

STANDARDS - COMPLEMENTARY DISPUTE RESOLUTION

Standard 1: Access to Complementary Dispute Resolution (CDR) Programs

The Judiciary should provide all court users with information about, and access to, the full set of options available for resolution of disputes, including traditional litigation and various complementary forums, so as to continue to fulfill its commitment to providing the highest quality of justice possible.

Comment: This standard has its origin in the 1990 Final Report of the Task Force on Dispute Resolution, which used similar language to describe the purpose and direction for court-connected dispute resolution. That language was echoed by the Strategic Planning Committee in its Strategic Initiative 7B: “[t]he Judiciary should develop and implement a full range of complementary dispute resolution concepts.”

In 1990, the Supreme Court adopted goals related to this standard, including:

- be as accessible as possible to all disputants and not favor one group or segment;
- protect the legal rights of all participating disputants;
- provide a fair and competent mechanism for resolving disputes;
- encourage the confidence and respect of disputants and the general public in the fairness, integrity, and justness of the methods by which disputes are resolved;
- be an effective forum for the enforcement of law, including formulating outcomes in terms that are conducive to subsequent enforcement when necessary; and
- be as efficient as possible in terms of the cost and time required of both the system and the disputants.

Since the Task Force completed its work the extent of CDR options has grown, including the expansion of Municipal mediation services statewide and the implementation of two major mediation pilots: one for Civil/General Equity and Probate cases and another for the economic aspects of divorce. Providing access requires the ability and commitment to providing all court users with information about available CDR programs by putting complete information about them on the Internet; disseminating printed information on the programs, developing such information as necessary; performing outreach efforts including press releases and public presentations; and continuing and improving dialogue with the bar. The Conference of Operations Managers should work with the CDR Coordinators’ statewide group and the program conferences to address these issues.

Standard 2: Integration into Case Management

CDR should be integrated into case management processes early in the life of a case to increase the potential for reducing costs to both the litigants and the courts and to provide settlement options before the parties' positions have become polarized.

Comment: The Strategic Plan describes the benefits of early referral to CDR as follows:

First, conclusion of a case through CDR reduces litigant costs, since early case resolution eliminates ensuing costs. Second, even when CDR does not conclude an action, it still has the potential for reducing costs since the litigants receive an independent view of the merits of their positions, thereby leading to early resolution. Third, CDR can improve the quality of litigation. When CDR is integrated into an effective case management system, attorneys must identify and define the substance of their case at the outset and judges thus gain a more clear view of the issues in dispute. Fourth, CDR should make better use of limited court resources, since referring cases to CDR often reduces the need for judicial intervention, thereby preserving judge time for those more essential tasks that only a judge can perform. And fifth, CDR should improve the public's perception of the courts by reducing the cost and time of traditional litigation.

(Report at page 91)

While the Strategic Plan was referring primarily to major Civil cases, these benefits are equally true for other areas of the court and accrue to both *pro se* litigants and those parties represented by counsel. The best time for referral varies according to case type and the amount of discovery that is needed before a CDR event, whether it be a settlement panel/conference, arbitration or mediation. This continues to be a subject for study, especially with regard to mediation of major civil cases. However, even where further discovery is needed after referral of a case to mediation, the mediator can work with the parties to determine what is needed and the best way to accomplish this. Generally, responsibilities for early identification and referral fall to staff in the program divisions and the Municipal Court Administrator. Mechanisms to generate referral orders have been developed through ACMS for major civil cases and should be developed through FACTS and ATS/ACS to assist in that process.

Standard 3: The Role of Conferences and Committees in Statewide Oversight

The Conferences of Presiding Judges and Division Managers, in conjunction with the Supreme Court Committee on Complementary Dispute Resolution and the Arbitration Advisory Committee, should oversee dispute resolution programs. The objective of such oversight is to ensure consistency in the availability and quality of CDR programs throughout the state, while providing the flexibility for appropriate experimentation and pilot programs.

Comment: The development of court rules, and more recently, standards and best practices for the various divisions of the trial court has furthered the objective of consistency, first established in the 1990 Final Report of the Task Force on Dispute Resolution. Once standards are agreed to and adopted by the conferences, implementation is monitored by specially assembled teams to assure statewide adherence.

