

State DR Programs Submit Funding Data

Following requests from several states for information about how other state programs are funded, PCI recently distributed a survey to the network of state DR programs. Results show, not surprisingly, that the amounts and sources of funds vary widely from state to state and often derive from a complex set of budgeting procedures. In fact, the survey design posed challenges for some agencies who do not have separate budget allocations for their dispute resolution programs.

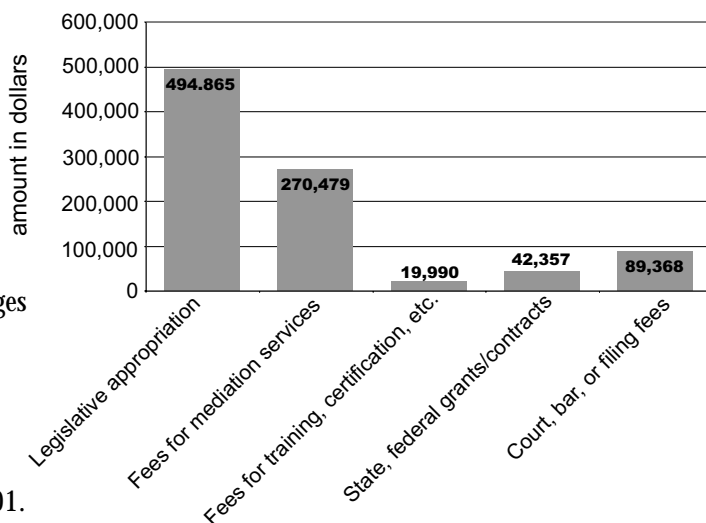
The findings revealed several noteworthy trends, particularly among court and university programs. The 19 court programs that responded to the survey received an average of \$727,000 in 2000-2001. Their budgets are derived from at least six different sources. As illustrated in the chart above, legislative appropriations make up the bulk of that funding—nearly \$495,000 on average, or about 70 percent of the total—followed by fees for mediation services, and court, bar or filing fees. Specific funding information for court programs is listed in the table on page 8.

University programs received an average of \$506,674 over two years to fund their DR service and research initiatives. The budget information for university programs appears in the table on page 9.

Of the nine university programs responding to the survey, fees for mediation services was the greatest source of revenue (\$171,843 on average, or about 30 percent of the total), followed by retained revenue accounts and legislative appropriations. State, federal

Average funding for
STATE COURT PROGRAMS

Average for all court programs = \$727,069 (n = 19)



and/or private grants also contributed significantly to universities' funding sources. The chart on page 10 lists all university funding sources and the averages across programs.

Four administrative branch programs also provided funding information. The table on page 9 lists the specific sources and amounts reported by each of these programs.

The average budget for this group was about \$465,000 for 2000 - 2001. As illustrated in the chart on page 10, legislative appropriations were the most significant source of funding (\$307,366 on average, or about 66 percent), followed by fees for mediation services and state and federal grants, respectively.

While surveys were distributed to individual state agencies, as well as attorneys general and administrative law judge (ALJ) offices, results indicated that the majority of these programs do not have separate budget lines for their dispute resolution activities. Some ALJ programs, for example, report that their DR or settlement services are treated, and budgeted for, as part of their regularly assigned duties. In those states where ALJs charge agencies for their services, time

INSIDE	
<i>PCI Consensus Center Begins Activities</i>	4
<i>Tracking ADR Legislation</i>	5
<i>ALJ's Explore Facilitated Settlements</i>	8
<i>State Programs Update</i>	9
<i>PCI Funding Survey Tables</i>	10

Reshaping Natural Resources Decision Making

By **Hon. Bruce Babbitt**, Secretary of the U.S. Department of the Interior from 1993 to 2001. Excerpt reprinted with permission of CPR Institute for Dispute Resolution's Into the 21st Century: Thought Pieces on Lawyering, Problem Solving and ADR,* © 2001.

ADR concepts have invaded natural resources policymaking in a remarkable, profound, and largely unappreciated and unnoticed way.

ADR concepts have actually displaced not only the traditional role of the courts, but the traditional role of the U.S. Congress and created a new quasi-governmental process. I will leave you to judge whether it marks a significant step forward in the evolution of our democracy, or whether it is a sign of the degeneration and terminal illness of our society...

In the resources area, the U.S. Congress has abdicated the traditional policymaking role. It has become too complex, and the politics of division and stakeholder vetoes have driven Congress off the field. In my seven years as Interior Secretary, we've made a lot of progress, but none of it on the substantive side of legislating in the U.S. Congress. I don't know whether that will change.

As this great dispute unfolds, we've learned that litigation is not only undesirable, time consuming and complex, but it simply doesn't work. When you're dealing with the allocation of resources on a broad landscape across multiple competing stakeholder groups who traditionally went to Congress but now have that route blocked off by gridlock and failure of the congressional system, the courts don't provide any access either.

I learned that lesson when, as Arizona's governor, I handed off a small water rights dispute to the courts. I got a modern, streamlined, adjudication law passed, and the litigation over the Salt River system commenced in 1975, with 50,000 claim holders putting their claims in. It is now 25 years later, and nothing has happened. The courts have been unable to make their way into this. It's been back and forth between state and federal court systems with interlocutory appeals moving up and down, and after 25 years and tens of millions of dollars, they haven't even agreed on the completion of a plan for discovery.

Around the west, we simply see that when you're dealing with really large, multi-stakeholder issues that

involve the allocation of a limited resource and public policy, the courts can be a tactical weapon, but they cannot be a solution.

So where do you go if Congress has been effectively neutered and the courts as an institution can't possibly do it? In the genius of the U.S. system, an entirely new system of public policy is emerging. I wouldn't call it alternative dispute resolution. I would call it quasi-legislating dispute resolution. It involves an entirely extralegal process in which stakeholders are convened, as we did in California in 1994 with all of the big urban water agencies and the entire agriculture industry—a noisy, clamorous, vocal environmental spectrum of players—and we create a dispute resolution.

*The traditional ways
of finding solutions
are yielding to
something that is
enormously dynamic.*

The remarkable thing about it is that we're not doing classic dispute resolution. What we're doing is effectively what Congress used to do. We are resolving disputes, creating administrative law, legislating and appropriating. Now how do we do that outside the normal circle of our institutions?

I've done enough dispute resolution and had enough agony with it to know you've got to have carrots and sticks. In this new institutional environment, the sticks are easy to find. They're regulatory. Congress has left us in the executive branch an incredible collection of regulatory negative sticks. The endangered Species Act is at the head of the list. We have the sticks in the Pacific Northwest to ban logging in California, to shut down the water pumps. But they are sticks that can't be used in a heavy-handed way.

You also need incentives. What are they? It's money. The one part of Congress that has not shut down over the years is the appropriations process, because they have to pass appropriation bills every year. We have the power in these stakeholder events to produce money—not laws, but money. If we can move toward a solution, Congress will appropriate money.

