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FINAL EVALUATION SUMMARY WITH RECOMMENDATIONS

Prepared for the Supreme Court of Nevada

Prepared by
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ACKNOWLEDGMENTS

Program evaluators do not work within a vacuum, and depend on receiving data and information from a variety of sources. This evaluation, of the Supreme Court of Nevada Appellate Settlement Conference Program, was significantly aided by contributions of time and information from Justice Deborah A. Agosti, Janette M. Bloom, all of those individuals who participated in the November 2004 survey, and members of the program's Core Committee.

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This report is a summary with recommendations, based on the findings of an evaluation of the Nevada Supreme Court Settlement Program.

EXECUTIVE SUMMARY

The present settlement conference program provides a needed benefit to the court and to the public it serves. During its first 8 years, the program maintained a 55 percent settlement rate. Although the program is effective, there are policy and procedural issues that could be implemented. These proposed changes would enhance the program and could conserve resources. Modifying existing requirements and adding comprehensive standards for settlement conference panelists (judges) could enable the program to maintain quality results. Expanding the program to include *pro se* cases may be premature.

SCOPE OF EVALUATION

This program was initially an experimental effort to assist the court with case management. It has evolved into a viable court asset. The program is now poised to take the next step and become a fully integrated part of the court's case processing system. Before making any program changes, it was determined that an independent evaluation, providing insight and assembling information, was a pre-requisite. Based on a request from the court and its appellate settlement program Core Committee, and using earlier reviews[1] of the program, it was decided that the broad focus of the evaluation of the Nevada Supreme Court's Settlement Conference Program include:

- Overall program effectiveness;
- Program policies and procedures;
- Qualification and competency of neutrals;
- User perceptions of the program and of the settlement conference judges;[2] and
- Proposed addition of *pro se* cases.

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1 *State Appellate ADR: National Survey and Use Analysis with Implementation Guidelines*, by Nancy Neal Yeend was first published in 19 99 with the second edition in 2002. This seminal study provided the first national review of the status and usage of appellate alternative dispute resolution, ADR, in all 50 states.

2 This topic did not receive a separate section, as the perceptions about the program and of the settlement conference judges is inextricably tied to the preceding 3 topic sections. This topic is discussed throughout the report.

Initial findings[3] in 1999 and 2002 indicated that the Nevada program maintained one of the higher settlement rates[4] for an appellate alternative dispute resolution, ADR, program, and consistently processed a significant number of cases.[5] There are two areas, however, where the program does not appear to parallel comparable appellate programs:

- Neutrals—This subject includes qualifications and best practice standards for settlement judges. Clarity of the role of the neutral (settlement conference judge), performance review, tenure/appointment/removal of neutrals, and the relationship of neutrals to the court are included in this broad topic.
- Program policies and procedures— Inconsistencies appear to exist between the court rule, program name, program policies and procedures, and actual practice.

A major portion of the evaluation effort was spent reviewing these two important topics. Program policies and procedures and the neutrals that serve on a court's settlement conference panel comprise the most significant aspects of any program.[6]

EVALUATION CRITERIA

There are a number of criteria that are used when evaluating an appellate ADR program, specificity: program goals, program effectiveness, competency of neutrals, satisfaction rates of the program users, and cost effectiveness. For this particular evaluation there are three additional criteria:

- Benefits to court and community;
- Sustained and consistent evaluation of neutrals;[7] and
- Liability as it may relate to the court and its panel of neutrals (settlement judges).

Combined, the three additional criteria relate to program quality control. Program excellence influences the overall perception of the program by the community served, as well as by the attorneys and clients who participate in the settlement conferences. All of these factors influence program effectiveness and ultimately the settlement rates.

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3 Ibid.

4 Annual court reports indicate an average settlement rate of 55 percent from 1997 through 2004. The settlement range is from a high in 1998 of 60 percent to a low in 2003 of 52 percent.

5 This mandatory program receives an average of 552 new cases each year. The greatest number of new cases occurred in 1999 with 589 cases, and the fewest in 1997, the first year of the program, with 499 cases.

6 Most of the recommendations identified in this evaluation relate to policies and procedures and to neutrals.

7 This includes specific evaluation criteria for application/appointment/tenure/termination of neutrals, and incorporates ethical standards for the settlement conference panel members (settlement judges).

