GUIDE TO PROGRAM SUCCESS

CHAPTER 14: MANAGE YOUR PROGRAM

Having invested significant effort developing or improving your ADR program, it is important to manage the program so that it is effective in meeting your goals for it. In essence, you want to ensure that what you put in place, stays in place.

Although ADR programs are often designed to reduce the overall use of court resources, they do not run themselves. Depending on how they are structured, ADR programs need not be labor-intensive, but they do need someone to feel and act responsible for their success.

Here are some examples of typical program management tasks.

- Ensure quality of neutrals is maintained, potentially with regularly-scheduled continuing education events and peer review.
- Ensure a judge who is experienced with the program introduces it to new judges, encourages their use of it and answers their questions about how it works.
- Identify who is in the best position to work with the bar to develop genuine buy-in, create a plan to obtain that buy-in and then execute it.

The two core management issues to address can be summed up as who and how. On this page, read about who is responsible for managing the program or jump to what needs to be managed.

WHO WILL MANAGE THE COURT ADR PROGRAM?

There are three management roles for a court ADR program: judicial oversight, program administration and advisory committee input. The number of individuals necessary for each role will vary depending on the size and complexity of your program.

JUDICIAL OVERSIGHT

Every operational court ADR program needs its “go-to” judge. This judge sees the health of the court ADR program as an important part of their job. This judge should:

- Understand how the program is intended to function
- Be able to make sound judgment calls about difficult situations (e.g., challenges to confidentiality, whether to remove a mediator)
- Speak on behalf of the program (e.g., requesting funding or staffing)
- Be willing to make changes in the program when warranted
- Work well with the program administrator

Effective leadership is putting first things first.
Effective management is discipline, carrying it out.

Steven Covey
Review regular tracking reports (e.g., the numbers and types of cases that are being mediated, how many and which types of cases are settling and how many cases each mediator is mediating)

Review reports as to whether neutrals have complied with ongoing expectations for education, pro bono and other requirements

Depending on how your program operates, this judge may also make final decisions about accepting neutrals onto the court’s roster and removing them from the roster.

Once your program is operational, if there are multiple judges involved with the program, it is useful for these judges to meet with one another from time to time about referring cases and about the program more generally. Your go-to judge may arrange this in conjunction with the Advisory Committee or a gathering of neutrals so that all participants can share their perspectives, or limit it to judges only so that they can speak more freely with one another.

PROGRAM ADMINISTRATION

At its core, program administration is about ensuring cases move smoothly from the traditional court process into the ADR process and back again to the court process, ensuring neutrals conduct quality ADR services, and managing program tracking activities. (For more about tracking, see Chapter 11: Design a System to Track Your Program.) While not every program will have one individual with the title “Program Administrator,” every program needs someone – or multiple people – to carry out these tasks.

Responsibilities of the program administrator vary depending on how your program is structured. At a minimum, these responsibilities are to:

- Manage program tracking activities (e.g., ensure parties complete post-mediation surveys, enter information into tracking systems)
- Prepare program tracking reports
- Ensure judges receive appropriate reports
- Receive complaints about neutrals and ensure they are processed correctly

Administrative tasks may also include:

- Maintaining roster of mediators (e.g., ensure they meet initial criteria and continue to meet ongoing requirements)
- Ensuring neutrals are reviewed (e.g., mediator peer reviews are conducted)
- Assigning neutrals to cases
- Scheduling cases
- Screening cases
- Preparing forms
- Sending reminders to parties, lawyers and neutrals
- Entering the results of ADR into the court administration system

ADVISORY COMMITTEE

Once the planning committee has completed its work, some members of it will form the nucleus of a steering or advisory committee. The committee will be made up of judges, court administrators and ADR program administrators. Its function is to stay well-informed about the program and to advise the court about it. Depending on the size and complexity of the ADR program, the committee might meet monthly at first, and then quarterly, or even less frequently, once the program is operating smoothly. The committee would closely review the program tracking reports and hear from program staff about any issues or particular successes (keeping in mind the need for confidentiality of case
details). The committee might also identify the need for an evaluation; weigh in on any policy issues that arise; and help conduct or organize ongoing training for neutrals, lawyers or judges.

WHAT NEEDS TO BE MANAGED?

How complicated the administration and management of a court ADR program is depends on the size of the program and how it is structured.

CASE FLOW

The top priority for program administration is to receive and handle the optimal number of referred cases. Case referrals are the lifeblood of the ADR program. Without enough cases, the program withers and is unable to make a meaningful difference to litigants or the court. With too many cases, the program is flooded and unable to provide quality services.

