Getting the Best of Both Worlds:
Exemplary Partnerships Between Court and Community ADR Programs

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I. Introduction

Ever since the Pound Conference, courts have been actively seeking ways to improve upon their services to the public. In his address there, Professor Frank Sander endorsed mediation as a way to lighten dockets and to make courts more efficient.1 To many, court improvement also involves increasing the public’s access to justice and its satisfaction with outcomes.2 As an alternative that redirects cases from courts and often gives parties a say in their outcomes, appropriate dispute resolution (“ADR”) often provides a means for satisfying all of these goals.

The spectrum of court ADR processes currently available runs quite a gamut.3 Processes include facilitative mediation, early neutral evaluation (non-binding assessment of the case), binding arbitration, judge-hosted settlement conference4, and court minitrial (flexible, non-binding settlement process generally used out of court).5

Many courts collaborate with community mediation centers (“CMCs”) as part of their ADR program design. CMCs often provide training for court ADR programs and


2 See, e.g., Craig A. McEwan & Laura Williams, Legal Policy and Access to Justice Through Courts and Mediation, 13 OHIO ST. J. ON DISP. RESOL. 865, 866 (1998) (discussing the ability of court mediation to “empower[] individuals to shape decisions about their own lives and conflicts”).


4 This is the most common form of ADR used in courts. Id.

5 Id.
receive court referrals from the court. While some of these collaborations have created benefits to the court, the CMC, and the public at large, others have to an extent fallen by the wayside and have not been as successful.

Part II of this Paper will provide a brief history of court-community ADR collaborations, discuss each entity’s independent goals, and provide thoughts on why the two entities would want to collaborate.

It would be naïve to argue that there is one model for collaboration that should be implanted in all jurisdictions. (Just as neutrals are often charged with the task of seeking tailored solutions to individual problems.) To that end, Part III of this Paper will attempt to define “exemplary collaboration” and will contend that while not all exemplary partnerships are the same, their characteristics share a common denominator. Moreover, it will argue that the characteristics found in “more exemplary” partnerships are nonexistent or weakened in less successful partnerships.

It is important to note that this Paper will only address state court ADR and its relationship with CMCs. Others have discussed qualities of and concerns with institutionalization of ADR in general and federal court ADR programs. Nonetheless, it may prove true that concepts addressed here are transferable to all courts’ (both state and federal) ADR programs and not solely to their collaborations with CMCs.


7 See, e.g., James Alfini et al., What Happens When Mediation is Institutionalized?: To the Parties, Practitioners, and Host Institutions, 9 OHIO ST. J. ON DISP. RESOL. 307 (1994), Wayne D. Brazil, Court ADR 25 Years After Pound: Have We Found a Better Way?, 18 OHIO ST. J. ON DISP. RESOL. 93 (2002).

I must also mention that the conclusions and suggestions outlined below are derived largely from testimonials of individuals involved in the inception and administration of these partnerships. Analysis of raw scientific data may be useful to amend these findings in the future; however, the information will hopefully act as a starting point for discussion. By recounting and analyzing the experiences and reflections, I hope to shed light on what state courts and CMCs should do (and try to avoid doing) when establishing partnerships.

II. History, Tensions and Purposes of Collaborations

A. History of CMCs in the United States

Community mediation in this country developed along two paths—“generally parallel, occasionally merged, often philosophically divergent.”9 One evolved from the social and political activism of the 1960s, while the other grew out of attempts to reform the perceived inefficiency of the justice system. The first formalized movements toward community mediation were funded through the federal Law Enforcement Assistance Administration (LEAA)—programs included the Philadelphia Municipal Court Arbitration Tribunal and the Columbus Night Prosecutor’s Program.10

The next phase of the evolution included the establishment of neighborhood justice centers (NJC’s) and other independent mediation centers. NJC’s, another federally funded initiative, sought to “involve citizens in the administration of justice through

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methods to promote reconciliation.”11 Beginning in the 1970s and into the 1980s, communities began to develop their own, locally funded, dispute resolution resources that were often linked to the courts.12

The number of CMCs has been on a steady increase since the 1980s. At that point, there were only a little over a 100 programs operating.13 Today, however, the National Association for Community Mediation (NAFCM) estimates that there are over 550 CMCs in existence.14

B. The Independent Goals of CMCs and Courts

Courts and CMCs are fairly different beasts; thus, it is not surprising that they have different goals and interests. A predominant concern of courts today is the increase in court filings.15 For instance, according to the National Center for State Courts’ most recent data, national civil filing trends since 1987 have increased in limited and general jurisdiction state courts by 29 and 17 percent respectively.16 Additional aims, including access to justice, user satisfaction, and citizen involvement in dispute resolution, have been cited by scholars as well.17 However, these goals are all too often mentioned as a secondary matter.18