FINDINGS WITH RECOMMENDATIONS

The evaluation and accompanying recommendations are based on findings developed from assessing and analyzing a number of sources. A partial list includes review of current policies and procedures, statistical summaries and various program reports, interviews with select individuals including program staff and some Core Committee members, and settlement conference judges' responses to a written survey.[8]

PROGRAM EFFECTIVENESS: The starting point of any court-connected ADR program evaluation begins with a review of the initial goals[9] established by the court. In order to effectively evaluate a program, goals must be defined in measurable terms. For example, a measurable goal might be defined as "reducing the caseload of the court by 5 percent", or a goal might be defined as "reducing the duration of a case in the appellate process by 90 days". The goals for this program were initially defined as "reduce the caseload of the court" and "conserve judicial time"[10]. Without a specific, measurable target, it is impossible to accurately determine how beneficial a program is to the court.

By deduction, with the high settlement rate of this program and the large number of cases that it handles each year, [11] it appears that this is a successful program. The court would derive a greater benefit, if the goals were measurable.

- *RECOMMENDATION 1:* Establish specific, measurable goals for the appellate settlement program.
- *RECOMMENDATION 2*: Consider goals that address caseload, savings of judge or staff time, duration of case time in the appellate process, and/or other goals that may assist the court to accurately assess all benefits derived from the program.

For many programs, reducing the time a case remains in the appellate process is important.[12] Developing a goal that would focus on the time from filing a notice of appeal to

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8 See Appendix A. Survey.

9 Based on the model developed in *Appellate ADR: National Survey and Use Analysis with Implementation Guidelines*, 2nd Edition, Nancy Neal Yeend, St. Petersburg, FL: The John Paul Jones Group, 2002.

10 Ibid. Goals were identified during a 1999 interview with court staff. In addition, a September 2004 program summary, prepared by Tom Harris for this evaluation, reaffirms the initial program goal as "help the court manage its significant caseload." The court added a new goal of improving confidence in the settlement program.

11 See Footnotes 4 and 5 previous. Ibid. Individual appellate programs do not use consistent factors when determining settlement rates, however, even with variables, the Nevada appellate program settlement rate still remains higher than the national average of 36 to 42 percent.

12 This appears to be an implied goal of this program. Also, see Appendix B.

disposition could be measured in days. Comparing the duration of a case, participating under the Rule 16 program to those that do not, would be another important piece of information when evaluating a program's effectiveness.

- *RECOMMENDATION 3:* Establish a measurable goal that relates to the duration of a case in the appellate process, and compare those that participate in the settlement program to those that do not.

Developing measurable goals may provide additional benefits such as making the public aware of the efficiency of the appellate process, and demonstrating responsible use of precious court resources. Improving the public perception of the court and judiciary has been an unforeseen and welcome benefit to other appellate court programs.

In no event should a case either languish in a settlement program, or should the participants use a settlement program as a means for tactical delays.[13] Although this settlement program has policies regarding scheduling, the actual sessions are often not held for many months. Some dates are canceled and rescheduled multiple times, which further adds time to the settlement and ultimately appellate process. These delays greatly diminish the benefits of a settlement program. Early settlement discussions provide the participants with more flexibility and reduce the costs for the participants and the court.[14] Some appellate programs require holding a session within 30 to 90 days of assignment. Typically, these programs do not suspend deadlines for filing briefs or trial transcripts. Holding settlement sessions earlier and not slowing the appellate process may improve program effectiveness.

- *RECOMMENDATION 4*: Modify Rule 16 to specify that the settlement session occur within a specific, limited period of time.
- *RECOMMENDATION 5*: Modify Rule 16 to remove the stay policy regarding the time for filing a request for transcripts under Rule 9, or for the time for filing briefs under Rule 31.

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13 See Policies and Procedures for related recommendations. Review of Settlement Conference Status List, survey of panelists and anecdotal information appeared to indicate that some parties use the process to delay, and then declare bankruptcy. This may be more prevalent in divorce cases than in other types of cases. The topic of delays was not the focus of this evaluation, and requires more study.

14 Presently scheduling must be set within 30 days of assignment to the settlement judge, but there is no time limit within which the session must actually occur. The first status report is not required for 120 days. Only after a case has been in the settlement program for one year, is the settlement judge required to file a report indicating the circumstances that justify an appeal being in the program for such an extended period of time.