Because the field of dispute resolution continues to evolve and the bar and public are increasingly accepting of it, the development of pilots (such as ones currently in place in the Civil and Family Divisions), should continue. Based on pilot evaluations, statewide expansion should be considered, where appropriate, through the Committee and Conference structure.

Standard 4: The Role of the Central Office in Statewide Oversight

Staff at the Central Office should continue to act as champions of CDR Programs in their capacities as staff to the Committees and Conferences with oversight responsibilities, providers of technical assistance to the vicinages, coordinators of work with mediators and arbitrators, and liaisons with outside groups.

Comment: Staff at the Central Office, located in the Civil, Family and Municipal Program Divisions, and in the Special Programs Unit of the Programs and Procedures Division, play key roles along with vicinage staff in developing and implementing a full range of complementary dispute resolution processes. To accomplish this, staff should continue to work with vicinage staff and the conferences toward the following objectives:

- promote uniformity and quality of “best practices” in CDR programs in all vicinages;
- monitor, and serve as a clearinghouse for ideas, issues and new trends, both within and outside the state, including national ADR programs and legislation;
- provide vicinages with updated information about current issues and new trends;
- staff the Supreme Court CDR Committee, the Arbitration Advisory Committee and Conferences, with regard to CDR-related issues;
- monitor and evaluate CDR programs at the state level and advise vicinage CDR coordinators and program division staff regarding local evaluations;
- develop and foster pilot projects to meet new needs;
- monitor (and sometimes provide) the training and continuing education programs of neutrals in light of the Court standards;
- review and act on requests from applicants to be waived from mediation training;
- maintain statewide rosters of court approved neutrals;
- oversee application of standards for mediators and arbitrators in court-connected programs; and
- institutionalize relationships with the Bar, Universities, the Marie Garibaldi ADR Inn of Court and private providers.

Standard 5: The Role of the Assignment Judge in Vicinage Oversight

The Assignment Judge shall have overall responsibility for developing and overseeing CDR programs in the vicinage, within the framework of statewide standards. The Assignment Judge shall also determine an appropriate mechanism for on-going review of vicinage CDR programs and program development with members of the local bar, judges and court staff. The Assignment Judge shall appoint a CDR coordinator under the supervision of the Vicinage Operations Manager to assist in those efforts.

Comment: The 1990 Final Report of the Task Force on Dispute Resolution included recommendations that the Assignment Judge appoint a vicinage-level CDR Advisory Committee and a CDR Coordinator to staff that Committee, among other duties. Following development of a Master Plan by the newly appointed Supreme Court Committee on Complementary Dispute Resolution in 1991, the CDR Coordinator assisted the Assignment Judge and TCA in the preparation of a “Vicinage Comprehensive Justice Programs Plan,” working with the vicinage CDR Advisory Committee, including judges, court staff, attorneys, and (in some vicinages) other public members such as university professors. After that plan was approved by the Supreme Court and necessary implementation completed, the vicinage CDR Advisory Committees were generally disbanded.

In more recent years the development of standards and best practices in the program divisions, and increasing responsibility taken by the program divisions for their own CDR programs (a step envisioned since 1990), called into question the need for a vicinage CDR Advisory Committee. During the 1998-2000 rules cycle, the Supreme Court Committee on Complementary Dispute Resolution recommended that the requirement for a vicinage Advisory Committee be replaced by the requirement that the Assignment Judge maintain “continuing relations with the Bar ... and mechanisms to educate judges, attorneys, staff and the public on the benefits of CDR.” The Supreme Court adopted this change. This might take the form of Bench-Bar committees (by specific program division), with ad hoc committees established as needed.

Standard 6: The Role of the CDR Coordinator in Vicinage Oversight

Each Vicinage shall assign a person to discharge the duties of CDR Coordinator, working under the direct supervision of the Operations Manager. The CDR Coordinator shall work with staff in the central office and in the vicinage program divisions to provide overall coordination, education and outreach.

