would have been preferred, but enough to provide input.

COMMISSION FORMATION

During the summer of 2011, the ADR commission was formed. The 20 commissioners included members of the judiciary and the bar; representatives from organizations, such as the University of New Mexico School of Law, the New Mexico Mediation Association, and the State Bar ADR Committee; and individuals from diverse backgrounds, including commissioners from different geographic areas, nonattorney ADR professions, and the business community.

The commission had a strong starting philosophy. On one hand, “one size does not fit all.” Each judicial district needed the autonomy to develop ADR programs that fit local needs and resources. On the other hand, statewide resources could provide an otherwise unavailable economy of scale, and statewide leadership could support program development and quality assurance. This twofold approach was deemed critical.

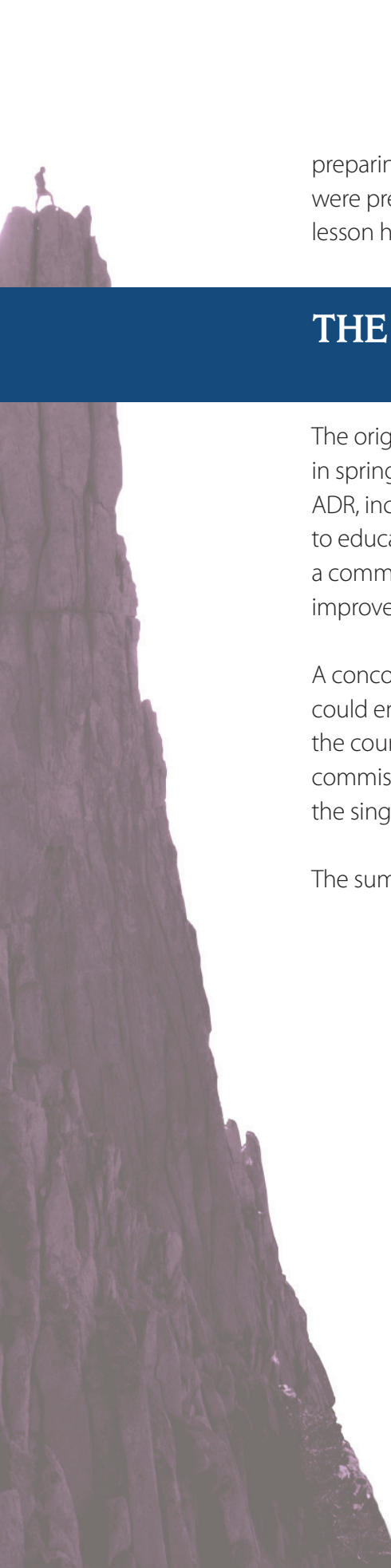
The commission also recognized that immediate implementation of all ten recommendations and each aspect of each recommendation was unrealistic. The commission is seeking out what priorities would lead the way to improved court-connected ADR in New Mexico.



Robert Boag, NCSC

An early success was the establishment of a scholarship fund for two members of the judiciary to attend basic and family mediation 40-hour training at the University of New Mexico School of Law. The purpose was to provide judicial officers and staff with firsthand knowledge of mediation as a tool for enhancing court-connected ADR programs in their courts.

During the fall, the commission organized an approach for achieving its mission. Commissioners were divided into three committees to develop a set of strategic plans addressing education, quality, and resources. The commission anticipated



preparing an overall strategic plan from the work of the committees. The committee reports were presented at the January 2012 commission meeting. However, by then an important lesson had been learned, which redirected the immediate focus of the commission.

THE SUMMIT

The original goal had been to roll out a comprehensive ADR plan at the Judicial Conclave in spring 2012. However, statewide understanding and awareness of court-connected ADR, including that of the commission itself, needed to be stronger. The spring goal shifted to education. A summit would be held, where the leaders of the judiciary could acquire a common understanding of ADR and where enthusiasm for going forward to build or improve ADR programs in the New Mexico courts could be inspired.

