



CPR LEGAL PROGRAM

TO DEVELOP ALTERNATIVES TO LITIGATION

STATEMENT OF CONCERNS AND PRINCIPLES REGARDING COURT-RELATED ADR

*Issued by the Judicial Project Advisory Council of the
Center for Public Resources/CPR Legal Program (CPR)*

This is a particularly critical period for our public justice system. The Civil Justice Reform Act of 1990 provides the opportunity for far-reaching changes in our courts. Over a third of the Federal Districts have now submitted cost and delay reduction plans required under the Act, with all but a handful calling for increased use of alternative dispute resolution (ADR) in their courts. The remainder of the Districts are to submit their plans by December, 1993. Given the significance of this undertaking, the time is ripe to examine present directions, and to raise concerns that can be addressed to ensure the quality of the civil justice reforms now being designed and implemented.

Founded in 1979, the Center for Public Resources/CPR Legal Program is a nonprofit alliance of 530 major corporations, leading law firms, legal scholars and judges working toward the sound integration of ADR into the mainstream of legal, business and judicial practice. The CPR Judicial Project, created in 1985 to probe ADR's role in civil justice, is guided by a distinguished 40-member advisory council of federal judges, court administrators, academics and legal counsel.

The CPR Judicial Project Advisory Council has considered the impact to date of the Civil Justice Reform Act on the federal district courts and, more specifically, on the design, implementation and evaluation of court ADR programs. As a result, the Council has a number of immediate concerns. These concerns relate particularly to the adequacy of the resources being devoted to court ADR, the quality of the emerging ADR efforts, and the importance of continued attention to ongoing problems in the courts. These concerns are summarized as follows:

RESOURCES

The cost and delay reduction plans submitted by the Federal Districts to date reflect a diversity of approaches to ADR. This diversity is to be applauded given the desirability of experimentation. However, we are concerned that without the commitment of adequate resources, including professional staffing, the experiments cannot fairly explore and test the full potential of the various ADR programs and run a substantial risk of delivering an inferior quality of service or of failing altogether.

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While there is legitimate debate about compensation of court-appointed neutrals from public funds, other components of quality programming clearly require support. These include staffing, training, monitoring and program evaluation. Training for neutrals, for example, is at the heart of quality service delivery. A sound level of training is a significant program expense, a fact that must be recognized and accepted by all of the Federal District courts.

Congress has appropriated funds for implementation of the Civil Justice Reform Act, but we are concerned that necessary funding levels will not be maintained. While the court has many needs, full and sustained support for court ADR programs is essential to their long-term success and public legitimacy.

QUALITY PROGRAMS

The Council is also concerned about the quality of all court-sponsored ADR procedures. We need to ensure that the programs designed and implemented today are not simply ad hoc, second-class alternatives to traditional litigation. Rather, they should be high quality processes integrated effectively into a comprehensive justice system.

Quality court ADR programming has several essential attributes. Programs should develop incrementally, and be designed deliberately to meet clearly articulated goals. Goals should be explicitly recognized to include more tailor-made or satisfying results for litigants as well as the savings in cost and time highlighted by the legislation. Judges and lawyers should be educated about ADR so as to maximize program support from the Bench and the Bar. Effective, ongoing program monitoring and evaluation is necessary to ensure that programs deliver services of consistently high quality and meet their intended goals.

We urge that as programs are implemented in the Federal Districts, each of these essential attributes of quality ADR programming be taken into account.

ONGOING PROBLEMS IN THE COURTS

The Federal courts face many problems, including burgeoning criminal caseloads, federalization of remedies in new legislation and judicial vacancies. These problems require sustained public attention. While design, implementation and evaluation of court ADR is a significant and valuable reform, increased use of ADR in the courts should complement and not replace efforts to improve the public justice system as a whole.

CPR Judicial Project Advisory Council ¹
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¹ Listing of signatories attached.