11 Id.

12 Id. at 352-353.

13 Id. at 353.


15 Van Epps, supra note 6. Interestingly, many have argued that ADR processes, such as mediation, have not been across-the-board successes as cures for increased court filings. See, e.g., id.; Jennifer Shack, Efficiency: Mediation in Courts Can Bring Gains, But Under What Conditions?, 9(2) DISP. RESOL. MAG. 11 (2003).
These secondary goals of the courts are more salient in the community mediation sphere. The Preamble of the National Association for Community Mediation supplies the objectives of community mediation:

Community mediation offers constructive processes for resolving differences and conflicts between individuals, groups, and organizations. It is an alternative to avoidance, destructive confrontation, prolonged litigation or violence. It gives people in conflict an opportunity to take responsibility for the resolution of their dispute and control of the outcome. Community mediation is designed to preserve individual interests while strengthening relationships and building connections between people and groups, and to create processes that make communities work for all of us.19

As one can see, community mediation, as opposed to traditional litigation processes, focuses more on individuals’ experience with conflict and less on settlement.

The differences between the philosophies of litigation and community ADR have given rise to some conflict when the two meet. As Della Noce, Folger and Antes have remarked:

Since mediation and the judicial system are built on incompatible assumptions about human nature, human capacity, and the goals of conflict interaction, an implication of this insight is that any mediation program must consider whether and how to preserve the values of mediation within the institution, because programs do have choices in this regard.20

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17 See, e.g., Van Epps, supra note 6.

18 Id. at 632.


It has been argued that annexation by the judicial system of ADR may lead CMCs to become co-opted, or in other words to lose their independence to the mandates of the court.\textsuperscript{21} There might be a barrier to the access to justice that CMCs believe in when parties in dispute are forced, directly or indirectly, to settle; while “it may advance efficiency goals, [it does] very little to promote party participation and empowerment.”\textsuperscript{22}

Another conflict arises with regard to state legislatures, the bodies that often sponsor and largely fund court-community collaborative ADR programs. As the Honorable Wayne Brazil has pointed out, “lawmakers may be inclined to assess court ADR’s value using only efficiency criteria”\textsuperscript{23} which are ambiguous, partly because participant satisfaction is often not taken into account or difficult to gauge.\textsuperscript{24} This focus could result in “legislators imposing pressures (indirectly) on court neutrals to cut ethical corners and to pressure parties to settle.”\textsuperscript{25} Unfortunately, the need for funding does not meld with the goals of CMCs, such as disputants’ opportunity for self-determination.

Are there court-community ADR partnerships that have allowed the respective entities to keep all of their goals intact? Is some sacrifice expected or warranted? One

\textsuperscript{21} See, e.g., Hedeen & Coy, supra note 10. Some have pointed out that co-optation often occurs through courtroom-by-courtroom battles and not necessarily through general systemic support. See, e.g., Telephone Interview with Susan Yates, Executive Director of the Center for Analysis of Alternative Dispute Resolution Systems (CAADRS) (June 17, 2003).

\textsuperscript{22} McEwan & Williams, supra note 2, at 871, 874; see also James Alfini & Catherine G. McCabe, Mediating in the Shadow of the Courts: A Survey of the Emerging Case Law, 54 Ark. L. Rev. 171, 173-174 (2001) (“Court-sponsored mandatory mediation programs generally are promoted and established … for reasons of judicial economy, with little attention given to mediation’s core values … such as party self-determination.”).

\textsuperscript{23} Wayne D. Brazil, An Assessment: Court-Related ADR 25 Years After Pound, 9(2) DISP. RESOL. MAG. 4, 6 (2003).

\textsuperscript{24} See Shack, supra note 15 (recommending that understanding court-related mediation effectiveness will be more sophisticated when researchers realize that not all programs are the same or have the same goals).

\textsuperscript{25} Wayne D. Brazil, supra note 23.
should keep these questions in mind throughout the remainder of this Paper, which will argue in Part III that exemplary collaborations are those that do in fact allow each entity to maintain a significant level of autonomy.

C. Why CMCs and Courts Would Develop Partnerships

If there were such a chance for discord, why would courts and CMCs want to work together? While the results are not the same for all jurisdictions, both entities have reaped great benefits, despite the various concerns. This section will discuss the benefits and costs of CMC and court ADR program partnerships.

First, in addition to having a site for training neutrals, a court is able to utilize the CMC in order to realize its goals. A 1983 Justice Department report, for instance, named five goals for the use of mediation in small claims disputes: (1) increase the efficiency of case processing, (2) reduce court system costs, (3) allow judges to provide added attention to cases on the regular civil docket, (4) improve the quality of justice, and (5) improve collection of judgments.26 The ability to refer a large number of cases and to allow parties to have more say in the outcomes of their cases, through the use of CMCs, promotes the achievement of these goals.