The story's still unfolding in California, but in 1994, we reached an agreement known as the Bay Delta Accord, which is now enshrined in the state's history. You'll never find it in a textbook or in the laws of the California legislature or Congress. But on the basis of that accord, California has passed a billion-dollar bond issue, and the U.S. Congress is now appropriating \$50 million to \$100 million every year to an alternative

Continued on Page 3

PCI's Policy Consensus Center Begins Activities

Activities are underway at the Policy Consensus Center, PCI's education and training arm. The Center is a joint project of PCI and Portland State's College of Urban and Public Affairs.

In late May, the Center will host a one-day pilot workshop for state agency scientists and program managers on *Managing Scientific And Technical Information In Collaborative Decision Making Processes*. The seminar will focus on the use of scientific and technical information to enhance the knowledge and ability of decision makers who work on complex environmental and social policy issues. The seminar will ultimately become available to a variety of prospective audiences, ranging from government officials to scientists, technical experts, and community and business leaders. Contact PCI for information about how to co-sponsor this workshop for an agency or agencies in your state.

A related project, following on the *Managing Scientific and Technical Information* initiative, will involve an examination of environmental problems that appear to pit the culture of science against local, regional, or traditional culture. The project, called "Bridging The Divide," seeks to develop new methods of communication, mediation, and problem-solving that can be used when fundamental ways of knowing collide in large-scale, multi-party water, energy, land use, and public health issues.

A workshop for agency dispute resolution (DR) coordinators will also be developed and piloted at the Center this summer. This workshop will provide DR coordinators with skills and methods necessary to perform a variety of functions, including:

- Leadership skills for integrating conflict resolution in agency practices
- Using collaborative approaches to crafting ADR policies and programs
- Assessing agency needs for conflict management and dispute resolution
- Planning, developing and implementing ADR systems or processes
- Acquiring or assisting in locating resources (funds and neutrals) for ADR
- Addressing barriers and incentives affecting ADR use in state agencies
- Evaluating dispute resolution processes and producing progress reports.

Dates for the DR Coordinator Workshop have not been set; PCI will contact state programs when an agenda is confirmed.

Watch PCI's website <policyconsensus.org> for details on these and other upcoming workshops and activities.

State Programs Directory Now Online

For the most current version of PCI's *Directory of Conflict Resolution Resources in State Government*, visit the website at <www.policyconsensus.org>. The *Directory*, viewable by state and by program type, is updated regularly. PCI asks that State Programs check their listings and contact information, and e-mail any changes or edits to the PCI Santa Fe office.

Reshaping Natural Resources Decision Making . . .

Continued from page 2

dispute resolution table. We actually are in the position now of having a program constructed out of the backdrop of regulation and the willingness of Congress to provide money to this extra-legal, extra-constitutional body.

I don't know if this is what ought to be. But I can tell you it's the only thing that's working and that the same is true in every part of the country.

I don't mean to appear cynical about Congress or the courts. My bottom line is, the concept being brought to flower in so many different ways is not just a private sector dispute resolving mechanism. It's a concept that is

invading the very core of government, because in some ways, relationships among communities, the uses of resources, and complexities on the landscape have now become such a pervasive part of our society. The traditional ways of finding solutions are yielding to something that is enormously dynamic. And I am quite certain it will continue to develop and proliferate, and perhaps ultimately shake back into a more clearly understood institutional innovation.

* For copies of *Into the 21st Century: Thought Pieces on Lawyering, Problem Solving and ADR*, contact CPR Institute for Dispute Resolution at <alternatives@cpr.adr.org>

Library System Enables Oregon To Track DR Legislation

As ADR sheds its reputation as ‘alternative’ and advances into the mainstream, more and more legislators are introducing bills that include provisions for ADR. While certain legislation with a DR focus may be a potential boon to state programs, some may be poorly informed and even detrimental.

States have found that keeping track of the quantity—and quality—of these bills during a single legislative session is a time-consuming but crucial undertaking.

To deal with these tracking challenges, staff at the Oregon Dispute Resolution Commission turn to the State Library’s computerized “StateTrak.” This Legislative Issues Tracking system, like many other web-based systems, allows users to search for specific words or phrases contained in bills being introduced. According to Commission Director Susan Brody, staff members search for words or phrases related to dispute resolution—mediation, arbitration, school dispute resolution, and the like—and create a list of bills to review.

Bills that contains the ADR keywords are then printed out, and Brody and a colleague read through each one. “As we’re reading, we try to figure out whether it’s a bill we should continue to track,” she said.

Once read, the bills are assigned a priority ranking of A, B, or C. Brody said A-bills are those which could have a significant impact on the Commission or the mediation community. B-bills have a potential impact, and C-bills, despite their inclusion of DR keywords, are unlikely to have any impact. C-level bills are not tracked, but those on the A and B list get entered into the StateTrak system along with additional notes on the number and title of the bill, the commission’s priority ranking, and the name of the commission staff reviewer.

StateTrak then issues a report, updated daily, that the Commission prints and reviews several times a week. The report is a six-column table that includes pertinent information about the bill, including its history. For example, the report will indicate whether the bill has had a ‘first reading,’ where it may have been referred or assigned, and an agenda of upcoming meetings about the bill. The StateTrak system also sends daily e-mail messages informing the Commission of the current status of bills they are tracking.

As part of the tracking process, Commission members contact other stakeholders who may be interested in or impacted by the bill. Those parties can discuss aspects of the bill, decide on issues that should be raised, and coordinate testimony.

Brody describes the process as a “coordinated approach to dealing with the problems with bills,” but points out that not all bills are bad. “Sometimes we identify a bill we think is great, and we want to make sure we know about it and support it.”

At present, the Commission is tracking about 30 bills—eight or nine of which are on the Commission’s A-list. One is a bill to extend limitations on liabilities for DR programs, which Brody testified in favor of, that would benefit community dispute resolution centers throughout the state.

Another A-list bill would require statements made in domestic relations mediations be under oath or corroborated by other evidence. “This introduces a procedure that none of us think would be good,” Brody said. The Commission has identified other interests that would be affected by the bill to

Continued on Page 5

Measure	Sponsor	Subject	Category	Reviewer	History						
HB 2079	n/a	Directs State Commission on Children and Families to coordinate with Governor’s Council on alcohol and drug abuse programs to develop statewide assessments of youth assets. Relating to youth assessment surveys	POTENTIAL IMPACT	EVE FORD	01-08(H) First reading. Referred to Speaker’s desk. 01-10 Referred to Health and Public Advocacy.						
HB 2277	n/a	Requires that statements in mediation in domestic relations proceedings be under oath or corroborated by other evidence. Relating to mediation in domestic relations proceedings.	SIGNIFICANT IMPACT	SUSAN BRODY	01-01(H) First reading. Referred to Speaker’s desk. 01-16 Referred to Judiciary. 03-01 Public hearing possible. Work session scheduled. Upcoming Meetings: <table border="1"> <thead> <tr> <th>Date/Time</th> <th>Location</th> <th>Type</th> </tr> </thead> <tbody> <tr> <td>03-01 8:30</td> <td>357</td> <td>Public hearing & possible work session</td> </tr> </tbody> </table>	Date/Time	Location	Type	03-01 8:30	357	Public hearing & possible work session
Date/Time	Location	Type									
03-01 8:30	357	Public hearing & possible work session									
Consulted with Hal Harding: Dom Rel Mediators have significant concerns.											

