GUIDE TO PROGRAM SUCCESS

CHAPTER 2: GATHER YOUR PLANNING TEAM

Once you have a general idea about why your court wants to develop or improve an ADR program, you will need to turn that desire into reality. Developing or improving a court ADR program requires leadership, teamwork and expertise.

IDENTIFY YOUR LEADERS

It is likely that your leaders will be those who initiated the move to establish or improve the ADR program. There are typically two key leadership roles in the development of a program. For the purposes of this discussion, we will call them champions and captains. The captain is the leader who works with stakeholders to design an ADR program in a way that works based on local resources, culture and desires. The champion is the leader who has the power, respect and standing to get others to support his or her vision. Among other tasks, the champion invites others to join the planning committee.

In some instances, one person can fulfill the roles of both a champion and a captain, but more often than not, they are filled by two different people. For example, the chief judge of a jurisdiction may be a champion with a vision for a family ADR program and the presiding judge in the family court would be the captain responsible for figuring out what program would work best. Even if the family court judge was the one with the vision for a new ADR program, he or she might still be a captain who would need a champion to make it happen.

Captain
Captains come in many varieties, but there are a few qualities that are more likely to ensure success:

- Commitment to ADR: There is no point assigning a captain the task of developing a court ADR program if that captain doesn’t see benefits to it.

- Open-mindedness: There are many right ways to structure a court ADR program. The captain needs to be flexible about how the program should be structured and be willing to reach out for input and assistance.

- Willingness to make decisions: While many decisions about program design may result from agreement among stakeholders, there will be times when the leader will have to decide how a particular aspect will work.

Coming together is a beginning. Keeping together is progress. Working together is success.

Henry Ford
Respect of the decision-makers and the champion: While the leader doesn’t need to be powerful, he or she must have the respect of the decision-makers so that when he or she brings them the planning committee’s recommendations, they will be more inclined to adopt them without reservation.

Respect of the stakeholders: To be effective, the captain must be seen as a leader.

**Champion**

The qualities of a champion and captain are very similar. In addition to the qualities of a successful captain listed above, champions need the following qualities:

- **Power**: In order to be effective, champions must have the ear of the powerful and be powerful themselves.
- **Willingness to advocate**: It doesn’t matter how powerful a champion may be if he or she will not wield that power on behalf of ADR.
- **ADR knowledge**: A misinformed champion can make promises that ADR can’t deliver or misinform stakeholders about how a program will operate.

**ESTABLISH A PLANNING COMMITTEE**

Once you have set a general direction and identified leaders, you will need to gather stakeholders. At this stage, courts typically establish a planning committee. It can range from a formal blue ribbon commission with big-name members appointed by your supreme court to an informal working group that meets over brown bag lunches.

**RESPONSIBILITIES OF THE PLANNING COMMITTEE**

The planning committee completes the rest of the steps in this guide. Accomplishing all these tasks requires more than just planning committee members attending meetings. Someone will need to coordinate the committee’s activities, e.g., set meeting dates and locations, develop meeting agendas and distribute materials. This may be the captain or it may be someone designated by the captain, such as a court staffer, a judge, or another member of the planning committee. Committee members also will need to do quite a bit of work between meetings, whether it is researching ADR processes, drafting rules or seeking input.

**PITFALLS TO AVOID WHEN SETTING UP YOUR PLANNING COMMITTEE**

*Don’t expect the full committee to work on all the program development tasks.*

The planning committee may expand, contract and subdivide during the planning process. For example, at the goal-setting stage, you are going to want to get a lot of input about what aspects of ADR would be seen as valuable about your court ADR program. Later, when you are creating program documents, you probably will want them drafted by a subgroup or an individual.
APPLY THIS PRINCIPLE TO PLANNING COMMITTEES

If your court is a large jurisdiction or if you are planning an ADR program that addresses a type of case that is a hot topic in the news (e.g., during the national foreclosure crisis), you may want two levels of planning committees. One would be the “status” group with big names that sends the message that the ADR program is supported by individuals and entities with power and makes a formal recommendation to create the program. This group might be chaired by the champion. The other group, led by the captain, would be the working group that figures out how to make the program work.

Similarly, the entire group of stakeholders does not need to participate in every level of planning. You may want to invite all the stakeholders to offer their ideas, move to a smaller group for writing rules and other program design, and then go back to the full group for input on the rules and program design.

WHO SHOULD PARTICIPATE IN PLANNING

Whether you call them stakeholders, publics, markets, constituencies, involved parties or something else, these are the people and institutions that will participate in the court ADR program or who otherwise have a stake in how it performs. They are critical to success in planning and implementation.

There are at least four constituencies essential to the success of a court ADR program: judges, lawyers, court administrators and neutrals. Your specific program may have additional stakeholder groups that you should also involve in program design.

Judges
The most important group to include in program design is the judges who are responsible for the cases that will go to ADR. In fact, a judge is typically the captain – the leader of the program design effort – even if the initial impetus for ADR came from a champion or someone else.

Judges have the most knowledge of the full breadth of the cases in a particular area, how they are normally processed, and the quirks that may be encountered. They also know the lawyers who practice in the area. Perhaps most important, they know the challenges of a particular court call.

If one judge is particularly positive about ADR and another is more negative, include them both in the planning process. Their differing viewpoints are likely to strengthen the eventual product. After all, when well-managed, conflict can be useful.

Lawyers
Generally, lawyer acceptance and participation are keys to the success of a court ADR program. It is therefore essential for you to obtain participation from lawyers who practice on all sides of whatever type of case is involved in the program. Inviting bar leadership to help in the planning stages of the program helps to ensure the bar's commitment to it during implementation.