On the flip side, CMCs often team with the local court system to gain referrals, funding, and legitimacy. First, the court system provides a large number of the cases referred to the CMCs. About half of the 185 CMCs responding to a 1998 NAFCM survey reported that at least half of their referrals come from the courts.27 CMCs do not


27 Hedeen & Coy, supra note 10, at 354.
have as many self-referrals as they might desire.  There are many reasons for the low number of self-referrals; ADR is not yet fully a household word and the ability to advertise is limited by confidentiality requirements. Moreover, Hedeen noted that it is against the individualist nature of society to seek help.

Second, a large number of the programs surveyed received all, if not most, of their funding from either the court directly or from the state legislature via the judicial system. According to Linda Baron, Executive Director of NAFCM, funding and sustainability are among the biggest of issues for CMCs. A steady source of funding in the form of a flat grant each year or funding tied to caseload size) would be highly attractive to CMCs trying to expand their services.

Third, because the public habitually views the court system as the default site for resolving conflicts, CMCs gain legitimacy to an extent by being tied to the courts. CMCs may publicize their services and do other forms of outreach; however, most individuals do not think of their local CMC as the default site for resolving more serious disputes. While it is unfortunate, perhaps, that reliance on the courts for “credibility” is a necessity for some CMCs, it remains a public relations benefit for a vast number of others.

As will be discussed more specifically below, CMCs have realized some additional and sometimes unexpected benefits. For example, CMCs have been able to use court support in order to establish school peer mediation programs, improve the

28 Telephone Interview with Tim Hedeen, Chair, Community Based and Peer Mediation Programs, American Bar Association Section of Dispute Resolution (June 10, 2003).

29 Hedeen relayed that his dispute resolution center was once called the “Destitute Resolution Center.” Id.

30 Id.

31 Interview with Linda Baron, Executive Director of the National Association for Community Mediation (NAFCM), in Washington, D.C. (June 9, 2003).
judicial process in the state, and make efforts to change in the community’s view of conflict.

**III. Evaluation of Collaborations**

This section provides a discussion of selected court-community ADR collaborations. Through the analysis, I hope to identify the characteristics that exist in more exemplary partnerships as well as the characteristics of successful ones.32 Further, this section will identify collaborations whose success has allowed for additional initiatives outside of the courtroom, such as the establishment of peer mediation programs.

While I investigated four of exemplary collaborations in detail, the implications of the following conclusions should be broadly applicable. Moreover, this project includes the creation of a court-community catalog, which will be maintained by the American Bar Association Section of Dispute Resolution (“Section of DR”).33

*A. Attempts to Define “Exemplary”*

While surveying individuals for this Paper, I asked each person this question: What do you think are the characteristics of an exemplary partnership? While each individual chose different words, their responses seemed to have a common thread: A partnership can be exemplary when both entities are able to maintain their individual focus while reaping the benefits of collaboration.

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32 It is important to mention that every program tries to implement or improve upon these characteristics at different rates and with different levels of necessity based on factors such as geography, demographics, funding, etc.

33 See Appendix B for a representation of the catalog.
Susan Yates, the Executive Director of the Center for Analysis of Alternative Dispute Resolution Systems (CAADRS) and former Executive Director of the Center for Conflict Resolution (CCR), both in Chicago, stated, “There is no blueprint for an exemplary collaboration, but there are factors.”  She named three qualities necessary for an exemplary collaboration: (1) quality, (2) respect, and (3) evaluation.

First, if the partnership produces high-quality services, she avers, the court will be less inclined to “mess with it.” Second, she feels that the court and the CMC need to have respect for one another. CMCs have to avoid a “holier than thou” outlook and have to respect that the court does have efficiency concerns and the court has to respect the values of self-determination and confidentiality that the CMCs promulgate. Third, Yates insists that the collaboration be evaluated under characteristics that the court and the CMCs value either separately or mutually.

Tim Hedeen, Chair of the Section of DR Community-Based and Peer Mediation Programs Committee, believes that partnerships are exemplary when the CMC not only maintains its identity, but its “integrity” as well. Hedeen feels that in order for the CMC to maintain its integrity, it must be physically located outside of the courthouse, have voluntary participation, have an advisory board made up of members of the community, provide service provided regardless of ability to pay, have a diverse funding

34 Telephone Interview with Susan Yates, supra note 21.

35 Id.

36 In other words, CMCs cannot feel that their goals and concerns are paramount or that their abilities are superior to those of the court.

37 Id. In Maryland, CMCs work collaboratively with the court to develop uniform evaluation systems for the court’s ADR programs and for CMCs and to draft detailed status reports. See MACRO web site, available at http://www.courts.state.md.us/macro/index.html (visited July 30, 2003).

38 Telephone Interview with Tim Hedeen, supra note 28.
base, have diversity in referral sources, and “be able to refer out so [it] can refer back in.” Hedeen summed up his response by claiming that there must be a clear delineation of oversight and responsibility and that the “problem” with the neighborhood justice centers is that they got wholly swallowed up by the court system.