The most essential task of program management, therefore, is the day-to-day processing of cases. Exactly how this works will vary considerably and will depend on the structure of the program, but there are similar needs:

- Identify cases that will go to ADR
- Inform parties that their case is going to ADR
- Move cases from the traditional court track to the ADR track
- Schedule the ADR sessions or hearings
- Provide any support needed during the ADR process
- Collect data for program tracking
- Report on outcomes of the program

SUPPORT THE PROGRAM

The most important groups that need to provide ongoing support to a court ADR program are usually the court and the bar. Also important is any entity from which the program is receiving funding, such as a foundation or county board. If the court, the bar and the financial supporters are favorable about the program, its future is more secure.

You can maintain this support through formal and informal methods. Formal methods include submitting reports and funding requests on the schedule mandated by courts, elected leaders, government officials and funders. Less formal methods include conducting outreach to the community and educational programs for the bar and bench. Maintaining informal connections, e.g., sending an email to the presiding judge and other stakeholders about program milestones, is also helpful for maintaining program support. For both formal and informal reports, a story or two can demonstrate the positive impact on individuals – as long as you ensure confidentiality is protected.

NEUTRAL QUALITY

Neutral quality is essential to a successful program. Without it, a program can unravel. For example, unskilled mediators are less likely to be able to assist parties in voluntarily reaching settlements. If arbitrators or evaluators don’t have sufficient knowledge to make reasoned awards or recommendations, ADR will lead to more litigation, not less. Even if settlement is reached in mediation, the quality of the experiences and durability of the agreements are likely to lag with poorly skilled mediators. Lawyers who practice in the area will be dissatisfied and their clients will be unhappy.
More importantly, lack of quality can translate into a program that does not provide the justice experience for which the court is responsible. For example, if parties do not experience procedural justice, then the program is not providing the ADR services expected of a justice system. In a court ADR program, it is the responsibility of the court to ensure ADR does not become second-class justice.

Following are some tasks related to ensuring neutral quality. See Chapter 9: Select and Manage Your Neutrals for more about neutral quality.

- **Provide ongoing neutral education**
  Bringing neutrals together on a regular basis for continuing education and training helps keep their skills sharp and maintain their sense of being part of the program. If your neutrals need to remain up to date on changes in the law, this is a good way to help them do so.

- **Conduct a neutral review process**
  Every court ADR program should have some process to regularly review the work of its neutrals, whether it is something as simple as a judge reviewing the awards written by arbitrators of mid-size civil cases or something as complex as a peer review system for a court’s family mediators. The neutrals will benefit from feedback, and the program will identify potential issues before they become more serious.

- **Address complaints about a neutral**
  If a lawyer or a party is sufficiently upset about neutral conduct within an ADR process to lodge a complaint, the program must investigate. The first step would be to talk with the neutral, so if the ADR process is confidential, someone other than a judge should be responsible for looking into the complaint. This is the time to use your neutral review process to observe the neutral, assess whether there are problems, and determine whether there are steps that can be taken to ameliorate the situation. If the problem is confirmed and it is sufficiently serious, steps to rectify the situation must be taken, potentially including removal from the program.

**DATA COLLECTION**

As is mentioned throughout this guide, collecting reliable information and regularly examining it is critical to knowing if your court ADR program is successful. To ensure your program is collecting the data it needs to succeed, see Chapter 11: Design a System to Track your Program.

**OBSTACLES TO USE OF THE PROGRAM**

Obstacles to use of the ADR program vary depending on whether participation is left up to the parties and their lawyers, if they are represented, or determined by particular case characteristics. If participation in the ADR program is voluntary, it will succeed only if judges consistently encourage use of the program. With a new ADR program, judges should be prepared to refer cases as soon as rules are in place and neutrals are available. This will help overcome initial program inertia and give the neutrals the opportunity to put their new skills to work before they have time to cool after their initial training.

Exposure to the ADR process through training will help lawyers and judges get used to the new program. Having judges speak to other judges and to lawyers about how the program will work and why it is important in your jurisdiction will help develop acceptance of the program. Probably the best way to encourage lawyers to use your program is for them to have positive experiences with the process.
FUNDING
If the program receives any financial support – from big-dollar grants to in-kind services such as space – the entities that provide that support must receive reports on the program and recognition for their support. Formal grants will have reporting requirements, while you may need to be proactive about determining what and when to report to those who provide less formal support.

ADMINISTRATIVE SUPPORT SYSTEMS
In order to manage your ADR program, you will need office support systems. These typically include:
- Phones, computers, internet service, email, web sites, scanners, copiers
- Office space for program administration
- Space to conduct ADR processes
- Method to pay neutrals, if this is part of your program

CONCLUSION
While the results of these approaches to program management can’t be guaranteed, the one thing that is certain is that a program with insufficient management is skating on thin ice. A court ADR program needs someone who grasps the big picture, absorbs data about how the program is performing, knows how to apply ADR ethics, keeps an eye on the program goals and communicates about the program with all stakeholders.

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