

Collaborative Justice Update

Study Gauges Expansion of Collaborative Court Principles

A new study conducted by the California and New York state court systems explores the extent to which key principles and practices fostered by collaborative justice courts may be applied throughout the legal system.

DEVELOPING AND CONDUCTING THE STUDY

Collaborative justice courts are distinguished by a number of unique elements: a problem-solving focus; a team approach to decision making; integration of social services; judicial supervision of the treatment process; community outreach; direct interaction between defendants and the judge; and a proactive role for the judge inside and outside the courtroom. The report of the study, titled *Going-to-Scale Project: Opportunities and Barriers to the Practice of Collaborative Justice in Conventional Courts*, examines the feasibility of integrating these principles with traditional court models.

The project originated with the California Judicial Council's Collaborative Justice Courts Advisory Committee and was carried out by researchers from New York's Center for Court Innovation and from the Research and Collaborative Justice Units of the California Administrative Office of the Courts (AOC). The goal of the joint study was to analyze three principal questions:

1. Which collaborative justice principles and practices are easiest to transfer to conventional courts?
2. What barriers might

judges face when attempting to apply these principles and practices in conventional courts?

3. How might collaborative justice be disseminated among judges and judicial leaders throughout the court system?

SPECIFIC FINDINGS

Researchers conducted focus groups and individual interviews among a diverse group of judges with experience in drug, domestic violence, mental health, and other collaborative justice courts. Most judges agreed that their collaborative justice court experience greatly enhanced the frequency and effectiveness of their application of specific collaborative justice principles and practices on general calendars.

"I find [that when I'm] sitting in a traditional court the issue of time is incredibly important," said a judge from San Francisco. "It is much less emphasized in a collaborative justice court, where the goal is to solve the problem for each individual person regardless of the amount of time it takes."

Judges also identified critical barriers to the practice of collaborative justice, including: a shortage of resources and staff to give individualized attention to each case; the traditional view of the role of the judge (deciding cases, not solving problems); legal and constitutional constraints (especially in adult criminal courts); and attorneys who are unfamiliar with or unwilling to embrace the collaborative approach.

FINDINGS

Based on the criteria established by the legislation, the report finds that all five of the Early Mediation Pilot Programs resulted in substantial benefits to both litigants and the courts. Out of nearly 8,000 cases submitted to early mediation in the five pilot program courts, approximately 60 percent were settled as a direct result of the mediation.

The study found that in San Diego and Los Angeles Counties the pilot programs reduced the proportion of cases going to trial by 24 to 30 percent. This translated into potential annual savings in judicial officer time of 521 days in San Diego County (with an estimated monetary value of approximately \$1.6 million) and 670 days in Los Angeles County (approximately \$2 million). In addition, mediation programs reduced the number of motions or other pretrial hearings in Fresno, Los Angeles, San Diego, and Sonoma Counties.

The researchers found that parties' litigation costs in reaching resolution were lower in program cases that settled at

"In the initial stages of starting up a drug court and whenever a new member of the team joined, I had to spend quite a bit of time working with the new team member to help them overcome being intimidated by the judge," commented a judge from Burbank. "When we are functioning as a team, everybody needs to feel comfortable to express their opinion, and that means disagreeing with me. That was a radically new concept, even for lawyers."

SPREADING THE WORD

In exploring strategies for expanding collaborative justice principles and practices throughout the court system, the judges who were interviewed discussed extensively the need to change attitudes among the many judges and judicial leaders unfamiliar with or unresponsive to collaborative justice courts. They recognized that, while collaborative justice would never be embraced by all of their colleagues, exposure to the concept is key to changing attitudes.

Judges cited the need for more educational courses on collaborative justice at judicial trainings and new judge orientations. Many judges expressed support for mandatory training. They also recommended less formal means by which judges might be exposed to collaborative justice, including mentoring and brown bag lunches.

A common theme was that receptivity to collaborative justice is enhanced if judges "hear

it from other judges" rather than from administrators, attorneys, or academics. In addition, judges in the focus groups emphasized the importance of presiding judges and other judicial leaders' encouraging broader use of collaborative justice throughout their superior courts.