The Oregon State Library’s StateTRAK is a Legislative Issues Tracking System that enables ODR to monitor DR bills.

STATE PROGRAMS MEETINGS & WORKSHOPS

The Colorado Judicial Institute, along with the Office of Dispute Resolution for the Colorado Judicial Branch, the Colorado Bar Association, and the American Arbitration Association, in March sponsored an ADR Forum titled **Dispute Resolution in Colorado: Today's Practices, Tomorrow's Policies**. The workshop explored ADR practices in the courts, government, private sector, and community through moderated panel discussions and interactive workshops. PCI Co-executive Director Dick Gross was a featured speaker at the forum. For highlights contact ODR Director Cindy Savage at <cynthia.savage@judicial.state.co.us>.



sponsoring the **Second Biennial Heartland Mediators Conference**, April 5-7, 2001. With nationally recognized speakers, breakout sessions and panels on practical and theoretical issues—and lots of opportunities to network—the conference offers an opportunity for mediation advocates in the heartland to explore roots, branch out, and to grow together. The conference will be held at the Arbor Day Farm, Lied Conference Center, in Nebraska City, Nebraska. To receive a brochure e-mail pladehoff@alltel.net. The registration brochure is also on line at <http://court.nol.org/odr/conferences/2001conf.html>

The fourth **Mediation for Administrative Law Judges training** will take place in Denver, Colo., from April 2 - 6. This 40-hour class will equip 25 ALJs with the basic skills needed to conduct mediations in state or federal agency disputes. The training, previously given in Baltimore, Nashville, and Boston, looks at the challenges in mediating disputes involving governmental entities. The program focuses on building skills needed to be an effective mediator, and analyzes the similarities and differences between being a mediator and an ALJ. Each participant will conduct a complete mediation and receive feedback. For further information, contact Marshall A. Snider, Chief ALJ, Colorado Division of Administrative Hearings, at 303-764-1432, or e-mail: marshall.snider@state.co.us.

The Nebraska Mediation Center Association and the Nebraska Office of Dispute Resolution are

As part of ADR Month in Hawaii, the State Judiciary Center for ADR in March co-sponsored four brown bag forums and a one-day conference titled **The Best of Mediation and Dispute Resolution in 2001**. Other sponsors were the ADR Section of the Hawaii State Bar Association and the Mediation Center of the Pacific. The Administrative Director of the Courts was the luncheon speaker.

The third in a series of workshops on **Resolving Public Disputes in North Carolina**, scheduled for May 9, will focus on highly contentious issues and emotional behavior in public hearings. The workshop includes: understanding pre-meeting steps to address citizen concerns and strong emotions; learning verbal and nonverbal techniques for responding to strong criticism or attacks; and methods of handling angry or irrational people in public meetings. For information call 919-403-8700.

Tracking DR Legislation . . .

Continued from page 4

coordinate testimony at the hearing, and to point out problems with the bill to the legislative committee members.

Though Brody says Oregon's StateTrak system is a big improvement over past systems, and that the State Library has made significant progress in computerizing the process, she suspects other states are following a similar trend.

In Texas, the Center for Public Policy Dispute Resolution contracts with a commercial tracking

service called "Gallery Watch." John Fleming, the Center's Program Director, said the service sends daily e-mails with any new bills related to ADR, new actions on bills listed on the Center's track list, and provides access to a range of legislative information and articles. Bills are also searchable through a "Texas Legislature On-line" service.

In Ohio, the Commission on Dispute Resolution and Conflict Management also contracts with an on-line news service that provides daily write-ups of bills introduced. Commission Director Maria Mone said her staff checks these write-ups, then does searches for specific bills with an ADR component.

ALJs Exploring Facilitated Settlement Programs

By David Marcus, ALJ, Oregon

Many states, particularly those with a centralized office of administrative hearings, have been exploring and developing facilitated settlement programs, and most utilize ALJs as mediators. Following are some examples of programs involving the use of ALJs as mediators.

- ◆ The Minnesota Office of Administrative Hearings has provided ALJ mediator services for over 15 years. These mediations have included professional licensing disciplinary cases as well as court-referred mediation, and even some larger public policy disputes.
- ◆ The Georgia Office of State Administrative Hearings, has developed a formal ADR program, on a voluntary basis, for the resolution of contested cases otherwise bound for an administrative hearing.
- ◆ Maine's Division of Administrative Hearings provides dispute resolution services to state agencies.
- ◆ The Texas Office of Administrative Hearings has developed a sophisticated settlement program as a result of legislation in 1997 authorizing ALJs to refer cases to ADR procedures. Under that law, ALJs are authorized to serve as impartial third-party facilitators, but parties may opt for private mediation at their own expense. The most commonly used form of ADR is the "Mediated Settlement Conference" conducted by an ALJ who has no previous or subsequent responsibilities in the case. Since its inception in 1997, that program and the number and types of cases mediated has gradually but steadily grown to include such cases as professional licensing disciplinary actions, medical necessity of a particular medical treatment, sanction for sale of alcohol to minors, and others.
- ◆ In Colorado, the Division of Administrative Hearings began developing a mediation program in 1993, coordinated by ALJ Marshall Snider, who is now the Chief ALJ. The primary users of the service over the past five years have been the state licensing boards, though the program has expanded to other agencies and the number of cases referred for mediation has steadily increased. Snider and Colorado will host the "Mediation for ALJs" program, co-sponsored by NAALJ, NCALJ and the ABA Section of Dispute Resolution in April.
- ◆ In North Carolina, the Chief ALJ of the Office of Administrative Hearings has statutory authority to order a mediated settlement conference in any case.

However, the mediated settlement conference is conducted by a private mediator, properly "certified" through the Administrative Office of the Courts, rather than by an ALJ. The parties may select a mutually acceptable mediator or, if agreement between the parties cannot be reached, the Chief ALJ may appoint a mediator to the case. Since 1994, more than 650 cases have been referred for mediation.