Comment: Rule 1:40-3 provides that the “Assignment Judge shall appoint a CDR coordinator to assist in the oversight, coordination and management of the vicinage CDR programs.” In 1996 the TCAs acknowledged a need for the role when they adopted a full-time position in their staffing model devoted to CDR and volunteer coordination. The Conference of Operations Managers in its revised model basically adopted the same approach in the spring of 2003. The thinking behind this model is that several of the job responsibilities and skill sets required for these two roles are essentially the same, including performing community outreach/public speaking, program development, monitoring and evaluation of programs, program publicity, and representing the vicinage at state level meetings. In addition, volunteers are used for some CDR programs. This model is now being used (or the position has been posted) in ten vicinages. Thus it is a desirable goal within the context of other vicinage staffing needs even though it is not mandated by these standards.

When the Operations Division was created, the Operations Managers were given the responsibility for coordinating CDR and Volunteer Programs; however, in three instances the person designated as CDR Coordinator is still located within a program division and has responsibilities within that division, as well as overall vicinage coordination of CDR programs. Experience suggests that the first priority of the individual will be to the particular division work and not to the coordination of programs across divisions. Locating the CDR Coordinator in the Operations Division both permits the individual to coordinate CDR programs from an overall perspective and not be tied to one program division and allows the consolidation with CDR duties that the TCAs envisioned in 1996.

The specific duties that are envisioned for a CDR Coordinator are listed below. It is suggested that at a minimum the Coordinator in each vicinage handle the duties described in the first two sections.

1. Represent Vicinage at Statewide CDR Coordinators Committee Meetings

- Participate in discussions about CDR programs, standards, best practices and other issues
- Share information about new vicinage programs or approaches with other Coordinators
- Provide feedback to the vicinage, including possible new applications
- Perform follow-up at the vicinage as needed

2. Serve as primary point-of-contact for Vicinage dispute resolution programs

- Handle requests from the bar and public for information on becoming a mediator or

arbitrator

- Answer questions from litigants on how to get into a CDR program
- Educate the public about CDR options through all media
- Ensure that all vicinage printed material about CDR meets the same standards for design and content
- Accept public speaking engagements to talk about CDR
- Review statistical data on an on-going basis to effectively enhance existing programs
- Convene or participate in special vicinage committees/meetings as appropriate (e.g. special CDR Program Planning or Evaluation committees)
- Monitor CDR program pages on Judiciary Infonet and Internet; recommend changes as necessary

3. Provide assistance to Family, Civil and Municipal Divisions with CDR programs.

- Revise and develop brochures and other public information as needed
- Periodically monitor and evaluate programs; assess program needs and make recommendations
- Assist in developing and implementing pilot programs
- Assist in recruiting volunteers for CDR programs
- Facilitate (and in some vicinages serve as trainer for) 18-hour mediation and conciliation training (with Vicinage Training Coordinator) and 4-hour continuing education mediation training for volunteer mediators
- Work with Human Resources Division and AOC - Training and Staff Development Unit on coordination of mandatory 12-hour law clerk mediation training. Coordinate logistics and assist training staff as needed
- Ensure that incoming law clerks have successfully completed the training requirements; draft memorandum to Assignment Judge and Civil CDR Point Person
- Provide assistance with specific CDR programs as needed in a particular vicinage (e.g. work with Special Civil Division on scheduling of law clerks for small claims mediation/settlement)

Standard 7: Monitoring and Evaluation

The program divisions, working with ITO, and with input from appropriate conferences and committees, including the Conference of ATCAs/Operations Managers, should continue to develop performance measures and enhancements to their data systems to provide the ongoing monitoring and evaluation of CDR programs. Data on CDR should be incorporated into monthly case management reports. Periodic surveys of users (litigants and attorneys) should be coordinated at the state level.

Comment: During the course of the evaluation of the pilot mediation programs for the economic aspects of divorce and for the presumptive referral of civil cases, program staff has used a combination of data from case processing systems and special evaluation forms. For on-going CDR programs, data should routinely be collected on such factors as outcome of cases referred to mediation and arbitration, and time frames including time from filing to referral and time to disposition. Mechanisms should also be developed to capture information about the outcome of cases sent to CDR but not resolved and post-disposition litigation of cases resolved through CDR. More work needs to be done in the Municipal Division, which currently collects mediation statistics manually.