Mark Collins, Assistant Coordinator of the Office of Alternative Dispute Resolution Programs for the New York State Unified Court System, stated that strong collaboration is critical between the funding organization and local providers as to the procedure, policy, and promotion of the process. It is only through this communication, he feels, that everyone is “on board” and able to “sell the positive and correct the negative.”

Sheila Purcell, ADR Director for the Multi-Option ADR Project in the San Mateo County Superior Court in California, said that the governance structure is the most important element in forming an exemplary partnership between court and community ADR programs. If the CMC is an equal partner, she argues, the governing body is more likely to find creative ways to fund and conduct processes.

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39 Id. A CMC that “refers out” so as to be able to “refer back in” affirms its capacity to accept cases by rejecting the inappropriate ones.

40 Id. Hedeen felt that the neighborhood justice centers’ inability to clearly delineate oversight and responsibility led to their co-option by the courts.

41 Telephone Interview with Mark Collins, Assistant Coordinator of the Office of ADR Programs, New York State Unified Court System (July 8, 2003).

42 Id.

43 Telephone Interview with Sheila Purcell, ADR Director of the Super. Ct. of Cal., County of San Mateo (June 17, 2003).

44 Id.
There is a common message throughout the respondents’ replies to the question. Each in some way voices the importance of collaboration and mutual respect of needs for an exemplary partnership.

I hypothesize that partnerships are more successful when the CMC has not lost its identity and is able to be a full contributor. This is not to say that the court’s goals should be ignored. I argue that the best partnerships are the ones where both entities’ goals, needs, and interests are accounted for and entered into the calculation when decisions are made.

Perhaps a metaphor would help. The court and the CMC in a faltering partnership can be seen as two parties participating in a mediation. If these two “disputants” are aiming to come to a mutually satisfactory agreement, it is crucial that they acknowledge and respect the needs and interests of the other party. Otherwise, the mediation will be at a standstill and any resolution coming from the discussion will probably not be wholly supported. Likewise, courts teaming up with CMCs will produce the best work when all issues and needs are on the table.

Taking the metaphor a step further, problems may arise in creating and managing these partnerships because the “mediation” in question is more like a landlord-tenant dispute. That is, there is an inherent power imbalance that must be dealt with in order to resolve the conflict. Successful landlord-tenant mediations often yield satisfactory resolutions because a balance of power has been created. In the mediation, each party has equal opportunity to speak, even if one is the more powerful figure outside of the mediation room. Similarly, court-community ADR partnerships provide avenues through
which the CMC (most often the “less powerful” entity) can voice its concerns and have equal input into how the program is run.

B. Analysis of “Exemplary” Collaborations

How have exemplary collaborations secured their success? How have they allowed both the court and the CMCs to maintain identity and focus? This section will examine different aspects of exemplary court-community ADR collaborations in California, Illinois, Maryland and New York. It will argue that these partnerships have kept court co-option of the CMCs at bay and allowed CMCs to keep their focus intact. The next section will assert that in “less successful” partnerships the court’s concerns have superseded those of the CMCs.

Hedeen and Coy outlined areas of special concern with regard to court-community ADR partnerships. They wrote, and I contend here, that partnerships are more beneficial to the people they serve when they avoid or overcome these pitfalls. The areas of concern Hedeen and Coy cited are:

(1) Dependence for funding on the favor and support of the justice system;
(2) Loss of case autonomy to turn back inappropriate court referrals;
(3) Coerced participation in mediation;
(4) Potential to be found at fault faced by only one party;
(5) Misunderstanding of the legal status or basis of mediation processes and outcomes; and
(6) Loss of focus on community in community mediation.45

It is clear that these concerns mirror the theme of the individuals’ responses above—each is the result of the CMC losing its identity in the partnership. Analysis of partnerships’ activities vis-à-vis these potential hazards will show that the exemplary partnerships have either avoided or overcome Hedeen and Coy’s concerns.

45 Hedeen & Coy, supra note 10, at 355-356.
**Dependence for funding.**

Many, if not most, of the people I spoke with cited funding as the largest barrier to a partnership’s progress. While some described lack of funds as the dilemma, many reported that being fully dependant on one funding source was the root of the problem. In other words, CMCs often felt required to heed the court’s commands because the CMCs were in essence reluctant to alienate their primary funding source.