- ◆ The Maryland Office of Administrative Hearings has provided ALJ mediation of special education cases for some time, but has only sporadic requests for mediation in other case types. In an effort to prepare for increased utilization of ADR in lieu of contested case hearings, the entire corps of ALJs recently completed 40 hours of mediation training.
- ◆ In Oregon, highly successful and effective programs were developed at the Workers' Compensation Board and at the Construction Contractors Board (CCB). With the creation of Oregon's new Hearing Officer Panel, CCB has delegated broad authority to qualified Panel ALJs to assist parties in reaching an informal compromise settlement in any CCB claim case referred for a contested case or an arbitration hearing. ALJs are trained to effectively conduct settlement conferences in which they facilitate settlement negotiations between the parties.

ALJ-facilitated negotiations have resulted in settlement over 90 percent of the time (as opposed to just over 40 percent when the parties opt to negotiate with each other directly). Approximately 300 cases, some involving multiple parties (homeowner, general contractor, subcontractors and suppliers) have been settled without hearing since July 1997.

Not all mediation services by ALJs are generated by central hearing agencies, however. In Missouri, the Office of Hearings does not provide any mediation services but has incorporated mediation by ALJs and associate ALJs into its case adjudication system, on a case-by-case basis. In New York, the Department of Environmental Conservation Hearings program has become the Hearings & Mediation Program, and has provided ALJ-conducted mediation services since 1996.

ALJs at the Washington State Department of Health, Office of Professional Standards provide mediation services in licensee disciplinary cases, and also mediate workplace disputes within the agency. The

Continued on Page 7

STATE DISPUTE RESOLUTION PROGRAMS UPDATE

PUBLIC POLICY PROGRAMS

A recent study by Rosemary O'Leary and Tracy Yandle, published in the *Journal of Public Administration Research and Theory* [Vol. 10, No. 1, pp 137-156, 2000], gave the **Florida Conflict Resolution Consortium** an A+ for excellence in environmental dispute resolution. No other state received an A+. The study built on the work of Syracuse University's "Government Performance Project Ratings," which grade states on an A-F scale in five management areas. Those ratings are published annually in *Governing* magazine. The study by O'Leary and Yandle evaluated environmental DR programs in several areas, including legislation that supports environmental dispute resolution, amount of staff dedicated to environmental DR programs, and support for the program either in state agencies or in the governor's office.



The Consortium's efforts in environmental dispute resolution began in 1988 with a large case involving the U.S. Fish and Wildlife Service and the State Game and Fresh Water Fish Commission over management of Big Cypress Reserve. Following that effort, the Consortium worked with the Florida Department of Environmental Protection (DEP) in 1991-1992 to conduct an environmental enforcement mediation pilot, which successfully resolved 12 pilot cases saving an average of \$350,000 per case. As a result of the

pilot, the DEP uses mediation in an average of 60 enforcement actions each year.

The Consortium has continued to assist DEP in permitting cases and projects, including phosphate mining permits, partnering projects with DEP and Florida State University, and in DR training and education at DEP for environmental staff and attorneys.

"The A+ rating is a testament to the close partnership DEP and the Consortium have had in advancing dispute resolution efforts at DEP and beyond," said Larry Morgan, Deputy General Counsel overseeing enforcement activities. Consortium Director Bob Jones described Morgan as "a committed process-champion for mediation and dispute resolution at DEP for the past 15 years," and said the ranking would not have been possible without Morgan's dedicated leadership.

In anticipation of a change in state government administration, the **Montana Consensus Council** initiated conversations with as many administrators and other officials in Montana State government as possible throughout the summer and fall of 2000. The purpose of these informal conversations was to talk about the role and value of collaborative approaches to public participation and dispute resolution in state government, and how collaboration can be used to achieve the expectations of citizens, the legislature, and the Governor. A memorandum summarizing the feedback and perspectives of the state government officials involved in the discussions was sent in December to Governor-elect Judy Martz and Lt. Governor-elect Karl Ohs from "People Interested in Collaborative Problem Solving in State Government." (Some state program staffers may remember that Ohs, former House majority leader and member of the Montana Consensus Council board, is a DR champion.) The memo offered a series of options to the new administration on how to further integrate the philosophy and strategies of collaborative problem solving into state government.



ALJs Exploring Settlements . . .

Continued from Page 6

Washington Growth Management Hearings Board, which is divided into four regions, offers mediation of land use planning disputes, provided by a board member from another geographic area.

These examples are not exhaustive, but do provide a glimpse of how ALJs are already functioning effectively as mediators, to the benefit of the parties and agencies involved. Such examples should help to dispel the "myth" that settlement (with or without mediation) of enforcement type contested cases is not possible or appropriate.

Your comments, responses, anecdotes are all encouraged and may be sent to david.g.marcus@state.or.us.

The Program on Negotiation and Conflict Resolution at New York's **Wagner Graduate School of Public Service** sponsored a three-session New York City Energy Dialogue beginning in December 2000. The 70 Dialogue participants included representatives of communities



Continued on Page 13

State Programs Submit Funding Data

Continued from page 1

State abr.	Name of COURT Program	FY	Staff: FT/PT	Legislative appropriation	Fees for mediation services	Fees for training, certification, etc.	Court, bar, or filing fees	Revenue accounts	TOTAL
AL	Center for Dispute Resolution	00-01*	2 / 0	\$ 125,000	\$ 0	\$ 0	\$ 0	\$ 1,250	\$ 166,125
AK	Alaska Court System	01	2 / 1	0	0	180,000	0	0	180,000
AR	ADR Commission	00-01*	1 / 0	152,429	0	100,000	0	0	252,429
CA	Administrative Office of the Courts	01	1 / 1	216,000	0	0	0	0	216,000
CO	Office of Dispute Resolution	00	5 / 5	6,000	545,626	184,792	0	40,000	776,418
FL	Dispute Resolution Center	00	5 / 2	0	212,000	0	452,000	0	664,000
GA	Office of Dispute Resolution	01	4 / 0	342,690	0	25,000	0	0	367,690
HI	Judiciary Center for ADR	00	5 / 0	656,836	0	0	0	0	656,836
KS	Office of Judicial Administration	00-01*	1 / 0	100,000	5,000	0	89,000	0	194,000
ME	Court ADR Service (CADREP)	01	1 / 1	0	325,120	0	57,000	0	382,120
MI	Community DR Program / ODR	00-01*	4 / 0	574,300	0	340,000	1,100,000	0	2,014,300
MO	Supreme Court of Missouri	00	0 / 1	136,463	0	0	0	0	136,463
NC	Dispute Resolution Commission	00-01*	0 / 3	51,000	0	102,810	0	0	153,810
NE	Office of Dispute Resolution	00	1 / 1	538,365	0	0	0	0	538,365
NH	Supreme Court Rule 170 Program	00-01*	0 / 1	0	0	0	0	0	13,000
NV	Supreme Court Settlement Conference	00-01*	2 / 1	190,758	0	0	0	0	190,758
NY	State Unified Court System	01	8 / 2	6,100,000	0	0	0	0	6,100,000
VA	Department of DR Services	00-01*	2 / 0	600,000	0	0	0	0	600,000
VT	Family Court Mediation	01	0 / 3	212,000	0	0	0	0	212,000

* Represents average over two years, 2000 and 2001.