A concomitant belief was gaining recognition: Beyond improving docket control, ADR could enhance the quality of justice and provide significant benefits for the parties and the courts. The summit explored the full range of ADR benefits. In addition, while the commission desired to address all forms of court-connected ADR, the summit focused on the single most popular form of dispute resolution, mediation.

The summit was planned for May 2012. Preparation included three elements:

A planning team, chaired by commission co-chair David Levin, designed a program to provide information and understanding, evoke conversation, and generate enthusiasm. The format included a combination of plenary presentations and discussions, small-group roundtables and breakout groups, surveys, and materials to read before the summit.

Three research teams prepared reports and presentations on basic mediator qualifications and standards and basic mediation program requirements. The teams looked at the available national standards, the experiences of other states, and the experiences of court-connected ADR services within New Mexico. In addition, each team considered whether these targeted areas might vary by subject-matter area, as well as how the areas would affect the relationship between the New Mexico Supreme Court/Administrative Office of the Courts and local courts.

A partnership with the state of Ohio involved Jacqueline Hagerott, manager, Dispute Resolution Section, Supreme Court of Ohio, who joined the summit planning team. She recruited W. Milt Nuzum III, former judge and director, Office of Judicial and Court Services, Supreme Court of Ohio, and Richard Altman, magistrate judge, state of Ohio, to participate in the summit. Ohio had a history

of developing court-connected ADR services in a state analogous to New Mexico. For example, there was a statewide ADR office and an ADR commission, a vast number of independent judicial districts, and a desire to balance local autonomy with statewide resources and quality assurance. Ohio's participation brought an important dimension to the summit: the vision of bringing court-connected ADR to a diverse state.

The summit was a tremendous success (see <http://www.nmadr.org/>). People left energized and interested in furthering court-connected ADR in New Mexico. However, there was a lingering concern regarding how to find resources and the specific doable ideas to implement those aspirations, which led to a new set of initiatives.

POST-SUMMIT INITIATIVES: PILOT, MARKETING, AND RULES

The commission faced two post-summit challenges. First, the planning team and the commission leadership had dedicated time to the summit in addition to their regular duties. After the summit, the planning team and the commission leadership had to return more exclusively to their ordinary duties, reducing the energy and time for follow-up. Second, three concrete projects for capitalizing on momentum were chosen:

A pilot project was established to support the development of a family mediation program in the Ninth Judicial District. Commissioners began a working partnership with the district's staff attorney and the chief executive officer. Collaboration included work on forms, organizational ideas, mediation mentoring, program design, and how to build a mediation court services program. The goal was twofold: to support the local program and to develop a prototype of how to support other programs around the state. The early returns indicate that mediations are helping cases move forward, and the participants are highly satisfied with the service.

A marketing committee was established to promote court-connected ADR. The committee's first task was to develop videos for use throughout the state. This work is ongoing.

A rules committee was established to draft proposed rules governing court mediation services. The primary resources for the draft were *Model Standards of Conduct for Mediators*, *National Standards for Court-Connected Mediation Programs*, *Model Standards for Family Mediation*, and applicable New Mexico law.

People left energized and interested in furthering court-connected ADR in New Mexico. However, there was a lingering concern regarding how to find resources and the specific doable ideas to implement those aspirations, which led to a new set of initiatives.

25
YEARS AGO

Alternative Dispute Resolution

In a 1987 survey, state court administrators in 44 states, the District of Columbia, and Puerto Rico reported 458 operating ADR programs, ranging from mandatory court-annexed arbitration and mediation programs to statutory provisions for discretionary referral processes. Types of cases mediated included domestic relations; contracts; small claims; motor vehicle; environmental disputes; misdemeanors; juvenile delinquency; and neighborhood, landlord-tenant, and employer-employee conflicts. ADR has been most widely adopted in domestic relations cases. The use of court-annexed arbitration continues to grow.

Proposed rules were drafted and approved by the commission at the August 2012 meeting (see <http://www.nmadr.org/>). The supreme court approved publication of the proposed rules for comment, bringing unexpected results.