The addition to the program of a Core Committee appears to offer a significant benefit.[15] The members of the Committee reflect the state's geographical diversity of the program panelists. There is a mix of experienced attorneys and professional mediators providing the Committee with depth and understanding of program challenges as well as the intricacies of the appellate process. Maintaining a viable Committee that links the court and program panelists, through improved communication, is extremely important for program effectiveness.[16]

- *RECOMMENDATION 6*: Develop specific periods of appointment for members of the Core Committee, while continuing to maintain its diverse composition.[17]
- *RECOMMENDATION 7*: Stagger the appointment periods, so continuity and historical perspective is maintained.

POLICIES AND PROCEDURES: A review of the policies and procedures of the appellate settlement program appear to include the fundamental elements: program management, statistical tracking and record maintenance.[18] The staff continually monitors and improves the program management[19] process, and enhances communication with the panel members through the use of newsletter, educational seminars, and the Internet and program Bulletin Board. The increased use of technology should benefit the program through direct cost savings.[20]

- *RECOMMENDATION 8*: Computerize all forms used in the settlement program and make available on the program website.
- *RECOMMENDATION 9*: Accept only court-approved forms.
- *RECOMMENDATION 10*: Develop a transition schedule for all official program communications, reports and document exchanges through the Internet.

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15 Justice Deborah A. Agosti, staff and program panelists developed the concept of the Core Committee in 2003. The Committee's first meeting was held January 2004.

16 The Core Committee recognized several areas of concern, which were also identified during this independent evaluation.

17 Comments provided by program panelists suggest that in order to prevent a closed system from developing, a process be established for periodically rotating new individuals on to the Core Committee.

18 Originally many of the policies and procedures of the program were informal, however, over time the staff has initiated more detailed policies and procedures as the need has arisen.

19 Many excellent procedures are in place, such as conflict checks of settlement judges prior to case assignment and case consolidation procedures.

20 An analysis of the program budget was not a part of this evaluation.

The program could derive significant benefit from clarifying the specific ADR model used. Apparently the envisioned program ADR model was not specified, and through use and expectations of the program participants, settlement conference judges and staff, the model has evolved significantly and rapidly. The original Rule 16 appears to create a traditional settlement conference program.[21] Mediation has many benefits, not the least of which is producing higher settlement rates.[22] Mediation tends to consistently produce higher satisfaction ratings on program participant evaluations. In addition, mediation produces higher settlement compliance rates, because the participants developed the terms of the agreement for themselves.

At present, the ADR model used by most of the program panelists is mediation.[23] The present title of "judge" confuses some participants, and the term may well influence how the ADR process is managed. The term "judge" apparently effects the assumptions and expectations of some panel members with respect to their powers and authority, as well as the conduct of participating attorneys and their clients. The inconsistency between the title of "judge" and the ADR model presently used during most settlement discussions, mediation,[24] appears to be generating tension within the program.[25]

- *RECOMMENDATION 11*: Specifically define the program ADR model as mediation.

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21 In the initial Petition to Adopt Rule 16, filed on September 18, 1996, "settlement conference" is the term used for the process. An Opposition statement filed on September 23, 1996 also refers to the process as a "settlement conference" and to "settlement judges". The final Adoption of the Rule 16 Order, filed on December 27, 1996, continues to refer to "settlement conference" and "settlement judges". In an Opposition Order to Appointing Settlement Judges, February 21, 1997, the term "settlement conference judges" is replaced by the term "settlement mediators".

22 Ibid. It was found that the appellate courts using mediation as the preferred ADR process enjoyed significantly higher settlement rates than programs using arbitration and traditional settlement conferences. It appears that mediation is in fact the ADR process used in this program, which may help explain its high settlement rate. Nationally, mediation is the preferred court-connected ADR process.

23 See Appendix B, responses to Question 3. Nearly 80 percent of the program panelists (settlement judges) use mediation.

24 By early 2000 settlement judges were required to take 40 hours of mediation training.

25 When using the term "judge" during a settlement session there may be an unintended influence on the management of the process and on the participants' ability to design their own settlement. Beginning in August 2000, several revisions of Rule 16 tried to address whether the program's settlement panelists could use the term "judge" in their marketing materials. At one point, panelists could not use the term "settlement conference judge" in advertising. In 2002 the complete prohibition against using the term was rescinded. At present there is no rule addressing the use of the term in advertising. Anecdotally, information surfaced during the evaluation that indicated some panelists use the term "judge" in marketing their other professional services. The title of "judge," when used by panel members outside of their court designated role, may imply an authority or connection to the court not originally intended by the court.