The Maryland court-community ADR collaboration is in many ways exemplary, and its funding structure contributes to this status. Although the Mediation and Conflict Resolution Office (MACRO) is almost fully funded by the state legislature’s allocation to the judiciary, CMCs do not feel controlled by the funding source. Rachel Wohl, Executive Director of MACRO, cited the 9-Point Community Mediation Model for CMC funding as the reason.46 The Model distributes state funding to CMCs according to success in performing the following tasks:

1. Train community members who reflect the community’s diversity with regard to age, race, gender, ethnicity, income and education to serve as volunteer mediators;
2. Provide mediation services at no cost or on a sliding scale;
3. Hold mediations in neighborhoods where disputes occur;
4. Schedule mediations at a time and place convenient to the participants;
5. Encourage early use of mediation to prevent violence or to reduce the need for court intervention, as well as provide mediation at any stage in a dispute;
6. Mediate community-based disputes that come from referral sources including self-referrals, police, courts, community organizations, civic groups, religious institutions, government agencies and others;
7. Educate community members about conflict resolution and mediation

46 Telephone Interview with Rachel Wohl, Executive Director of the Mediation and Conflict Resolution Office (MACRO) (June 11, 2003); Telephone Interview with Jonathan Rosenberg, MACRO (June 11, 2003).
(8) Maintain high quality mediators by providing intensive, skills-based training, apprenticeships, continuing education and ongoing evaluation of volunteer mediators; 
(9) Work with the community in governing community mediation programs in a manner that is based on collaborative problem solving among staff, volunteers and community members. 47

What makes this process exemplary is that from the outset it ties funding from the outset to values held by CMCs 48 and not solely to the court system’s goals. Thus, even though the court system is the solitary funding source, the structure of the collaboration does not allow it to supersede.

Sheila Purcell of San Mateo County’s Multi-Option ADR Project warns that a related concern is competition for funds. 49 In California, the Dispute Resolution Programs Act authorized courts to charge a filing fee of up to $8 that would be earmarked for mediation. Purcell reported that while San Mateo allocates this money to the CMCs, other counties in the state allow competition for the funds to direct the money to other programs other than the CMCs. 50 This leads not only to ill will between programs but also to a lack of needed CMC funding. She explained that if the San Mateo court system proper similarly kept the money intended for CMCs, the partnership would be “poisoned.” 51

New York State’s exemplary court-community partnership’s funding process is unique in that it is designed to encourage diversity in financial support. In addition to


48 Compare with the NAFCM Pledge above.

49 Telephone Interview with Sheila Purcell, supra note 43.

50 Id.

51 Id.
relatively large grants from the state judiciary, the “community dispute resolution center grants require an equal non-court system match for all dollars that exceed a [sic] $20,000 per county served.”52 Other funding sources include municipalities, service fees, donations and grants, Youth Bureaus, school districts and the United Way. This variety “result[s] in a healthy independence or healthy interdependence of various organizations, including the courts.”53 Hence, the New York CMCs are able to maintain some sense of autonomy because in addition to having enough confidence from the state legislature, they are equal partners in the funding process.

Loss of autonomy/right to decline cases.

Hedeen and Coy warn that if CMCs do not have the right to decline cases, the court will eventually be able, through uncontested mandatory mediation, to co-opt the CMCs.54 It is not surprising, then, that virtually every respondent who believed their collaborations were successful reported that CMCs have the ability to deem cases referred by the courts inappropriate for mediation, and each agreed that this was an important element in their success.55

Maryland’s MACRO partnership with the Maryland Association of Community Mediation Centers (MACMC) has recently initiated a pilot program in Anne Arundel County that should be highlighted as exemplary. In this plan, the Anne Arundel Conflict

52 E-mail from Mark Collins, Assistant Coordinator of the Office of ADR Programs, New York State Unified Court System, to Jaimie Kent (July 8, 2003, 15:52:28 EDT) (on file with author).

53 Id.

54 Hedeen & Coy, supra note 10, at 358-359.

55 Jonathan Rosenberg of MACRO commented that the courts in Maryland would “know better” than to force cases on the CMCs. Otherwise, he said, there would be bad “PR” for the whole system. Telephone Interview with Jonathan Rosenberg, supra note 46.
Resolution Center, in addition to having the power to decline cases, will be able to tap into the court’s online directory to screen cases directly and decide which may be appropriate for mediation. After selecting cases, the Anne Arundel Conflict Resolution Center will be authorized to contact the parties on court letterhead. In addition, this arrangement saves court resources because the CMC is taking over responsibilities, contacting parties and encouraging them to try ADR, previously carried out by the court.

Coerced participation; Potential to be found at fault.

When Hedeen and Coy voiced these two concerns, they essentially were arguing that co-opted CMCs deliver un-mediation-like services. In other words, the court would make the inherently voluntary process of mediation mandatory by threatening charges if a party fails to appear at criminal mediation. This “mandatory” mediation would retain the adversarial nature of litigation.

More successful court-community partnerships avoid these prospective pitfalls. The collaborations discussed in this Paper, such as the San Mateo program, encourage the parties disputing in court to use the ADR option, but never forces an attorney or party to participate. Furthermore, by conducting mediations and other ADR processes, at non-courthouse locations convenient to the parties like schools, libraries and the CMCs themselves, collaborations such as in Maryland and San Mateo project neutrality and prevent non-complainant parties from feeling as though they are at fault.

