

# Supreme Court of New Mexico

## STATEWIDE ADR COMMISSION



**Minutes ADR Commission Meeting - March 9, 2017**  
8<sup>th</sup> Floor Metro Court, Albuquerque, 10:00 am – 12:30 pm

### Meeting Notes – Draft

The ADR Commission was called to order at approximately 10:10 am, the Honorable Jeff McElroy presiding.

In attendance were:

The Honorable Jeff McElroy, Chair  
Mary Jo Lujan (by phone), Vice Chair  
Susan Barnes Anderson  
Laura Bassein  
Jennifer Foote  
Torri Jacobus  
Jessie Lawrence

Cynthia Olson  
Ted Ramirez (by phone)  
David Smoak  
Kevin Spears  
Sara Steven  
Chris Vigil

Absent were:

*Hon. Francis Matthew, Hon. Mark Sanchez, Philip Dabney, Mari Gish, and Peter Bochert*

Also attending were:

*Kristen Frueh-Leyba (by video link) and Jodie Schwebel (by video link)*

### **I. Welcome & Introductions**

After initial introductions, Judge McElroy (the Chair) welcomed and thanked Commission members for attending, and noted that he appreciates regular attendance. The Chair informed the Commission that the May 11, 2018 Commission meeting will be chaired by Vice Chair, Mary Jo Lujan, as the Judge will be at conference in Reno, NV at that time.

The Chair opened discussion on the meeting agenda and asked if members had any changes or alterations to the agenda to suggest. There were no such requests and the agenda was approved.

## **II. Announcements & Updates**

Chris Vigil informed that Commission that he would continue in the role of the statewide ADR coordinator for the AOC. (UPDATE: *Chris Vigil has resigned from the AOC effective April 19 and will no longer continue in this role*).

The Chair announced that the ADR Commission now has a Google Groups page, intended for use as an electronic bulletin board and repository for Commission related documents. Chris Vigil described the page. The Chair suggested that members try it to determine if it would be useful and asked Chris to send out invitations to all Commissioners. Torri Jacobus described the cloud storage platform, Google Drive, and suggested that it might be a useful public storage platform for the Commission. The Chair suggested that the Commission consider using both the Google Groups account and Google Drive. Laura Bassein pointed out that Google software platforms may not be available to all Commissioners due to the security filters in use by some professional email applications.

The Chair confirmed that in January, the NM Supreme Court has entered the ADR Commission Roster for 2018.

### Training Announcements

Cynthia Olson announced that she will be conducting mediation training for no cost in Las Cruces for the Magistrate Court on May 5, 2018. Chris Vigil confirmed that the UNM School of Law School basic mediation classes will be held on June 1, 2, 3, 15, 16, and 17, 2018. The ADR Bureau will be doing a five-day mediation training, also no cost, in Farmington June 4-8. Mary Jo Lujan (the Vice Chair) noted that classes in Farmington are in partnership with San Juan College.

### Miscellaneous Updates and Issues

The Chair asked the Commission if Aztec/Farmington, NM region has a magistrate court mediation program. No one on the Commission knew the answer, and Chris Vigil volunteered to look into the question, and to identify any program and training if it does exist. There was general discussion with regard to the AOC identifying and coordinating training for volunteer mediators, if appropriate.

Laura Bassein commented that ADR Commission would benefit from membership representation from all levels of state courts, magistrate, metro, district, and appellate. The Chair suggested that committees can add this representation at the Commission committee level. There was general discussion that there is no representation of magistrate courts on Commission.

## **III. Review and Approval of Final Report for 2017**

### Opening Comments and Discussion

The Chair gave opening remarks and asked if any commissioner had comments on the 2017 Annual Report. Laura Bassein noted that she had a few minor changes to the report that she would send to Chris Vigil; Laura also asked if the Report was accurate with regard to the

question of whether both Supreme Court sliding scales were adopted (pg. 3 of Report). The consensus of the Commission was that the report is accurate. The Commission discussed and decided that the roster in the Report reflect the Commission members who served in 2017 rather than the currently serving members.

Kevin Spears moved to approve the Report with the suggested changes; the motion was seconded and unanimously approved.

#### **IV. Review and Discussion of Supreme Court Sliding Fee Order**

##### Details of Order

The Chair reviewed the Supreme Court's Order and discussed each item. He pointed out that the Order only pertains to District Courts and does not order courts that do not charge to adopt a fee if they choose not to. The Chair also noted that other court programs have faced the problem of how to best collect fees and that it will take time to work out feasible systems for this. David Smoak asked if courts could set a maximum fee that diverges from order; answer is yes.