MORE RESEARCH NEEDED

The study found that promoting collaborative justice broadly, throughout the court system, depends largely on the receptivity and participation of judges without collaborative justice court experience. Researchers recommended a systematic survey of general calendar judges in California and New York to provide answers to several key questions concerning their knowledge, attitudes, and practices related to collaborative justice. That study is scheduled to begin this summer.

NEXT STEPS

The AOC's Center for Court Research, Innovation, and Planning, in conjunction with the council's Collaborative Justice Courts Advisory Committee, will work to integrate transferable principles identified in the study with its educational and training opportunities for judges and court staff. The AOC will also share information through court networking vehicles such as conference calls and the Collaborative Justice Web site. In addition, the study will be presented at the annual meeting of the National Association of Drug Court Professionals in June.

● To view the entire report, visit www.courtinfo.ca.gov/programs/collab/. For more information, contact Francine Byrne, AOC's Office of Court Research, 415-865-7658; e-mail: francine.byrne@jud.ca.gov. ■

Promising Prospects for Collaborative Justice

According to *Going-to-Scale Project: Opportunities and Barriers to the Practice of Collaborative Justice in Conventional Courts*, following are the conventional arenas deemed most appropriate for practicing collaborative justice principles:

- Misdemeanor juvenile delinquency
- Juvenile dependency
- Family law (in California)
- Proposition 36 cases (in California)

Mediation Directives

The *Evaluation of Early Mediation Pilot Programs* report makes numerous recommendations on early mediation in civil cases. It directs AOC staff and the council's Civil and Small Claims Advisory Committee to:

- ◆ Work with the pilot courts to share their results with other trial courts;
- ◆ Provide trial courts with support and training to help them develop, implement, maintain, and improve mediation programs and other settlement programs for civil cases;
- ◆ Draft a proposal for a standard of judicial administration encouraging all trial courts to implement mediation programs for civil cases as part of their core operations; and
- ◆ Consider whether legislative or rule amendments should be recommended to facilitate the implementation of mediation programs.

Mediation

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judges, and mediators' qualifications and compensation.

RESEARCH AND REVIEW PROCESS

Evaluation of the Early Mediation Pilot Programs describes a 30-month study of the five pilot programs. Researchers examined data from the courts' case management systems on trial rates, disposition times, and pretrial hearings. They also surveyed and interviewed parties and attorneys about their experiences.

The pilot program courts helped design the surveys and other aspects of the study. They reviewed and commented on drafts of the report's overview of findings, the chapter outlining findings at their particular courts, and the proposed recommendations. The ADR Subcommittee of the Judicial Council's Civil and Small Claims Advisory Committee also reviewed the overview of the pilot program findings and the proposed recommendations.

mediation than in nonprogram cases. Based on the estimates of participating attorneys in all five pilot programs, litigants saved a total of \$49,409,698 through pilot program cases that settled at mediation.

"[The] mediator served to enable the parties to settle a number of cases this year," wrote an attorney surveyed about the pilot program. "The value of an experienced, impartial third-party mediator is not to be underestimated. I highly recommend the pilot program."

The report also noted that, even in cases that did not settle at mediation, the mediation experience increased participants' satisfaction with court services. Attorneys and parties expressed high satisfaction with the mediation and strongly agreed that the process was fair.

An attorney surveyed about a case for the study responded that, although the case had not settled yet, "the process was beneficial, as it may have lessened unreasonable expectations and provided insight to the parties on risks that may not have been

considered or understood before." A self-represented litigant commented: "It saved me considerable time and money to defend myself. The mediator did not take sides and did a great job."

NEXT STEPS

The report and its recommendations were approved by the Judicial Council at its February 27 business meeting and forwarded to the Governor and Legislature for their consideration. The AOC anticipates working in partnership with the courts to find out what they need to implement early mediation programs.

● To view the full report, visit the California Courts Web site at www.courtinfo.ca.gov/reference/documents/empprept.pdf. For more information, contact Heather Anderson, AOC's Office of the General Counsel, 415-865-7691; e-mail: heather.anderson@jud.ca.gov. ■