Even if your court ADR program will serve a portion of the court that deals exclusively with self-represented litigants, you should reach out to lawyers for input during the planning process. Those from the legal aid perspective may want to weigh in on protecting the rights of the self-represented. And even those lawyers who practice in the same courtroom but will not participate in the program (e.g., small claims courtrooms that hear unrepresented and represented parties) may have a different perspective that will lead to improved program design.
Court Administration
Court clerks and court administrators need to be part of the program planning process so that the ADR process can mesh with the overall court systems that are already in place. Also, they are good sources of information about how many cases are being handled, how they are tracked and how cases that go to ADR can be monitored using existing court systems. Their participation in the planning process also will help to ensure that they are ready to implement the new ADR process when it becomes operational.

Neutrals
Individuals who are already providing the ADR service a court is considering can provide valuable guidance during the design of the program. They are likely to know how a particular process usually works, what the ethical challenges can be, and what professional organizations to contact for additional help. Sources can range from community mediation centers to for-profit ADR providers.

Other Stakeholders
Depending on what type of case your ADR program will address, there are some other experts you may want to invite to your planning process.

- Experts in the substantive area of law: Depending on the type of case, you might reach out to, for example, local law professors or other professionals, such as family therapists for family disputes or social service administrators for child protection mediation programs.

- Insurance providers: If the type of case you will be sending to ADR often is resolved based on the insurance coverage, be sure to get the insight of the insurance providers.

- Frequent litigants in the substantive area of law: For example, if you are going to do medical-malpractice ADR, be sure to get the local medical centers, doctors’ associations and insurance providers involved.

PITFALLS TO AVOID WHEN BRINGING TOGETHER NEUTRALS

Don’t rely on neutrals to be neutral about how an ADR program is structured. Interestingly, the people who are going to act as neutrals in a court ADR program may not be very neutral when it comes to designing a program. As is the case with other professions, neutrals are likely to promote the use of models with which they are familiar. As with lawyers, inviting neutrals with a range of opinions will result in a stronger program design. You may want to reach out to local professional organizations of neutrals, bar association ADR committees, volunteer mediator organizations, and local companies that provide neutral services to identify neutrals with different perspectives.
APPLY THIS PRINCIPLE TO A PARTICULAR TYPE OF CASE

When developing a court program to mediate mortgage foreclosures, invite:
- Judges who handle foreclosure cases
- Lawyers who represent lenders and servicers
- Legal aid and private lawyers who represent borrowers
- Clerks who process foreclosure cases
- Neutrals
- Housing counselors
- Representatives from local housing agencies and real estate groups

PITFALLS TO AVOID WHEN BRINGING TOGETHER STAKEHOLDERS

*Don’t let ADR get sullied in the mud of politics.*
One of the great strengths of court ADR is that it can appeal across the board to diverse groups, whether they lean left or right politically. Allowing court ADR programs to become politicized dilutes that strength. For example, avoiding the language associated with advocates of any political persuasion can help keep ADR programs above the political fray.

*Don’t let your planning process be derailed.*
There may be negative pressures during the design of an ADR program. Some stakeholders may seek to profit or want their friends to profit. Others may feel that their turf, income or status is threatened, while others may just not like the change. At some point, difficult decisions must be made. They key is educated, open-minded leadership – guided by unbiased expertise – that is willing to make decisions even if some may be unpopular.

*Don’t underestimate the importance of buy-in.*
Once decisions are made, your planning team will need to work with their constituencies to educate them about the new program and to get everyone on board.

SEEK OUT EXPERT GUIDANCE

Even with a compelling vision and brilliant leadership, designing court ADR programs is not as simple as it might first seem. There are big benefits to bringing in expert help at the earliest stages of program development. The greatest benefit is efficiency. Bringing in expertise can help avoid reinventing the wheel and it can raise critical questions during the design phase, rather than stumbling into them once a program is operational.
The following list provides ideas about sources of expertise.

**Courts**
- The administrative office of your supreme court may have an ADR office or staff charged with supporting ADR.
- Other divisions in your own jurisdiction may be operating ADR programs and could be willing to give advice.
- Judges and administrators from courts in other jurisdictions can shed light based on their experience.

**Bar associations**
- Your state and local bar associations are likely to have ADR committees, and may have ADR subcommittees within substantive law committees.
- The American Bar Association has an active Dispute Resolution Section.

**Organizations of neutrals**
- The Association for Conflict Resolution has both national and regional operations.
- There are many local and national associations of neutrals.
- Local companies that market and provide neutral services may provide input.

And of course, Resolution Systems Institute, author of this guide, provides a full range of program development, monitoring, research, training and administration services.

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**APPLY THIS PRINCIPLE TO FAMILY COURTS**

Family court ADR’s array of ADR services goes well beyond mediation and arbitration. When developing a program for family-related cases, the Association of Family and Conciliation Courts (AFCC) can offer expertise, best practices and ethics codes for many of the ADR variations used in family courts.

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**PITFALLS TO AVOID WHEN SEEKING EXPERT GUIDANCE**

*Don’t stop with the first ADR program you find and use it as the model for your own ADR program.*

All too often when people tell the history of their court ADR programs, it starts with a variation on "I was at a conference and saw a presentation on an ADR program. It sounded good so we talked with the presenters and did our program like theirs." Don’t stop with those presenters on your quest for expert guidance. It may be that theirs was a great program for their jurisdiction, but that does not mean that it will be the best program for your jurisdiction. With an ever-expanding level of sophistication in the provision of court ADR services, it is a good idea to look around and see what your options are. With so many programs in operation across the country, there are many models to explore.
The term “stakeholders” may be overused these days, but the underlying concept of involving all those who have a stake in a program is essential. Not only does it develop buy-in to the program, but it gives you the opportunity during program design to address the concerns that may come up once the program is functioning.