State Programs Submit Funding Data . . .

State abr.	Name of UNIVERSITY Program	FY	Staff: FT/PT	Legislative appropriation	Fees for mediation services	Fees for training, certification, etc.	Private grants	State, federal grants/contracts	Revenue accounts	Other	TOTAL
AK	U of A Resource Solutions	01	2 / 2	\$ 0	\$ 70,000	\$ 45,000	\$ 150,000	\$ 35,000	\$ 20,000	\$ 0	\$ 320,000
AZ	U of A Udall Center	00-01*	2 / 2	0	0	15,000	35,500	30,000	0	40,000	440,000
CA	Center for Public Policy DR	00	5 / 1	0	975,000	0	0	0	700,000	26,000	1,701,000
DE	U of Delaware CR Program	00-01	2 / 4	0	100,000	100,000	0	125,000	0	0	325,000
FL	Conflict Resolution Consortium	01	4 / 0	575,845	87,900	3,000	357,425	116,900			1,141,070
IN	IU Public Policy Mediation Program	00-01	1 / 0	0	0	0	0	12,000	0	0	12,000
NC	UNC Public DR Program	01	1 / 1	50,000	10,000	3,000	0	0	0	0	63,000
PA	Penn State Ctr. For Research & Neg.	00-01	1 / 1	0	2,000	10,000	37,500	115,000	3,500	10,000	178,000
VA	UV Inst. For Environ. Negotiation	01	4 / 7	0	30,000	60,000	100,000	180,000	0	0	380,000

* Represents average over two years, 2000 and 2001.

State abr.	Name of ADMIN. BRANCH Program	FY	Staff: FT/PT	Legislative appropriation	Fees for mediation services	Fees for training, certification, etc.	Private grants	State, federal grants/contracts	TOTAL
MA	Office of Dispute Resolution	01	10 / 2	\$ 471,852	\$ 135,444	\$ 50,532	\$ 0	\$ 0	\$ 657,828
MN	Division of ADR	00-01*	3 / 1	117,500	0	45,344	174,550	0	337,394
MT	Consensus Council	00	1 / 2	50,000	100,000	0	0	75,000	225,000
OH	Commission on DR and Conflict Mgmt.	00-01	7 / 0	590,113	0	0	0	50,000	640,113

* Represents average over two years, 2000 and 2001.

State Programs Submit Funding Data . . .

Continued from page 1

spent on mediation or settlement is billed at the same hourly rate as hearings. Similarly, some individual state agencies reported that staff members conduct dispute resolution processes as part of their regular job responsibilities, and that no separate funding is allocated specifically for such work.

The lack of a separate allocation for DR activity may have both costs and benefits. It could be beneficial

to incorporate DR as an integral part of the package of services offered. However, that may also mean that agency staff members are expected to carry out DR without sufficient funds to support the activity.

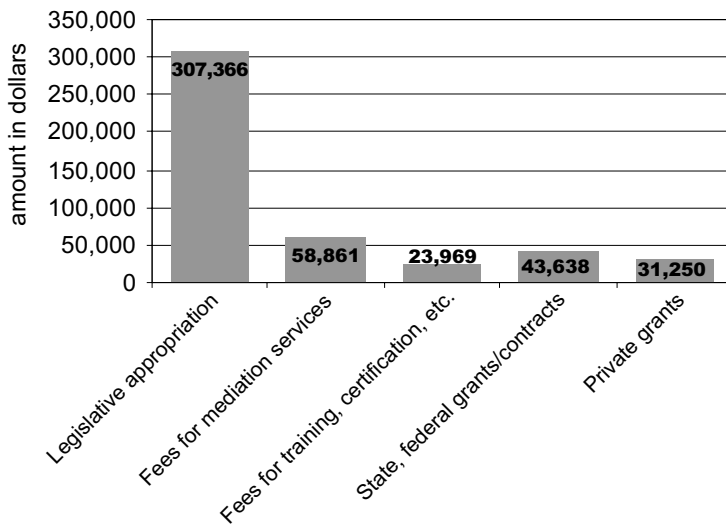
Because states are continually trying to secure administrative and legislative support for their programs, PCI will continue tracking funding across states. We want to provide this information so

programs can compare the kind of support they receive with what similar programs in other states receive. PCI also is helping programs to improve the ways they assess and can report on their own performance (see story on page 11).

Many thanks to the programs that responded to the survey, and to those who provided valuable remarks and insights. We invite further comments and suggestions on the survey instrument and will continually work to improve it.

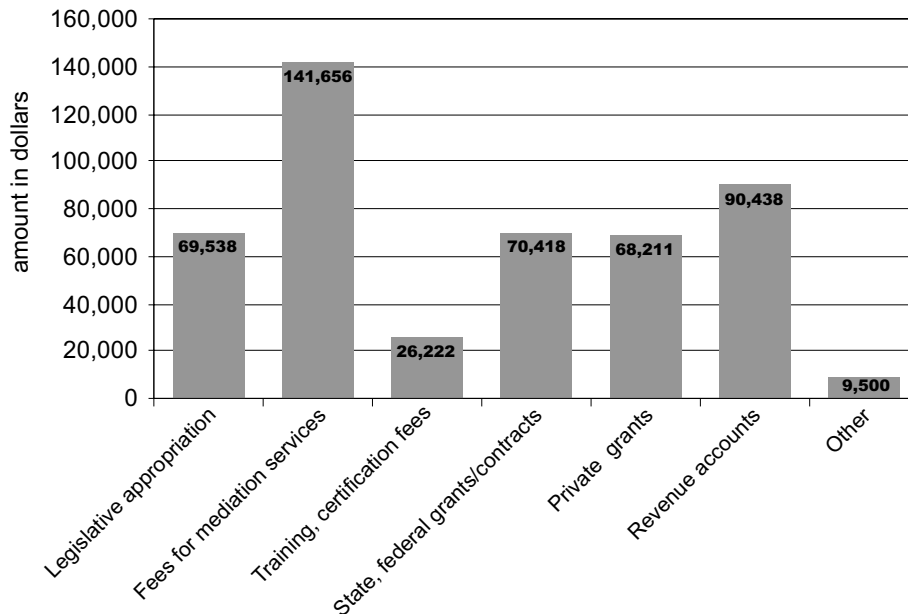
ADMINISTRATIVE BRANCH PROGRAMS

Average for all administrative branch programs = \$465,056 (n = 4)



UNIVERSITY SERVICE & RESEARCH PROGRAMS

Average for all university programs = \$506,674 (n = 9)



Tackling Case Evaluation**Demonstrating Cost-Effectiveness Key to Support**

One of the claims often made about dispute resolution is that it is cheaper and faster. But, as we also know, 'that depends.'