- *RECOMMENDATION 12*: Change the designation of the program panelists from "judge" to "mediator" to match the ADR process, thus providing clarity and consistency.[26]

When determining the process to be used, there are two other related topics, and both generate a significant impact on the program and the process used. Rule 16 requires that a settlement judge file a report following the settlement conference and that a settlement judge must determine if a party "... has failed to participate in good faith in the settlement conference process or that an appeal is frivolous." Further, it requires that the report "... must state the basis for the determination and recommend an appropriate sanction." Although these may be determinations made in a traditional settlement conference setting, they are inappropriate tasks for a mediator. The present Rule 16 requirement compromises the fundamental process concepts of confidentiality and impartiality of the mediator.

Determining if someone has participated in "good faith" is "ineffective and frustratingly unenforceable" according to John Van Winkle.[27] Many other court-connected programs have abandoned the "good faith" concept, and found that education of the participants has motivated counsel and client to participate through recognizing that it is in their own "self-interest". Education, with respect to "self-interest", is a stronger motivator than a "good faith" requirement. Since a mediator needs to remain impartial, making determinations and recommending sanctions is contrary to the role.

Anyone making a determination and reporting to the court may be in violation of the confidentiality provisions of Rule 16. Presently, the confidentiality portion of Rule 16 keeps "matters discussed at the settlement conference" confidential and "... shall not be admissible in evidence in any judicial proceeding..." Many court programs deal with failure to attend the settlement discussion by having an attendance form as part of the confidentiality agreement, and when a signature is missing, the court understands that someone did not participate as required. The court can administer the sanctions at that time. The mediator is not put into a position of investigator or reporter.

- *RECOMMENDATION 13*: Modify Rule 16 to no longer require program panelists determine if participants are there in "good faith"[28] or if the appeal is "frivolous".[29]

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[26] It is possible for a court to offer more than one ADR process, however, doing so may create additional confusion and disagreements may arise as to which process to use. Simplicity is key.

[27] Van Winkle is the former chair of the ADR section of the American Bar Association.

[28] It appears that the term "good faith" is not defined by any Nevada rule or published opinion.

[29] See Appendix D-2 and Footnote 61. Anecdotal information confirms that the court has not sanctioned any individual "based on a determination from a settlement judge that the appeal was frivolous."

RECOMMENDATION 14: Remove sanction authority from settlement conference program panelists.[30]

- *RECOMMENDATION 15*: Clarify the definition and present rules regarding confidentiality, and require all settlement session attendees sign a confidentiality agreement.

This program is mandatory for civil cases with the exception of those involving termination of parental rights and *pro se* cases. According to survey results,[31] many of the panel members reported resistance on the part of attorneys and clients to participate in the settlement process. Appellate dispute resolution is challenging, due to the fact that the trial court declared a "winner" and a "loser". Resistance often comes from individuals who do not understand the process, or how it might benefit them and their case. Education is one of the best ways to overcome this type of resistance.

- *RECOMMENDATION 16*: Develop educational materials, and include information that clarifies the process, role of the settlement panel members, benefits of the process, and how to effectively prepare for the process.

- *RECOMMENDATION 17*: Provide copies of all program forms, educational materials and documents that may be used during the settlement process on line, and require written acknowledgment from counsel that they have read the materials and discussed them with their clients.

When the legal community and public are aware of the benefits of a program, and the inherent success of the program, resistance to a program diminishes. Some courts total the savings in attorney's fees and costs for the settlements to illustrate additional benefits derived from participation in a settlement program. These figures typically result from estimates provided by counsel as part of exit surveys or program evaluations.

- *RECOMMENDATION 18*: Provide data on the program website, and in other program educational materials, which identifies the program's ultimate cost savings to the participants.

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30 It appears from a review of the records and comments written on the surveys that few program panelists recommend sanctions, and that the court rarely, if ever, follows the settlement judges' recommendations.

31 See Appendix D, Question 4. Nearly 80 percent of the settlement judges experienced some or frequent resistance. Some data indicated that pressure from a very few settlement judges may have magnified the resistance.

Court savings are another part of the education process. Courts typically calculate savings in judge and staff time. Listing the savings in hours or dollars is effective. Of course there is added benefit when global settlements are reached, when cases are consolidated, and when matters not yet litigated are resolved.