56 Id.
57 See Hedeen & Coy, supra note 10, at 359-361.
58 See Telephone Interview with Sheila Purcell, supra note 43.
59 Id.; Telephone Interview with Rachel Wohl, supra note 46.
CCR in Chicago consciously avoids the approach of the state’s juvenile system, which requires juveniles to assume guilt in order to get into the restorative justice program.\footnote{Telephone Interview with Susan Yates, \textit{supra} note 21.}

\textit{Misunderstanding of legal status.}

The crux of this concern is that because ADR is relatively new, public misconceptions of it as a process may lead to misconceptions of its legal implications.\footnote{Hedeen \& Coy, \textit{supra} note 10, at 361-362.}

Hedeen and Coy are not alone in emphasizing the importance of education. Susan Yates remarked, for instance, that in order “for court-related mediation to succeed, you need the bar to buy in.”\footnote{Telephone Interview with Susan Yates, \textit{supra} note 21.} Likewise, the Honorable Wayne Brazil has argued that good court ADR programs work to “show[] lawyers that ADR is in their clients’ best interest.”\footnote{Brazil, \textit{supra} note 23, at 7.}

More exemplary court-community ADR partnerships have either sidestepped or overcome this potential dilemma by educating users of their services (i.e. parties, attorneys, judges) about what mediation, arbitration, and other ADR processes entail. In New York, for example, the CMCs are constantly working with attorneys to make the process “user-friendly” for them.\footnote{Telephone Interview with Mark Collins, \textit{supra} note 41.} In the same vein, the San Mateo partnership held over twenty-two seminars and orientations during its first year of operation, continues to put on seminars approximately once per month, and has published informational
brochures that can be obtained in the courthouse and elsewhere. CCR in Chicago is constantly confronting the issue of educating judges, because the bench in that jurisdiction are elected and change relatively often.

**Loss of community focus.**

With this concern, Hedeen and Coy warn against losing a focus on community building and empowerment. Consequently, they advocate that partnerships continue CMCs’ practices, such as using volunteers from diverse backgrounds. Others have expressed the related sentiment that collaborations can deal with barriers to access issues with the “adaptation of mediation approaches to reflect the needs of diverse groups in local communities.”

The exemplary partnerships discussed in this Paper make diversity in the neutral pool a prominent issue. In New York, for instance, only 12-14% of the mediators are attorneys, there is no specific educational background required, and the male-female ratio is close to 50-50. The Community Dispute Resolution Center (which collaborates with the state court system) maintains a database of client and mediator demographics in order to ensure adequate diversity.

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65 Telephone Interview with Sheila Purcell, *supra* note 43.


69 McEwan & Williams, *supra* note 2, at 877.

70 Telephone Interview with Mark Collins, *supra* note 41.
Sheila Purcell described San Mateo County, as very diverse both socioeconomically and racially and stated that its diversity is an important factor for the operation of her program.72 The 200 volunteers that contribute to the partnership’s neutral pool are more diverse than the court’s private panel, which consists of more attorneys and is predominantly white.73 The San Mateo court-community ADR collaboration has also begun conducting bilingual mediation trainings, in order to better serve the needs of the community utilizing its services.74

There are additional factors that come into play when analyzing the court-community ADR collaborations. While they are not “concerns” in the Hedeen & Coy sense, their presence has affected the development and progress of the exemplary partnerships.

First, many of the individuals consulted emphasized the importance of having a diverse advisory body for the collaboration. In other words, they discouraged advisory boards comprised completely of court personnel. Instead, they reported that it was critical to have the CMC and other interested members of the community at the table. When members of the community are excluded, there is more “room” for co-optation of the CMC by the court.75

71 Id.
72 Telephone Interview with Sheila Purcell, supra note 43.
73 Id.
74 Id.
75 See Alfini, et al., supra note 7, at 313 (Dean Alfini expressed at the symposium that scenarios like the exclusion of non-lawyers from the Florida Supreme Court ADR rules committee was a problem and that the input of “people in the trenches” was essential).
Taking San Mateo as an example, the governance structure is a chief reason why the partnership is exemplary. There is an oversight committee involving all stakeholders, including the local bar, the executive director of the non-profit CMC, members of the bench, and community members. This oversight committee gives the court policy recommendations, which the court almost always follow, for all ADR programs and develops a five-year strategic plan.\textsuperscript{76} San Mateo County also has advisory committees for each CMC that involves non-profit volunteers and county agency representatives and allows for direct community input.\textsuperscript{77} Sheila Purcell emphasized the importance of the participation of all of these individuals and cited the diverse contribution base as a source for program creativity.\textsuperscript{78}

Second, many individuals argue that court-community ADR partnerships should be located outside of the courthouse.\textsuperscript{79} Tim Hedeen suggested that this physical separation is necessary in order to dispel the public impression that ADR is just another adversarial process the court controls and to allow the CMC to maintain its independence.\textsuperscript{80} Susan Yates commented that the physical separation would be helpful in Chicago’s case as a way to foster development of the “mediation culture.”\textsuperscript{81}

Third, a collaboration’s success can be largely affected by the level of state support. Jonathan Rosenberg of Maryland’s MACRO remarked that without the work of

\textsuperscript{76} Telephone Interview with Sheila Purcell, \textit{supra} note 43.