It depends on the context in which the DR program is being carried out. There is great variation in the settings of DR processes—courts, communities, commercial, or civil cases or public policy. And DR processes themselves vary. For example, mediation is very different from facilitated policy dialogues. Mediation itself can vary greatly in time and cost, depending on whether a mediation is a one-to-two-hour process in a small claims case, or an environmental case that takes days.

To garner support for DR programs, it is important to demonstrate whether dispute resolution is effective and efficient. Yet many state DR programs are stymied because they do not have the resources or expertise to collect the data and determine how to measure or compare results.

PCI has begun tackling this problem. We currently are working with the Massachusetts Office of Dispute

Resolution and the Oregon Commission on Dispute Resolution to help those programs develop systems for evaluating their services.

Some state dispute resolution programs already have tackled case evaluation and made significant progress that other programs may find useful. One exemplary effort is the work of Mike Niemeyer at the Oregon Department of Justice (ODOJ), who designed and carried out an evaluation and final report titled *The Collaborative Dispute Resolution Pilot Project*.

ODOJ has established systems for evaluating and monitoring cases that use "collaborative dispute resolution" in civil cases involving the state. Between 1998 and 2000, they collected information on more than 500 cases. They tracked the use of mediation, direct settlement negotiations, arbitration, and judicial settlement conferences.

One of the objectives of ODOJ's evaluation is to determine the relative efficiency and effectiveness of collaborative forms of dispute resolution. In evaluating

Continued on Page 12

ODOJ tracked the use of mediation, direct settlement negotiations, arbitration, and judicial settlement conferences

▶▶ DR NOTES . . .**UTAH PASSES GOVERNMENT ADR ACT**

Following similar moves in Texas and New Mexico, the Utah legislature has passed a Government Dispute Resolution Act (Section 63-46c-101) encouraging state agencies to develop and implement ADR procedures. The bill was sponsored by Ralph Becker, Utah House Minority Whip and a member of PCI's Board of Directors.

According to the act, agencies may use ADR to resolve disputes or issues involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemaking, enforcement action, permitting, certifications, licensing, policy development, and contract administration with the consent of all the parties. Any ADR procedures developed and used by an agency must be consistent with the requirements of the Administrative Procedures Act.

Agencies that use ADR procedures must develop agreements with stakeholders that provide for the appointment of ADR providers or neutrals, and that set

forth how costs and expenses will be apportioned among the parties. To download the Act, go to <<http://www.leg.state.ut.us/~2001/htmldoc/hbillhtm/HB0132.htm>>.

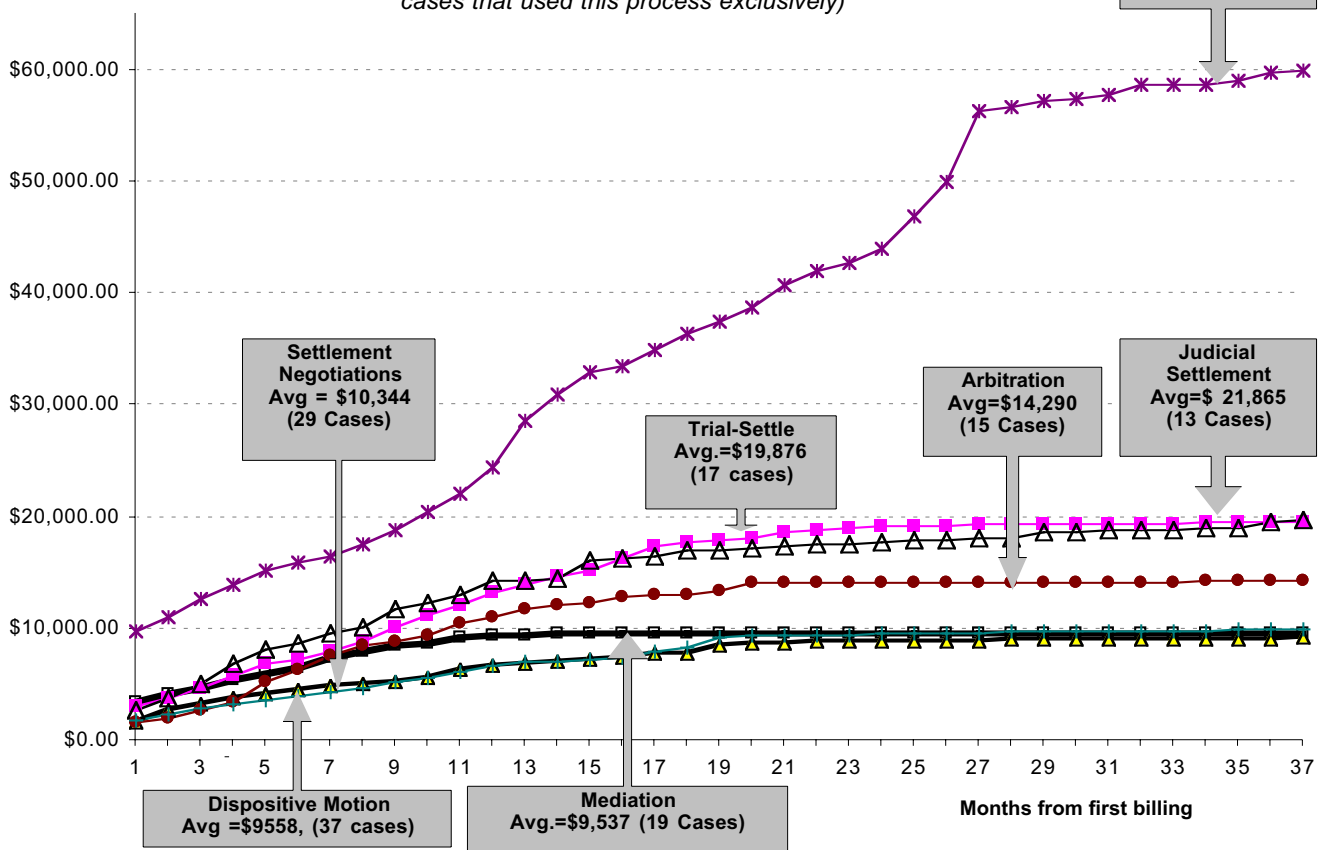
"BUILDING CONSENSUS ONE-BY-ONE-BY-ONE"

The March issue of *State Legislatures* features an in-depth article on the challenges and benefits of consensus building in the legislative arena. Written by Bruce Feustel of the National Council of State Legislators (NCSL), the article includes interviews with a number of current and former legislators, tips on skill-building and approaches to consensus, and strategies for overcoming barriers to the use of DR in the legislative arena.