POST-COMMENTS ACTION

There were 133 pages of comments from throughout the state. There were constructive suggestions, favorable comments, criticism, and significant misunderstanding of the intent of the proposed rules. Adoption of the rules after minor modifications was not an option because of the scope and depth of the comments. However, the comments did open an important opportunity for a serious discussion of court-connected mediation.

The commission, once again, revised its approach and selected goals for the first half of 2013:

Back to the Drawing Board. The rules committee was charged to work with the commenters and their concerns. The substantive issues include the difference between “guidelines” and “rules,” practical mechanisms for program administration and quality assurance, clarification between the goals of local initiatives and statewide standards, how the rules would differently impact existing programs and new start-up programs, and how to prepare a simplified, yet effective, statewide statement of purpose and implementation.

“How to” Toolboxes. The commission also decided to pursue a concrete set of “toolboxes” for use by courts in developing or supporting their programs. Ideas included “how to” handbooks developed from the pilot project, Web-based resources and communications, and regional trainings.

Training on Program Development. The Ohio summit participants were invited to conduct, along with New Mexico subject-matter experts, a prototype training on how to establish a magistrate court mediation program by creating a source of program development ideas, task outlines, materials, policies, and procedures for individual courts to consider for when working on their programs. The training was scheduled for March 2013.

Work on these initiatives is ongoing. However, another long-term goal was identified:

Staffing. There was a significant missing resource for the commission: a full-time, court-connected ADR professional. Volunteer time and a part-time staffer had exceeded all expectations during the first year of the commission, but were not enough for the long term. How to meet this need remains an important issue.

LESSONS LEARNED AND GOING FORWARD

The story of the first year of the commission is instructive. The NCSC report provided a clear and thorough vision. However, implementing the vision had been delegated to the commission:

Implementing a court-annexed dispute resolution alternative in a complex court caseload process is *not for the short-winded or organizationally challenged*. Major change takes time, sometimes lots of time. And it requires methodical, thoughtful planning and experimentation focused on a range of short-term, intermediate and long-term timelines (NCSC, 2011: 55; italics added).



Robert Boag, NCSC

There is a need for immediate successes to reassure people that realizing the vision provided in the NCSC report is possible. There is a natural desire to have the world change overnight. Yet change takes time and requires a deliberate and flexible sequence of developmental stages. Balancing local initiative and statewide standards and resources is a complex undertaking, which requires listening to others, being creative and responsive to various needs and interests, learning the field and being open to new ideas, collaborating with a sister state, and inspiring others with an example of patience, persistence, and a realistic belief in what is achievable.

A key lesson is that courts are similar to the prospective mediation clients that courts seek to serve: they are all different, and there is a desire to exercise constructive self-determination with varying degrees of information, experience and expertise, local practice and culture, and know-how. At the same time, there are statewide issues, such as maintaining minimum quality standards. A challenge is to balance these interests. As with mediation, the process requires constant monitoring and adjustment to support the opportunity for a variety of court interests to be served by enhanced court-connected ADR. The “top-down” and “bottom-up” pressures must be addressed to move a state forward.

The diversity of New Mexico created multiple challenges as to how to proceed, but a solid beginning has taken place. However, every step requires a renewal of commitment, time, and energy. The New Mexico Supreme Court ADR Commission has demonstrated persistence and adaptability to meet the challenges.

REFERENCES

National Center for State Courts (2011). “Advancing Alternative Dispute Resolution in the New Mexico Judiciary: Key Strategies to Save Time and Money.” Final Report, Court Consulting Services, Denver, April 15. www.nmcourts.gov/pdf/NCSC_New_Mexico_ADR_Final_ReportWith_Appendices04-19-2011.pdf

New Mexico Court Connected ADR Research Site (2012). <http://www.nmadr.org/>

New Mexico Judiciary Strategic Plan (2008-13). http://www.nmcourts.com/admin/2009_nmj_strategic_plan.pdf