\textsuperscript{77} \textit{Id.}

\textsuperscript{78} \textit{Id.}

\textsuperscript{79} Tim Hedeen expressed this sentiment to me, as did Susan Yates of CAADRS.

\textsuperscript{80} Telephone Interview with Tim Hedeen, \textit{supra} note 28.

\textsuperscript{81} Telephone Interview with Susan Yates, \textit{supra} note 21.
Honorable Robert Bell, Chief Judge, the ADR programs would not have so much confidence from the state legislature.\textsuperscript{82} It is clear that this support, via funding and “green lights,” has allowed MACRO and MACMC to be such innovative and admired programs.

Contrarily, Susan Yates reported that the court-community ADR programs in Chicago have not fully reached their potential in part because there has been much resistance from the top. Even though CCR is nearly twenty-five years old, Illinois has never set up a state-wide ADR program and instead has left the task to each circuit. In fact, CAADRS helps circuit courts develop mediation programs in the absence of support from the legislature.\textsuperscript{83} Undoubtedly, the operation and expansion of state-wide ADR programs would be smoother and more universal if there was more support from the top.

Finally, there are other more minor factors that may also be considered when assessing the performance of the collaboration. These include: the types of cases utilizing neutrals from the CMCs\textsuperscript{84} versus the types that may require attorney-mediators, such as very complex litigations; the existence of documents like five-year plans in order to keep the partnership on track; when ADR processes occur—day of trial or some other specified time; and whether or not CMCs and an “ADR culture” were in existence before the court opted to team with them.

\textsuperscript{82} Telephone Interview with Jonathan Rosenberg, \textit{supra} note 46.

\textsuperscript{83} Telephone Interview with Susan Yates, \textit{supra} note 21.

\textsuperscript{84} Typically, court-CMC collaborations handle neighbor-neighbor disputes, small civil claims, child dependency cases, and other family cases.
C. Why Some Programs Have “Gone Wrong”

Through their recent article, Della Noce, Folger, and Antes provide a helpful framework for understanding why CMC partnership with courts may sometimes go awry. The authors categorized collaborations as assimilative, autonomous, or synergistic.\textsuperscript{85}

The \textit{assimilative approach} involves the process of “adapting mediation to the underlying values and norms of the court system,” and practices included: “(1) [those] that imbue mediation with the authority and formality of the courts, (2) the mapping of legal language onto mediation, and (3) an emphasis on case processing.”\textsuperscript{86} In the \textit{autonomous approach}, “the mediation program was operated as autonomously as possible, with the goal of maintaining a separate identity from the court,” and defining practices including those that: “(1) established a separate identity for the mediation program, (2) maintained flexibility in process design, and (3) focused on conflict interaction.”\textsuperscript{87} Finally, the authors described the \textit{synergistic approach} as “building the two processes together in such a way that the total is more than the sum of the parts.”\textsuperscript{88} Practices in this category included: (1) program leadership practices with a synergistic vision, (2) partnering with community members, and (3) practices that preserved the integrity of the mediation process ‘in the room.’”\textsuperscript{89}

The authors concluded that the autonomous and synergistic approaches are most favorable, assuming the intent of the program administrators is to significantly infuse the

\textsuperscript{85} See Della Noce, et al., \textit{supra} note 20. While the authors’ study was limited to mediation programs in Florida, for the benefit of discussion this Paper will extend its implications.

\textsuperscript{86} \textit{Id.} at 21-22.

\textsuperscript{87} \textit{Id.} at 23-24.

\textsuperscript{88} \textit{Id.} at 25.

\textsuperscript{89} \textit{Id.}
values of ADR into the judicial system. Conversely, the assimilative approach “detracted from mediation’s character as an alternative to the judicial system.” Della Noce et al.’s findings comport with the present discussion: court-community collaborations that have “gone awry” fall into the authors’ assimilative category; in essence, they missed the mark for their potential because they permitted the court’s identity and goals to supersede.

Another way that programs may lose steam is when the original vision is limited or lost. For instance, the initiative may have had a charismatic person in the beginning, but the court subsequently “took over,” either intentionally or not. It is through this process that a partnership can lose some of the philosophy of community ADR and become simply a tool for the court. Similarly, it may be the case that a “second generation” program administrator will not necessarily have a particular commitment to a mediation program, but rather will be interested in a career in court administration.