"Building trust is difficult in today's legislature," notes Feustel. "Experienced lawmakers say there is less time for socializing, and the pressure to be back in the district or with family is great. Term limits are shortening the time legislators have to get to know each others." To deal with these challenges, the article says, lawmakers need to be focused and efficient in

Continued on Page 13

Chart #4: Average Monthly Legal/Process Costs by Type of Process
 (Box displays the average, total legal/process costs for cases that used this process exclusively)



Demonstrating Cost-Effectiveness Key to Support . . .

Continued from page 11

the costs and benefits of one dispute resolution process over another, they considered both *proximate costs* (process costs, legal expenses, and settlements paid out) and *peripheral and long-term costs* (cost to the environment or the impact on the state's ability to protect public safety).

The figure above, reprinted from Neimeyer's report, effectively displays a comparison of the proximate costs for the various DR processes.

The legal costs associated with a particular dispute resolution process may not be significant in all cases when compared to the peripheral and long-term costs of a case. In evaluating the costs and benefits of a process, the report suggests determining whether these costs are significant in a particular case. To make this determination, it recommends asking the following questions:

Would an adverse outcome in this case have significant, negative impacts to the state, beyond this

immediate case? Could an adverse outcome in this case, for example, result in a large group or class of persons making similar claims, or could an adverse outcome significantly damage:

- The credibility of essential government institutions?
- Important, long-term relationships?
- The state's ability to enforce public policy or protect public safety?

The long-term costs of these cases are alluded to in the report, but not quantified. The report also compares the relative costs and efficiencies of mediation to trial, and other process and case management strategies.

The *Department of Justice Collaborative Dispute Resolution Pilot Project* report is available in PDF format at <http://www.doj.state.or.us/ADR/bul_indx.htm>.

STATE DISPUTE RESOLUTION PROGRAMS UPDATE . . .

Continued from page 7

affected by proposed new electricity generation facilities, environmental and environmental justice groups, public agencies, leading business and real estate organizations in New York City, not-for-profit organizations, and academic experts. According to senior consultant Allen Zerkin of the Wagner School, who convened and facilitated the Dialogue, the effort succeeded in establishing lines of communication among people who have been adversaries in the political arena and, in some cases, in court. It is anticipated that this effort will inform the political process and public debate in the months to come, as New York City and State work through the issues of conventional versus alternative electricity supply and of demand management.



The **Pennsylvania Bar Association's** House of Delegates in December approved recommendations of the

Government Lawyers Committee to encourage the use of mediation by state, county, and local agencies. According to Herb Nurick, mediation coordinator with the Pennsylvania Public Utility Commission, a **Special Project Subcommittee** had studied the use of mediation in government and how other states and the federal government have implemented dispute resolution processes. Their research led to a draft model mediation policy and a recommended executive order. For more information on the recommendations, contact Nurick at nurick@puc.state.pa.us.

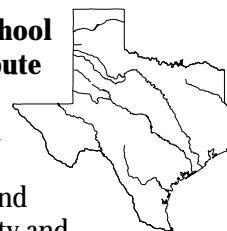
Also in Pennsylvania, the **Department of Environmental Protection** Environmental Justice Work Group in June will conclude a two-year stakeholders' group that has been meeting monthly to review the department's permitting, public involvement, and outreach programs, and to develop recommendations to more fully incorporate environmental justice principles into environmental protection programs. The work group's final report, to be presented to Secretary James M. Seif, will consist of formal recommendations for appropriate modifications to existing policies, procedures, and programs to ensure environmental equity and justice for the commonwealth's minority, low-income, and mining communities. The group is comprised of 18 stakeholders representing rural and minority communities, environmental groups, civil rights organizations, industry, DEP, and municipalities from

across the state, all of whom have devoted enormous time and effort to the project.

Another DEP working group—the Harrisburg's Susquehanna River Working Group—has approved a draft report of its efforts involving the city of Harrisburg, the State Fish and Boat Commission, and the DEP. The group was created to identify alternatives to a proposed hydroelectric project (which originally brought the parties to court) that could best address the City's and the parties' objectives. The working group included federal and state agency representatives, members of the public, and special interest groups who met monthly from July 1999 to November 2000.

The **University of Texas Law School Center for Public Policy Dispute**

Resolution provided facilitation services for the National Association of Insurance Commissioners for a policy dialogue between regulators and stakeholders on regulation of property and casualty lines of insurance. Stakeholders included representatives of national trade associations of insurance companies, insurance agents, and national consumer advocacy groups. The Center's Program Director, John Fleming, and former Deputy Director



Continued on Page 14

►► DR NOTES . . .

Continued from page 11

cultivating relationships with their colleagues. Consensus building offers an approach that provides broad participation and allows the best solutions to emerge from the work of the group.

For information on reprints of the article, contact Feustel at [<bruce.feustel@ncsl.org>](mailto:bruce.feustel@ncsl.org).

OHIO RESOURCES ONLINE

The Ohio Commission on Dispute Resolution and Conflict Management has an on-line listing by state of mediator qualification-related statutes and court rules. The statutes are available at [<www.state.oh.us/cdr/mediatorqualifications/mediatorqualifications.htm>](http://www.state.oh.us/cdr/mediatorqualifications/mediatorqualifications.htm). The court rules will be on-line by the end of March. The Commission has also posted its National Survey of School Conflict Management Legislation. To view the legislation, go to [<www.state.oh.us/cdr/legislationscm.htm>](http://www.state.oh.us/cdr/legislationscm.htm).

STATE DISPUTE RESOLUTION PROGRAMS UPDATE . . .

Continued from page 13

Suzanne Marshall, facilitated the meetings, which were a follow-up to Fleming's and Center Fellow Howard Seitzman's design and facilitation of a Feb. 2000 workshop on State Insurance Regulatory Reform for the NAIC. Using collaborative problem solving, the workshop developed a set of recommendations for reforming state insurance regulation.

Also at the Center, Executive Director Jan Summer has been appointed as the Texas Co-Chair of the ADR Committee for the Texas-Mexico Bar Association. Jan will serve with Gustavo Escamilla Flores, Mexico Co-Chair; from Monterrey, Mexico. Suzanne Marshall has since moved from the Center to a position as Administrative Law Judge in the State Office of Administrative Hearings.

ADMINISTRATIVE BRANCH PROGRAMS



The Ohio Commission on Dispute Resolution and Conflict

Management, in partnership with the Ohio Department of Education, will award this month up to 100 grants to

Ohio schools to implement conflict management programs during the 2001-02 school year. Competition is stiff, with more than 250 elementary, middle, and high schools applying for funding. Schools selected as grantees receive three days of conflict management training, 16 hours of on-site technical assistance, resource materials, and \$4,000 to support program implementation.

The Commission also recently completed an interim evaluation of its Truancy Prevention through Mediation program aimed at improving elementary and middle school attendance. The program uses mediation to address the issues that cause repeated unexcused absences. Program results demonstrate that participating schools significantly increase attendance when mediation is used to address truancy—schools report an average of 15.3 absences before mediation, and an average of 7.3 absences post mediation.