- *RECOMMENDATION 19*: Provide data on the program website and in other educational materials that identifies potential future savings to the court.[32]

The survey results identified a concern regarding the question of court jurisdiction. Although this issue did not arise in many cases, for those where it did, the frustration level of attorneys, clients and settlement conference panelists was significant. This aggravation apparently influenced the participants' perceptions about the program and their enthusiasm for participation in the program.[33]

- *RECOMMENDATION 20*: Require that all parties file a completed Case Screening Form prior to the appeal's placement in the settlement program.[34]

Although there is a reference in program orientation material for new panelists, which states that settlement judges are not officers of the court, there remains the possibility that a connection exists. The court provides a service, settlement conference program, and requires that individuals attend. Logically, one presumes that a mandated program provides trained, experienced and impartial persons, who are selected from a list of approved court panelists. If a settlement judge were to violate confidentiality, failed to remain impartial, coerced settlement or otherwise committed some prosecutable offense, then the question might be "Would the court experience some exposure or liability?" Although this issue has not yet arisen, the old saw "An ounce of prevention is worth a pound of cure" may be prudent.

- *RECOMMENDATION 21*: Clarify the relationship of the settlement conference panel members to the court.[35]

NEUTRALS: There are presently 86 neutrals on the Settlement Conference program panel. For the most part, the vast majority of neutrals receive high marks for their management of

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32 Of course this recommendation is applicable to Program Effectiveness section of this report.

33 Perception of the program was one of the 5 areas of review. The topic did not receive a separate heading in the report, as it is an integral part of each of the other sections.

34 Attorney filled-in Case Screening forms will save the court time, and could identify, in addition to jurisdiction issues, information about related or pending trial cases. This information would in turn help the court consolidate cases, producing additional savings.

35 Depending on the determination of the posed question, the necessity of immunity, indemnification and/or liability insurance may need review.

the settlement process. Few negative comments were noted on the written program evaluations.[36] When concerns were raised, those comments seem to fall into 3 broad categories encompassing panelists' apparent lack of preparation, impartiality, and implied violations of confidentiality. A few program participants felt that the settlement process was unnecessarily prolonged or added expense to the overall appellate process. Although the number of negative comments was small, maintaining a positive impression of the settlement program is vital to the continued success of any court effort.

- *RECOMMENDATION 22*: Continue to provide evaluations and comment forms to attorneys and their clients. Determine if there are significant differences between counsel and client comments. Clarify if negative comments are random or consistently focused on a particular panelist or are from a particular participant.
- *RECOMMENDATION 23*: Develop an incentive or motivate those participating in the settlement program to complete and return the evaluations.[37]

Maintaining a quality roster of neutrals is essential to any court-connected program. When courts have the ability to document that their settlement program panel members are trained and experienced, confidence in the program increases. If the settlement program continues as a mediation program, then all panelists must be trained in the mediation process.[38] Any exceptions must be based on written policies that are applied uniformly, and warranted on a case-by-case basis.

Appointment to the court's panel, duration of the appointment, qualifications to receive appointment, periodic review of panelists, and mechanism for removal from a panel further improve public confidence in a program. Program policies and procedures must be clear and consistently enforced. Trust in a program, its policies, procedures and the panel members all contribute to improved public perception and settlement rates.

- *RECOMMENDATION 24*: Identify a specific appointment time to the panel upon completion of an application, documentation of training and experience, acceptance of code of conduct by the appointee, and review by the court.

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36 There is no tracking of verbal responses from attorneys.

37 Some courts use an order that requires completion of the form. Providing pre-addressed, stamped envelopes with the evaluations, or providing time at the conclusion of the session, also increased feedback in other programs.

38 See Appendix C. Also note, on February 21, 2000 an Amended Order addressed the qualifications and appointment of settlement judges. A 40-hour mediation course is now required as part of the qualifications required for members of the court's panel. It is unclear if exemptions exist for present panel members, or if the limited practice of granting waivers continues.

- *RECOMMENDATION 25*: Develop a code of conduct and standard for ethical practice for all program panelists.
- *RECOMMENDATION 26*: Develop specific standards that relate experience to the subject matter and types of cases assigned.[39]
- *RECOMMENDATION 27*: Develop a continuing education requirement that specifies a certain number of hours and topics to be taken within the appointment period.[40]
- *RECOMMENDATION 28*: Conduct periodic reviews of settlement panelists' effectiveness with emphasis on evaluation ratings by settlement participants, fulfillment of continuing education requirements, and contributions to the court.