Laura Bassein noted that there are two types of family mediations, and that one type of mediation seems to be left out from the Order. She asked if low income families where family members are adverse parties effectively pay twice for mediations. The Chair answered that the Eight Judicial District in Taos has parties pay according to resources. Kevin Spears said that families paying twice are an issue, and this is why the Ninth Judicial District in Portales was considering not charging at all. The Chair added that judges have power to waive fees in any case. The Chair asked if the AOC would look at that statute to determine whether statute needs to be changed.

David Smoak asked how the courts determined the income of parties for purposes of determining what fees were due. The Chair responded that each district can decide own rules and noted that in some cases parties are only required to sign an affidavit declaring income – and are not required to provide tax documents to the courts. Laura Bassein noted that child support guidelines are very detailed. Responding to Laura, the Chair expressed the view that that the Commission cannot fine tune it at that level, and that this was really a question that districts would have to resolve.

The Chair asked the Commissioners whether the sliding scale should be distributed to whole judiciary, suggesting that it only be distributed to District Court judges and CEOs. He requested that the AOC ask Supreme Court Clerk, Joey Moya to distribute the Order to “all district court” email list, and look into whether it is on a SC website.

The Chair opened a discussion regarding how the Supreme Court interprets the Order, and asked that the AOC work with SC on this issue. Torri Jacobus said the 2<sup>nd</sup> Judicial District would like guidance from the Supreme Court and AOC on how the Court interprets the implementation of the sliding scale fee. Judge suggested that Commission and the AOC should develop district by district procedures to be submitted to the Supreme Court for approval, and noted that this issue has not been clarified yet. The Chair suggested that the AOC work on this issue with a “district court” committee of Commission members.

Jennifer Foote had a question about accounting and taxation issues with regard to court collection of fees and how this might affect non-court mediators, and asked if it would be helpful

to have the Court give some guidance or perhaps another order. Cynthia Olson pointed out that Commission does not always have all of the information to answer some of these questions, and suggested that a Commission committee be created to assist Commission at large to better evaluate such questions.

Jodie Schwebel asked the Commission what exactly a District should submit to the Commission committee to describe its procedures for implementing the sliding scale. The Chair replied that a short two-paragraph description might be sufficient to submit to the Commission.

Ted Ramirez noted that the Order does not have deadlines or other dates in the Order, and asked if that was typical. The Chair replied that the Court appeared to want to leave it open to make implementation of programs more feasible, and more in accordance with each district's practices.

## **V. Committee Structure**

The Chair's overview: he and the Vice Chair spoke regarding committee structure and agreed that smaller groups could more easily get work done between meetings, and bring report to the Commission for approval. The Chair listed the following committees and members:

- **Support and Evaluation of Existing Urban District Court Programs**
  - Torri Jacobus
  - Judge Matthew
  - Mari Gish
  - Ted Ramirez
  
- **Program Development in Rural Courts**
  - Judge McElroy
  - Kevin Spears
  - Judge Sanchez
  - Jodie Schwebel
  - Judge Weaver
  - Representation from Sixth and Seventh Districts
  
- **Other Mediation Programs**
  - Sara Stevens
  - Jessie Lawrence
  - Judge Matthew
  - Phil Dabney
  - Jennifer Foote
  
- **Magistrate and Metro Mediation Programs**
  - Susan Barnes Anderson
  - Representation from Magistrate Court programs
  
- **Awareness, Outreach, and Training**
  - Mary Jo Lujan
  - Ted Ramirez
  - Laura Bassein

- Cynthia Olson
- David Smoak
  
- **Data Committee**
  - Susan Barnes Anderson
  - Chris Vigil
  - Representatives from each District Court, the Court of Appeals, Magistrate and Metro Courts, and the Children’s Mediation Program

The Chair discussed the possibility of Commission subcommittees. Cynthia Olson replied that the Commission be cautious that members not take on too much work. The Chair requested that the AOC look into whom from the Magistrate Courts might be able to participate and give input.

#### Funding of the Commission’s Committee Recommendations

Susan Barnes Anderson discussed the difficulties of the increasing number of collection cases that were clogging up Metro’s mediation program. David Smoak remarked that since the founding of the Commission, the number-one issue has been lack of funding. The Chair suggested that the political climate in the New Mexico may mean better funding for ADR programs in FY20, given the right strategies. David Smoak also suggested that the business community may be a good ally in advocating for more funding for ADR, it being in their interest.

#### **VI. Next Commission Meeting Agenda**

For the next meeting, the Chair suggested adding the following items to the agenda:

- What does Commission need budget wise to make these programs expand?
- Invite Artie Pepin, AOC Director to next meeting

Meeting adjourned shortly after 12:30 pm.