COURT PROGRAMS

In December, the **Alabama Governor's Task Force on State Agency ADR** sponsored its first Fellows Training for Government Executives. Twenty five participants graduated from the Fellows Program. Evaluations and feedback from the program were

excellent. The Task Force received \$3,000 in funding from the governor to help put on the program. In addition, the risk management agency paid \$250 for each lawyer participant, because they received 12 hours of continuing legal education credit.



Task Force Director Judith Keegan said the program required extensive planning. "In the beginning, we surveyed Alabama agencies and interviewed people with more experience in this area, including PCI and Jan Summer at the University of Texas School of Law," she said. The final concept for the program was based on Texas' Fellows Program for government executives.

The kick-off for the Program began in May 2000, when principals from state agencies, the governor, the attorney general, and several legislators and judges were invited to a lunch at which the idea of the Fellows Program was presented. Each of these entities was asked to nominate a Fellow and an alternate from their agencies for the two-day training session.

The second Fellows Program class is scheduled for June 12 and 13. For more information on the program, contact Keegan at jkeegan@alabar.org.



A Colorado Judicial Department Office of Dispute Resolution

Advisory Committee has been appointed by the Chief Justice to advise the ODR Director concerning policies and procedures, strategies for improving service delivery, and fees for ODR services. The 17-member committee held its first meeting in mid-December. The committee will recommend a long-term plan to maximize appropriate expansion and integration of multi-door courthouse and alternative dispute resolution approaches, and will make recommendations concerning the creation, expansion, administration, and evaluation of ADR programs throughout the state. Committee members were selected based on geographic distribution throughout the state. They include: a Supreme Court justice, judges, a magistrate, a district administrator, ODR representatives, and representatives of the Governor's office, the legislature, the Department of Law, the Colorado Bar Association, the Colorado Judicial Institute, the Colorado Council of Mediators and Mediation Organizations, community mediation, and restorative justice.

Also in Colorado, a bill was introduced in the 2001

Continued on Page 15

STATE DISPUTE RESOLUTION PROGRAMS UPDATE . . .

Continued from page 14

legislature that would provide grants for community mediation services, through a combination of state and local funds. HB01-1191 has passed out of the House Civil Judiciary Committee, and is on its way to the House Appropriations Committee. Because there are no funds set aside for new programs this year, the bill as currently drafted would not take effect until 2002, in the hope that the funds would become available next year.



The **Georgia Office of Dispute Resolution** has three new publications on court-connected ADR in Georgia.

- *Participant Satisfaction Survey of Georgia's Court-Connected ADR*

Programs—a report of a newly completed survey funded by a grant from the State Justice Institute. Litigants, attorneys, and mediators in more than 300 Superior Court civil cases completed surveys immediately after mediations that were held from May to December 1999.

- A four-page *quick summary* of findings based on the full study report above.
- *Alternative Dispute Resolution in the Georgia Courts, 2000-2001*—a quantitative summary of ADR activity in the state. The \$15 annual report contains statewide and local statistics on the number, type, and outcome of cases that were processed by court-connected ADR programs last year; information about the neutrals registered with the office; and profiles of individual court programs in the state.

To order contact the Office of DR at <gaodr@mindspring.com>. Or download the free publications at <www.state.ga.us/courts/adr/adrhome.htm>.

The **Supreme Court of Ohio** has earned a first-place award from the non-profit CPR Institute for Dispute Resolution for a publication titled *Planning Mediation Programs: A Deskbook for Common Pleas Judges*. The award was given for Outstanding Original Work by Students in CPR's 2000 Awards for Excellence in ADR. The Deskbook was written by third-year law students at Ohio State University's College of Law, with assistance from The Supreme Court Office of DR Programs staff and committee members. The Office of Criminal Justice Services, Byrne Memorial Grant, provided funding for the project.



According to Eileen Pruett, dispute resolution programs coordinator, "This up-to-date publication provides a clear, readable resource for judges and court staff developing, implementing, and maintaining court-connected mediation programs." She said the book is easy to read and access and provides the 'missing link' for judges at all levels to learn about and implement mediation as a court service.

The complete text of the publication is available online at the Supreme Court of Ohio Internet site <http://www.sconet.state.oh.us/>. Click on Dispute Resolution Office, and then select Planning Mediation Programs.

The **Judicial Council of Virginia**

has created a Mediator Information System on the Supreme Court's homepage <www.courts.state.va.us>. Certified mediators are asked to enter into the system information related to court-referred mediations. The system tracks the number of court referrals by county/city and by level of court per month. The average length of time from filing of a case until referral to mediation is captured, as well as the amount of time from mediation referral until conclusion of a mediation. Information such as whether the case was appropriate for mediation or whether attorneys were present is also captured. This new system will offer greater information regarding the level and type of court-referred mediation activity taking place in Virginia.



UNIVERSITY PROGRAMS

The **Indiana University School of Law — Indianapolis Program on Law and State Government** sponsored its fourth Public

Policy Mediation in State Government course on January 8-12, 2001. The course allows law students to learn civil mediation skills in the same classroom with lawyers, government policy makers, and judges. The training brings the students back to school one week before the start of the academic semester for five days of intensive training and learning about civil mediation, including professional skills and knowledge, ethics, communications, interpersonal dynamics, and legal aspects of mediation in government. Successful completion of the January course qualified 23 IU-Indianapolis law students to become registered civil mediators under Ind. A.D.R. Rule 2.5 upon becoming lawyers in good standing in Indiana.



DR Upcoming Events

APRIL 19 - 21 — Association for Conflict Resolution (ACR) Environmental and Public Policy Sector mid-year meeting. Bloomingdale, IL. The Indian Lakes Resort. For information call 202-667-9700 or e-mail spidr@spidr.org.

APRIL 26 - 28 — The American Bar Association Section of Dispute Resolution annual meeting “Collaboration in the Capital: The Power of ADR.” Crystal Gateway Marriot in Arlington, VA. For information call 202-662-1680 or send e-mail to dispute@abanet.org.

OCTOBER 10 — PCI State Programs Meeting. In conjunction with the International Conference of the Association for Conflict Resolution (ACR, formerly SPIDR). Toronto, Ontario. Shearton Centre. Agenda to be announced in June.

OCTOBER 11 - 13 — International Conference of the Association for Conflict Resolution (ACR). Toronto, Ontario. “Coming Together: Community, Connection, and Conflict.” Sheraton Centre. For information call 202-667-9700 or e-mail spidr@spidr.org.

*Text versions of PCI Newsletters are available at <www.policyconsensus.org>.
To submit State Program Updates or feature articles or about state DR program initiatives,
contact PCI at 505-984-8211 or send e-mail to <kate4pci@aol.com>.*