Though I have been arguing that an optimal collaboration will occur when both the court and the CMC’s goals are voiced and in sync, it does not follow that an exemplary program is produced when the CMC “allows” the partnership’s focus to be judicial economy. If the goal was efficiency, it is likely that the outcome is not mediation but instead processes such as early settlement conferences or something similar. Steve Toben has commented on the dismal effects of these misconstrued collaborations: “Many court-based ADR programs offered little more than informal case evaluation

90 See id. at 35-39.

91 Id. at 23.

masquerading as mediation—‘settlement conference lite.’ All these conditions made for a wobbly industry, sustained in large measure by sheer belief in the power of the dispute resolution idea.⁹³ All told, it is possible that some programs, though commenced with the “correct” ADR intentions, have faltered because co-option has mutated the vision.

D. Benefits Beyond the Courthouse and the CMC

Rachel Wohl, Executive Director of MACRO, has written that state dispute resolution offices can serve as “catalysts for change”⁹⁴ by allowing court ADR programs to venture outside of the courthouse. Another aspect of exemplary collaborations is that their success has allowed them to seek initiatives outside of the judicial system.

In Maryland, for instance, MACRO and MACMC have instituted state-wide peer mediation programs, developed mediation programs in two state’s attorneys’ office, and “support[ed] ADR processes within state and local government agencies.”⁹⁵ Undoubtedly, the collaboration provided the necessary support in terms of funding, manpower, initiative, and creativity, to make these ventures possible.

Sheila Purcell in San Mateo credited the good working relationship between the court and the CMC with making a court improvement initiative possible. The executive director of the CMC and judges worked together to facilitate a community outreach program aimed at hearing the public’s opinion of the court. Purcell remarked that this

⁹³ Steve Toben, ADR in the Year 2010: Reflections on a Decade of Progress, 6(3) DISP. RESOL. MAG. 6, 8 (2000).

⁹⁴ See Rachel A. Wohl, Beyond the Courthouse: State Courts Work to Create a Civil Society, 7(4) DISP. RESOL. MAG. 21 (2001).

⁹⁵ Id. at 23.
project acted as a model for collaborative public-private partnerships for the rest of the court.96

Even when a court-community partnership has the intention of having an extended effect on the community, it must be strong in order to make it happen. An attempt to branch out was made in Chicago, but funding fell through. There, individuals at CCR tried to work with law school clinics to expand the use of ADR to legal services for poor or low-income clients. That the lack of resources was a barrier preventing the project from coming to fruition shows that there were “holes” in the court-community collaboration. That is, if the constant struggle for funding dollars and diminished confidence in new projects were eradicated, there may have been more support for the initiative.

IV. Conclusion

While exemplary programs throughout the nation have taken varying paths, there is a clear common denominator between them: In each both the court and the CMC are able to maintain their identities and goals.

Burgeoning or faltering partnerships should work to promote this denominator in order to improve their chances for success. It is likely that they are not exemplary because internal or external factors contribute to the muffling of either the court’s, the CMC’s or both entities’ unique identities and goals. Once they identify the conflicting issues, they can make procedural changes in order to modify the mindset of the partnership. Structural allowances for flexibility through diverse governing/planning

96 Telephone Interview with Sheila Purcell, supra note 43.
boards and diverse sources of funding allow the partnership to adapt accordingly when challenges arise.

This Paper has hopefully provided a foundation for extended dialogue aiming to improve current collaborations and create strong ones from the start. Accordingly, future studies should research the applicability and relevance of the factors this Paper identified in different locations and types of jurisdictions.
Appendix A

Contact Information for Court-Community ADR Partnerships*

* See also www.policyconsensus.org for an overview of state ADR programs.)

DISCUSSED PARTNERSHIPS:

CALIFORNIA (San Mateo County)
San Mateo County Superior Court
Multi-Option ADR Project
400 County Center, Ctrm. 2F
Redwood City, CA 94063
(650) 363-4148
http://www.sanmateocourt.org/adr.htm

ILLINOIS (Cook County)
Center for Analysis of Alternative Dispute Resolution Systems (CAADRS)
11 East Adams Street, Suite 500
Chicago, IL 60603
(312) 922-6475 x 924
http://www.caadrs.org/index.htm
caadrs@caadrs.org

Center for Conflict Resolution (CCR)
11 East Adams Street, Suite 500
Chicago, IL 60603
(312) 922-6464
http://www.ccrchicago.org/
cr@ccrchicago.org

MARYLAND
Maryland Association of Community Mediation Centers (MACMC)
1517 Ritchie Highway
Suite L7
Arnold, Maryland 21012
(410) 349-0080
(888) 826-2262
http://www.marylandmediation.org/
Mediation and Conflict Resolution Office (MACRO)
113 Towsontown Boulevard, