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Court Program Funding: Advice from the Trenches

Sheila Purcell

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Court Program Funding

Advice from the trenches

By Sheila Purcell

■ COURT ADR

Funding a court ADR program takes creativity and time—and it involves going to a variety of sources that may take you in directions you never imagined.

This article focuses on approaches for seeking long-term funding for staffing and operating a court ADR program. Having survived the startup phase of a program now in its sixth year, I will draw some examples from the mid-sized San Mateo County, California Court's Multi-option ADR Project (MAP) I direct—as well as a number of other state and federal programs. While every locale has its own opportunities, peculiarities and limitations, you will likely glean some ideas from others' experiences.

Look on the Internet or see if your community has a grants library or other nonprofit support center that houses information on funders and grant research and writing.

Techniques for initial funding

Let's say you have patched together a program with existing staff and some pro bono service by neutrals. You may even have a judge who has provided leadership to begin an experiment that receives grant or pilot money. If this

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sounds familiar, you are in good company and in a great position. But you must quickly turn your attention to long-term funding.

To do this, you'll need to simultaneously:

- create a small pilot program including possible partnerships within the ADR and legal communities
- produce a body of data to document the impact of your program
- develop a system for handling, tracking and evaluating cases, and look ahead two to five years to develop a phased strategic plan.

The importance of grants

In San Mateo, litigators worked alongside ADR neutrals and local judges to plan and design a project with the shared aim of helping the court set timely

civil trials. This partnership produced the Multi-Option ADR Project (MAP), which began in 1996 with a grant from the San Mateo County Bar Association. The grant provided a salary for an ADR Director and I was hired. This financial help was critical because it bought time. First, it permitted me to educate myself by reading what I could from the Administrative Office of the Courts (AOC) and asking other staff, judges and the court CEO about the budget process. Second, it gave me time to seek more permanent funding.

Grants have also played a major role in funding some other state programs. Alaska, for example, has sought and received federal grants to fund its Child in Need of Aid Juvenile Dependency Mediation Program. For more information, look on the Internet or see if your community has a grants library

or other nonprofit support center that houses information on funders and grant research and writing.

Tapping into the state budget

My first successful funding effort, outside of securing the bar association money, was to submit to the CEO of the court a proposal for permanent state trial court funding for my position. Like most states, the California courts' budgets are drawn up almost 18 months in advance of the actual funding. Given this lead time, it is clearly crucial to have an initial grant or other seed money that will permit you to set up a program and document its value.

As elsewhere, a major obstacle to court ADR funding in California is that there are no budget line items or allocations for ADR positions or programs. So you need to be creative in inserting yourself in the budget process. The following are a few of the approaches that have worked here.

Create collaborative partnerships

Our partnership with the local bar and community-based center has been essential to our program design, development and funding. A MAP Oversight Committee, made up of members from the bench, bar and community, monitors six court ADR programs and nine staff members. In addition, each program has an Advisory Committee made up of relevant stakeholders for that particular program. The Juvenile Delinquency Mediation Advisory Committee, for example, draws together the district attorney, probation officers, delinquency bench officers and diversion and court program staff. ADR staff members report on program progress and seek advice on policy questions from the Oversight Committee.

Other contributions have also been critical. For example, we use the resources of community volunteers in our juvenile and small claims programs. In civil cases, we ask the parties to pay for ADR services. For family disputes, we use a court staff neutral in some cases, pro bono providers and market-rate providers in others.

These practices have far-reaching

consequences for funding. First, we can point to the financial help of the bar and the volunteer help from the community when making budget requests, whether for grants or public resources. We can honestly say our program is a private and public partnership that makes the most of tax dollars and involves the parties and the community in solving problems. Further, we receive advice tested by reality when bar and community members are involved. This, coupled with aggressive education and outreach, has generated not just acceptance of our programs, but enthusiasm and support born of participation.

Make the most of vision statements

In California, a report titled "Vision 2020," prepared by the Administrative Office of the Courts, describes where the courts should be headed by the year 2020—and it endorses the widespread use of ADR. We quoted this report in our budget request and tied its vision to our plans. Check whether your AOC or legislature has engaged in any kind of strategic planning. Even in the absence of something as far-reaching as the "Vision

2020" work, bear in mind almost all court administrative offices have strategic plans you can plumb. For example, our five-year strategic plan—which we review every 18 months—matches the AOC plans where possible. And our budget requests point out these similarities.

Play the numbers game

Numbers are the key in many budget processes. We labeled our first 30 cases a pre-pilot, and asked the typical subjective questions about user satisfaction, cost and timesaving. These evaluations became more extensive and varied in subsequent pilot and current programs and the data have been critical to every

budget request. Make sure you document successes and address how you plan to face future challenges. Funders like numbers—and the fact that you are monitoring your program.

Growing through consolidation

Our initial success with our civil program enabled us to consolidate two pre-existing programs—small claims and judicial arbitration—with our newer civil, family and juvenile programs and to ultimately obtain state trial court funding for the programs.

Along the way, there were some meaningful early efforts at ADR both within the local bar and at the community mediation center, the Peninsula Conflict Resolution Center (PCRC). A number of our programs provide examples of how partnerships allowed us to look strategically and creatively at ways to fund and staff these fledgling efforts.

Juvenile dependency coordinator and community volunteers

During my second year with the ADR project, a juvenile commissioner

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drew my attention to an unusual statute that allowed counties to add three dollars to the cost of copying birth certificates. This money was earmarked for juvenile dependency mediation. Medium-sized San Mateo County could not generate a sufficient amount from this surcharge to hire a paid staff mediator, as did larger counties. But in partnership with the community nonprofit, we could hire a part time juvenile dependency mediation coordinator to oversee a group of PCRC community volunteers. So our county began a juvenile dependency mediation program and documented the need for it along with some small successes before the statute expired. Using that bit of history, we later sought and received the

more reliable state funding. Today, the court and community mediation center jointly fund and manage this staff coordinator. She oversees volunteers who handle dependency mediations for us and parent/teen and family cases for the PCRC.

Family law program and staff neutral

Our local bar association originated and staffed a fledgling family law ADR program that referred parties to private mediators at reduced rates. When the AOC listed family programs as one of its budget priorities, we sought funding to bring the bar's program into the courthouse. Our budget proposal pointed to our data on the success of the civil ADR program, the need for services to families, and the AOC's visioning work. Our budget request was successful—and today, a court staffperson manages a panel of private mediation providers and also serves as a mediator in some cases.

Delinquency victim-offender program/court coordinator/community volunteers

Our community mediation center had an underused and understaffed victim-offender program. At the same time,

redesigned. For example, our court had a preexisting small claims mediation program as well as a relatively well-received and functional judicial arbitration program. These were already funded and staffed, but we brought them under the ADR management umbrella and have been working on revitalizing them. In redesigning and automating these programs, we did not generate new dollars. But importantly, we have improved the overall stature of ADR in our court.

Other approaches to funding

Funding for our MAP program has come from our state's trial court budget. Courts in other states have had to look to other sources, some of which are described below.

Contracts with community centers

Dan Weitz, who oversees court programs in New York, tells of general funds going to support a community-based ADR program. The program, which originated about 20 years ago in just five New York counties, now has a five million dollar budget funding 62 community ADR centers throughout the state. Similarly, on several of the Hawaiian islands,

Parties pay and pro bono fee waivers

Many courts, including several in California, Florida, Colorado, Idaho, Texas and Alaska, expect parties with means in civil cases to pay all or part of the cost of ADR services. San Mateo County also uses this approach, reasoning that it is unfair to ask neutrals to waive fees for civil litigants who can otherwise afford an array of professional services. At the same time, we expect our market-rate neutrals to waive fees for clients who are indigent or of modest means. Pro bono and modest means requests are made in fewer than 5% of our civil cases.

Filing fees

Besides General Fund or AOC appropriations, court filing fees have been an important recurring funding mechanism. In some states, a portion of a filing fee is used to fund community mediation centers. In others, such as Florida, the fees are used to support a statewide ADR office, as well as local centers.

Filing fees have been a steady source of nonprofit ADR funding in California, generating approximately 8 million dollars statewide in 1998—the last year for which there are reliable data. Some of these centers, but certainly not all, work closely with the courts. The California Dispute Resolution Programs Act (DRPA) allows counties the option of increasing fees by up to \$8 per filing. Ironically, a county that is successful in pulling parties into mediation early, at the pre-filing stage, stands to lower total dollars from this source.

Another difficulty is the process by which these funds are distributed. Sometimes, in politicized settings, inappropriate recipients such as private judging organizations have received money earmarked for volunteer programs. Another challenge faces the smaller and more rural counties, which have fewer filings and thus fewer dollars. In 1998, for example, about half of all the money, 3.4 million dollars, went to the Los Angeles county programs. Nonetheless, this funding source has been a pivotal part of the growth of ADR in California by providing steady, recurring funds.

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the court's juvenile delinquency caseload numbers were growing. When the AOC's budget priorities in the year 2000 focused on programs serving youth and families, we were able once again to use our successes to consolidate our program with PCRC's program. As with our dependency mediation program, we now have a court staff coordinator who works with mediation center volunteers to mediate juvenile delinquency cases.

ADR-related programs within the court

There may also be programs within a court that may need to be revitalized or

ADR services are provided to court cases by community mediation centers supervised by staff at the AOC in Honolulu.

Contracts with private mediators

The Supreme Court of Virginia contracts with private mediators to handle a variety of cases.

A few California counties also use this approach, where an evaluation project is testing the benefits of early, mandatory and voluntary mediation. However, given the state's projected \$35 billion dollar budget crisis, this approach may lose out in favor of a party-paid system when the pilot is complete.

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FUNDING

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County money

Don't overlook the county as a possible source, depending on how court funding is structured in your locality. Florida uses a range of practices and funding mechanisms, including counties that add a filing fee to support ADR. Maine also uses this approach to fund small claims mediation.

Grant pilot money

Some states offer pilot monies for court programs. For example, the Cali-

responsibilities in addition to their other duties. However, while using existing staff can be cost effective, it often does not allow for recruiting for ADR expertise. And importantly, the force of a staff-person's personality, his or her expertise and ability to work well with a range of people from judges to attorneys to pro pers is critical to securing the support needed for all aspects of program development.

Securing long-term funding

Outside the immediate contents of a budget request are the conditions that

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ifornia AOC set up five pilot county programs for mediation beginning in the year 2000. By 2004, the AOC will have spent approximately \$7 million in support of court ADR staff and operations and, in some instances, to underwrite the private mediators.

Federal district court staff positions

Modest funding is now available from the federal judiciary's general budget under a formula to pay for staff positions. The formula, administered through the Administrative Office of the U.S. Courts, is based on the number of cases referred to ADR and requires that a court have an effective program in place for a year before being eligible for funding. Courts with a history of strong ADR programming receive funding at a higher level than those with smaller programs, leading some to observe that while it is laudable to reward successful programs, the formula isn't especially helpful to the courts most in need.

Existing staff vs. experts

If all else fails, consider converting at least a portion of an existing staff position to an ADR position. In New York, some of the court clerks now have ADR

may help make future requests successful. These include educating internally within your court and developing statewide and national networks. Work not only with your bench but also the CEO and clerks of the courts, demonstrating the value of the ADR program to the court as a whole. Learn from other courts and together make efforts to influence how ADR is viewed.

In California, ADR providers and programs hired a paid lobbyist and formed a 501(c)(5), California Dispute Resolution Council (CDRC) to help educate the legislature about the importance of ADR. We still do not have court ADR line items in the state budget, but we know we need this or something like it.

California court ADR directors also meet regularly to provide peer-based technical assistance to one another. The Association for Conflict Resolution, the National Association for Community Mediation, and other national organizations offer help in the form of committees interested in court ADR. The ABA Section on Dispute Resolution offers a computer list serve and a yearly mini-conference that are excellent avenues for getting support and information from peers.

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