

Justice and the Quality of Court ADR
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Program Description: Providing fair and efficient justice is among the courts' most fundamental responsibilities. What, then, are courts' quality assurance obligations when administering ADR programs or referring litigants to an ADR process or practitioner? Panelists and session participants will share and receive ideas, techniques, and tools to promote and evaluate the quality of court ADR programs.

Each presenter spoke for 15 minutes about what each of them do in their own jobs to promote quality ADR programming for just results.

Nick White on MACRO's ADRESS Data Collection and Analysis

Nick White began the session by discussing the ADRESS software his office has developed to ensure that the individuals participating in the over 10,000 ADR conferences held in Maryland courts per year receive quality services and access to justice. ADRESS, or Alternative Dispute Resolution Evaluation Support System, is a web-based data collection and reporting tool that enables courts to quickly and efficiently aggregate survey responses provided by practitioners, clients and attorneys and combine that data with court docket information.

Mr. White explained that ADRESS was born out of a perceived need of the Maryland District and Circuit Courts for better insight regarding how their processes and rosters are working. Before ADRESS was developed, some courts had no data collection at all or surveys were routinely collected and dropped into desk drawers. Mr. White explained that the goals for ADRESS are to help his office and the Maryland state courts understand long-term mediation trends so as to make decisions based on data and allow near-real-time learning

The ADRESS system updates every night, so it can provide almost immediate insight into the quality of the processes being offered to the public. ADRESS has three basic components: an ADR data collection tool that scans information from surveys completed by participants, attorneys, and ADR practitioners into the database; information complied by Maryland Judiciary's database; and a reporting tool that ties all the information together to allow courts to test whether small changes make a difference within their mediation conferences.

ADRESS is currently piloted in five Maryland Circuit Court ADR programs and statewide in Maryland's District Court ADR programs, but Mr. White said that it would be offered to more Maryland courts in the coming years. The program is accessible to anyone, but it is not off-the-shelf software. If another state wanted to use it, they would have to hire a programmer to tailor it to tie into their state's judiciary database to pull down the right data. Mr. White then performed a live demonstration of ADRESS, showcasing the nuanced information that courts can acquire using the software.

Maureen Denihan on Quality Improvement in a District Court Mediation Program

Maureen Denihan discussed the behind-the-scenes work that her office did to promote quality ADR services within the District Court of Maryland. Ms. Denihan said they focus on improving the quality of practitioners, the program, and the data that comes out of it. To ensure that Maryland residents receive the best services possible, it was important for the court to refine the process by which individuals are trained to serve as volunteer mediators within the Court.

For individuals to qualify to serve as practitioners, they must meet all the qualifications contained in the court rules and District Court policies. This requires individuals to participate in experiential training before they come into the court's mediation program and allows practitioners who finish training to begin working as a mediator much earlier than otherwise possible. If individuals meet the minimum age and training requirements, they can attend a full-day eight-hour orientation hosted by the District Court which sets the expectations for participation in the program. Throughout the day, court employees discuss the types of cases that may be referred to mediators and the quantitative data collection from practitioner activity reports and participant surveys.

Ms. Denihan explained that with the transition from a one-sided sixteen-question participant survey to a double-sided Scantron questionnaire, the Court has had to train practitioners to frame the survey to turns the daunting task of completing it into something participants want to do to help the practitioner and the court improve the services they provide.

Ms. Denihan said that the changes her court has been able to implement would not have been possible without having the support of the Chief Judge to fuel additional funding into the programs and provide enough resources for her office to grow into a staff of ten, including five regional program directors.

Ms. Denihan described the mediator apprenticeship program. As soon as future mediators complete the Court's eight-hour orientation, they attend an on-site orientation with a regional program director to familiarize themselves with the courthouse, see where they will be mediating, and become comfortable with the space so as to successfully operate there independently. Next, the individuals participate in two observations in which they are exposed to a variety of mediation frameworks by

watching two different practitioners conduct a mediation from start to finish. The Court tries to pair apprentices with mediators who practice using the apprentice's self-identified framework. This is intended to help apprentices easily follow their preferred approach.

After the individual attends the two observations, the court asks if the individual is comfortable with moving forward into what Ms. Denihan referred to as "review," where the individual will mediate on two separate occasions and be reviewed by either a lead mediator or a regional program director. During both observations and reviews, the program requires practitioners that have a pre-brief conversation and a de-brief conversation about what skills they saw and opportunities for improvement while the information is fresh in their minds. After the second review, practitioners who receive positive assessments from regional program directors and who are comfortable moving forward are deemed to have completed the program and are regularly scheduled into the program.

Mindy Sarkissian on the Virginia Judicial System's Mediator Certification Program

Mindy Sarkissian discussed two unique aspects of the dispute resolution services offered by the Virginia Judicial System: its mediator certification program and its partnership with Virginia Commonwealth University's MPA program to have capstone students evaluate Virginia's mediation processes.