The management of most court-connected settlement programs requires resources. Panelists receive compensation[41] for their service to the court, and they receive significant prestige from their appointment. The court must maintain a dependable roster of panelists, who will remain available to help resolve the cases assigned by the program. From past experience, the program staff can anticipate the number of cases that will be processed in a given year, and rely on the panelists' availability.

- *RECOMMENDATION 29*: Require program panelists accept a specific minimum number of cases each year.[42]

PRO SE CASES: Expanding a settlement program may well provide additional benefits to a court and the community it serves. Before implementing any changes to an existing program, a review of the present situation and identification of goals for the new proposed expansion is

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39 See Appendix E, Questions 1, 2 and 3 relating to Unrepresented Participants. Many respondents to the survey were enthusiastic about receiving more cases, and yet did not appear to have relevant experience in all subject areas. Comparison of education, professional training and practice, and the other experience listed on panelists' applications, indicated that willingness to take specific types of cases did not always correlate to the panelist qualifications or experience. Lack of previous legal or mediation experience with certain types of cases, such as custody and divorce, could further raise liability questions.

40 Part of the continuing education requirements found in other programs contain a special orientation for all new panel appointees that includes: applicable standards of review, obstacles that arise in appellate cases, and orientation to the policies, procedures and required program forms and reports. Additional continuing education for other panelists includes ethics, appellate updates and skill enhancement.

41 Rule 16 has been amended on several occasions to address the issue of compensation either in the form of an hourly rate or per case fee, and reimbursement for specific expenses. Analysis of the program's compensation polices were not a part of this evaluation.

42 Based on current figures, the average is about 8 cases per year per panelist. Four might be an appropriate minimum number of cases to require.

prudent. With respect to adding *pro se* cases, which heretofore have been expressly prohibited by Rule 16, significant issues need to be addressed. Of primary importance is the fact that a *pro se* litigant typically does not have an understanding of the law. Because knowledge is power, extreme power imbalances exist in negotiation settings where one party does not have legal representation.[43]

- *RECOMMENDATION 30*: Conduct a study and determine the pros and cons of an appellate *pro se* mediation program.[44]
- *RECOMMENDATION 31*: If it is determined that a program would bring significant benefit to the court without harming the rights of the litigants, then begin with a pilot[45] program for *pro se* appeals.[46]
- *RECOMMENDATION 32*: Require additional training and experience for those individuals who may handle *pro se* settlement conferences.[47]

CONCLUSIONS

As mentioned throughout this report, the program appears to be effective, and yet would benefit from implementing the above-mentioned 32 recommendations. Court programs are not static, and times, circumstances, issues on appeal and the law change. Continuing to monitor the program, and to improve exiting aspects, and/or anticipating events and initiating new procedures before they are required is prudent and cost-effective management.

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43 See Appendix E, Questions 1, 2 and 3 relating to unrepresented parties. It was interesting to note that from the surveys, few settlement judges have previously handled *pro se* cases, although most indicated that they were willing to do so. Of those who had experience, over half indicated that they would not want to handle appellate *pro se* cases. It seems that actual experience with *pro se* cases provides a different point of view.

44 The court's Proper Person Committee is presently looking into this issue. The findings of that committee may be important to the discussion of possible inclusion of *pro se* cases into this program.

45 Although there are a few trial courts with *pro se* settlement programs, it is extremely rare at the appellate level. For states with no intermediate appellate court, there are no *pro se* programs.

46 A more comprehensive case screening form would need to be developed for *pro se* cases. A written document stating that counsel may be present or may review any settlement agreement is often used in trial *pro se* programs.

47 Compare these settlement rates, satisfaction rates, and the duration in the program to the mainstream cases.

APPENDIX

NOTE: The statistical summaries provided in Appendix B through E do not always add up to 100 percent. Some respondents did not answer all questions or provided multiple answers. The responses are statistically significant, since 80 percent of the program's settlement judges responded within the allotted time.

Nevada Supreme Court Settlement Judges' Survey

This survey is part of the ongoing evaluation of the Supreme Court of Nevada's Settlement Conference program. There are 6 topics, and your responses to each question are very important. Completing this survey enables you to participate in the planning process, which is focused on the continued improvement and expansion of this worthwhile program.

