Collaborative Court Principles

Study Gauges Expansion of Collaborative Court Principles

A new study conducted by the California Courts and the 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, and mental health professionals; and an active 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 Supreme Court's Judicial Council's Collaborative Justice Courts Advisory Committee and was carried out by researchers from the National Center for State Courts in cooperation with the Judicial Council's 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 collaborative justice court experience greatly enhances the frequency and effectiveness of their application of specific collaborative justice principles and practices on general calendars.

“One thing that when I’m sitting in a conventional trial that’s a key to changing attitudes is for cultural barriers to the practice of collaborative justice, including, for example, the need for more educational courses on collaborative justice at judicial officer training 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 predisposing judges and other judicial leaders’ encouraging broader use of collaborative justice throughout their superior court systems.”

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 Court for 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, 415-863-7658; e-mail: francine.byrne@jud.ca.gov.

Mediation

Mediation

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Judges, and mediators’ qualifications and compensation.

RESEARCH AND REVIEW PROS.

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 in 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.

FINDINGS

Based on the criteria established by the council, 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 fully resolvable and resolved.

In the initial stages of starting up a drug court and when ever a new member of the team joined, I had to spend quite a bit of time working with the new team 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.

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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
- Consider whether legislative or rule amendments should be recommended to facilitate the implementation of mediation programs