By statute, certification is required for court-referred mediation in Virginia, and the Disputes Resolution Services office oversees that process. There are four levels of certification (general district court certification, juvenile domestic relations certification, circuit court civil certification, and circuit family certification) and all certifications involve some combination of classroom training and practical experience. Core classes for certification must adhere to the outlines promulgated by the DRS office, which require specific information to be covered and specific amounts of time to be spent on different topics. Once certified, mediators must re-certify every two years and complete ten hours of continuing mediation education, two of which must be on mediator ethics.

Although this process sounds rigid, Ms. Sarkissian emphasized that her office tries to be as flexible as they can while staying within state guidelines. She explained that state guidelines are in place because state residents have no control over who they get as a mediator, and VJS wants everyone to have consistent access to similar services. According to Ms. Sarkissian, "it is an access to justice issue if I have no control over who I am referred to and I am unrepresented and I am just totally overwhelmed." It is for this reason that her office requires mediators to be trained in the facilitative style of mediation because it is an accessible model that is designed to focus on problem solving, but once certified, mediators can employ any mediation style of their choosing as long as such style is in line with the mediation ethics rules.

Once certified, mediators enter Virginia's mentorship process. To serve as a mediator in Virginia's state courts, an individual must observe two cases either live or

within an eight-hour online observation course, participate in a mandated number of co-mediations, and write an agreement for the parties that resolves their issues and submit that agreement with his or her application. Every applicant must have at least two mentors, which implies that every applicant has experienced at least two different approaches to mediation.

Ms. Sarkissian emphasized that her office struggles with barriers to certification because they want diversity in their mediator groups. She said “our approach to mediation is that it’s an ability that people learn and practice. It’s an art and craft; it’s not based on education or income level. If you want to mediate million-dollar cases, we will certify you if you want to do it. You don’t have to have a law degree.” Ms. Sarkissian said that she did not have a bachelor’s degree when she became a mediator, and that was just fine because “we want mediators to look like the people we are serving.” Most people who participate in free mediations in Virginia are low-income individuals who arrive at the courthouse terrified and confused, so it is helpful for them to look across the table at someone who speaks their language and thereby put them at ease.

Ms. Sarkissian said that her office decided to take the data compiled within the 30,000 evaluation forms they receive annually and work with the master of public administration program at Virginia Commonwealth University to make sense out of it. The capstone students who worked with the Dispute Resolution Services offices carefully analyzed the data and compiled a 120-page report (accessible on Mandy Sarkissian’s speaker profile on the Conference app) that the office is now slowly testing the process before implementing it globally.

Questions and Answers

The first question for the panelists was whether they track the success rate for their volunteer mediators. Ms. Sarkissian said that Virginia does not have volunteer mediators. Ms. Denihan explained that her court tracks settlements, but that it does not schedule mediators based on individual settlement rates because the court hope to promote quality mediations instead of quantified outcomes. Ms. Denihan emphasized that settlements are the natural outcome of quality mediations. Mr. White pointed out that each jurisdiction has to grapple with how it wants to define “success.”

The second question was how each court assigns cases to mediators based on the data they collect. Ms. Sarkissian said Virginia has a rotation system to promote equitable outcomes and fairness, but that individual mediators may be removed if a court is dissatisfied with their performance. Ms. Denihan explained that mediators in Maryland appear for scheduled dates they signed up for in advance, and they will mediate whatever cases get referred that day.

The third question was how frequently each court system serves parties through its programs. Ms. Denihan said the district court’s return rate is 60%.

The fourth question was how each court promotes honest answers in post-mediation evaluations without asking the mediator to leave the room. Ms. Denihan responded by explaining that participants are given a tie-back envelope with the evaluation and told to take their time in answering before putting it in the envelope and sealing it. The practitioners remain in the room but are entirely focused on filling out their own data collection forms. Ms. Sarkissian explained that in Virginia, the evaluations are non-anonymous because the Virginia Judicial System wants to be able to reach out to the person in an effort to discuss any complaints.

The fifth question was whether the ADRESS program has a mechanism to capture post-mediation settlements. Mr. White responded that it does, but the information is nevertheless hard to capture because of the variations among the circuit court coding of this information.

The sixth question was what each court system tells participants so they can come in prepared for the process knowing what they should expect. Ms. Sarkissian explained that mediation is entirely voluntary. Once parties select mediation, the judge will order them to attend an orientation session in which the mediator explains the mediation process, emphasizes that the case will be scheduled for trial if mediation does not end in an agreement, and makes sure that the case is appropriate for mediation through screening. At the end of this orientation, both the mediator and the parties have the opportunity to decide whether to mediate. Ms. Sarkissian explained that the Virginia Judicial System encourages mediators to walk pro se litigants through their case and emphasize what a judge will likely hone in on if the case is brought for trial. She said that unless the case is brought in juvenile court (which requires intake screening before mediation), all of this occurs on the day the case is referred by the court. Ms. Denhian said that is also the case in Maryland.