GOALS:

1. From your perspective, what do you think should be the top 2 goals of this program?
   a. _____
   b. _____

2. What are your personal goals as a settlement judge? (Please prioritize your answers.)
   a. _____
   b. _____
   c. _____

3. What type of dispute resolution process do you primarily use when you convene your conferences? (Please circle only one.)

   arbitration mediation special master evaluation
   settlement conference other (specify) _____.

TRAINING AND EXPERIENCE:

1. In your opinion, what is the minimum number of hours and types of training that are needed to adequately prepare a person to serve as an effective program settlement judge?

   # of hours: _____ courses_____.

2. Do you think that settlement judges need a specific number of years of dispute resolution experience or be required to have mediated a specific number of cases before joining the program? _____ Yes _____ No. If yes, please clarify. _____

   _____ # years_____ # cases_____

3. Do you think that continuing education needs to be required of members of this program? _____ Yes _____ No. If yes, then how much training every <u>two</u> years? _____ hours.

CASES:

1. What types of cases do your prefer to handle? List your top 3 choices (i.e. family, employment, construction, health care, etc.):

   a. _____ b. _____ c. _____

2. Do you think appellate ADR is more difficult or significantly different from trial level ADR? _____ Yes _____ No. If yes, in what way? _____

   _____

3. In your opinion, what is the maximum amount of time a case should be open? Open meaning from the time the case is assigned to you until it settles or an impasse is declared. _____ days.

4. How often do you encounter attorneys or clients who are reluctant or are difficult to schedule a conference date? (Circle the one that best represents your experience.)

   nearly every case frequently sometimes never

5. How often do you find that your settlement conference is the first time the parties have ever met to discuss settlement? (Circle the one that best represents your experience.)

   nearly every case frequently sometimes never

6. In your opinion, what is the minimum number of program cases that each settlement judge should take each year? (Please provide a specific number.) _____ cases.

7. Are there types of cases, which are presently being assigned in this program that you do not feel should be included? _____ Yes _____ No. If yes, what types? _____

   _____

8. Have you ever recommended a sanction? _____ Yes _____ No. If yes, what were the circumstances? _____

   _____

SETTLEMENT:

1. How are the terms of the settlement typically determined? (check only one.)

   a. _____ I suggest most of the terms, most of the time.

   b. _____ Attorneys suggest most of the terms, most of the time.

   c. _____ Attorneys and their clients suggest most of the terms, most of the time.

2. Who usually writes the settlement agreements? _____ me, _____ attorney, or Other (Please specify.) _____

EVALUATION:

1. Do you think the performance of settlement judges should be evaluated?
   _____ Yes _____ No. If yes, who should evaluate? (Circle **all** you think apply.)

   parties attorneys court personnel

   other settlement judges outside, independent evaluators

2. Who or what entity should handle complaints from attorneys/parties about settlement judges? Please specify: _____.

UNREPRESENTED PARTICIPANTS:

1. Have you conducted conferences with unrepresented parties? _____ Yes _____ No
2. What problems did you encounter, if any? _____
3. Would you be willing to take *pro se* cases? _____ Yes _____ No

PERSONAL COMMENTS: Please provide any additional comments.

Goals Analysis

Program Goals—Question 1

Settle cases[48]	71
Improve public perception of court	6
Educate parties and/or counsel[49]	17
Assist parties and/or save them resources	13
Improve party satisfaction and treat fairly	12
Other[50]	7

Personal Goals—Question 2

Settle cases	40
Provide professional service/fair process	16
Professional satisfaction	5
Empower and/or educate parties[51]	28
Provide positive experience for participants[52]	20
Gain experience[53]	17
Other[54]	9

Type of Dispute Process—Questions 3

Arbitration	
Mediation	50
Special Master	
Evaluation	1
Settlement Conference	12
Other[55]	3

48 Some clarified with phrases like: reduce court backlog, resolve cases promptly, in an amicable fashion, streamline appellate process, and settle cases creatively.

49 Additional phrases used to clarify their ideas were: benefits of process, identify strengths and weakness of case, provide specialization, get parties talking, and narrow issues.

50 Similar ideas expressed were: eliminate need for intermediate court of appeal, sort appeals, improve judicial efficiency, explore possibilities, not delay cases, provide more training, energize program, and maintain high quality settlement conference judges.

51 Linked to this concept are understanding the cause of dispute, understanding the case, and determining strengths and weaknesses. One included similar terms for the mediator.

52 Other terms used in the responses included: even handed, fair, reflect well on judiciary, finish cases sooner, take more cases, and provide better conference facilities.

53 Other ideas expressed included: professional growth, hone skills, work with fellow attorneys, and become more effective.

54 Additional themes included: set own calendar, streamline appellate process, provide income, stay active, complete paperwork, dignify process, save resources, and give back to the community. (It is assumed that a court does not have an obligation to ensure a constant income stream for its panelists.)

55 Three marked more than one answer: 2 marked both mediation/settlement conference, 1 marked both evaluation/settlement conference.

Training and Experience Analysis

Minimum Hours and Courses—Question 1

No specific training requirement	6
Less than 10 hours	15
10 to 19 hours	15
20 to 40 hours	20
More than 40 hours	11

Required Training—Question 2

Training required (yes)	37
Training not required (no)	27
Number of years	
1-5 years	15
6-10 years	12
over 10 years	5
Number of cases	
Less than 10	6
10-25	15
over 25	7

Continuing Education and Hours (every 2 years)—Question 3

Require CLE (yes)	27
Not require CLE (no)	19
Less than 10 hours	27
10 to 20 hours	16
More than 20 hours	1

Case Analysis

Difficult/Different—Question 2

More difficult/different (yes)[56]	40
Less difficult/different (no)	25

Maximum Duration for Settlement Process—Question 3[57]

Less than 90 days	7
90 to 180 days	43
181 to 270 days	2
271 to 360 days	3
Over 360 days[58]	7

Encounter Reluctant or Difficult Attorneys or Clients—Question 4

Never	12
Sometimes[59]	38
Frequently	13
Nearly every case	4

First Time Settlement Discussed—Question 5

Never	1
Sometimes	20
Frequently	35
Nearly every case	7

Minimum Number of Case Per Year—Question 6

Less than 5	23
5 to 10	24
11 to 20	7
More than 20	10

Cases Being Assigned That Should Not—Question 7

Yes	15
No[60]	46

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56 Predominant comments centered on the following themes: there is already a winner and loser, parties polarized or event happened many years ago, and these cases require more experience.

57 Some suggested longer times only with approval of court and if requested by all the parties.

58 Of these seven responses, five suggested that there be no time limit, one suggested that the time limited be controlled by the settlement judge.

59 One used the word "rarely".

60 Some reasons given included: jurisdiction questions, judgment—there was no trial, cases with governmental entities (eminent domain)—usually no authority, child custody—move cases, large number of parties on one side, and domestic.

(continued)

Case Analysis
(continued)

Recommended Sanctions—Question 8

Yes[61]	20
No	44

61 For those who answered "yes" to the question, there were reasons stated, which included giving sanctions if approved by court, bad faith negotiations, attorney conduct, failure to attend, and unresponsive attorney. Unresponsive (includes failure to attend) and attorney conduct were most frequently mentioned reasons for requesting sanctions. One comment indicated that a settlement judge had requested sanctions twice and the court denied the request both times. The settlement judge no longer requests sanctions. One settlement judge indicated the nature of a sanction he/she requested, which was a dismissal of the appeal.

Settlement, Evaluation and Unrepresented Parties Analysis

Determines Settlement Terms—Question 1

Settlement judge	22
Attorney	11
Attorney and client[62]	30

Settlement Document Writer—Question 2

Settlement judge	27
Attorney	35
Other: combination of both	8

Evaluation of Settlement Judges—Question 1

Yes	57
No	6
Parties	40
Attorneys	51
Court Personnel	15
Other Settlement Judges	7
Outside, Independent Evaluators	7

Complaint Process—Question 2[63]

Supreme Court	22
Unspecified Review Panel	3
Committee of Settlement Judges	7
Judicial Ethics Commission	1
Clerk's Office	6
Administration[64]	16
Core Committee	2
Chief Justice	1

Unrepresented Parties at Conference—Question 1

Yes	24
No	40

Unrepresented Parties—Problems that Arose—Question 2

Few problems arose	6
Lack understanding of rights/wanted legal advise	13
Unrealistic view of case	2

Willingness to Take *Pro Se* Cases—Question 3

Yes[65]	40
No	18

62 Some marked them all.

63 These terms represent the broad concepts expressed by the survey respondents.

64 Tom Harris, Settlement Program Administrator, was specifically mentioned 3 times.

65 There was one "maybe", which was not added into the count.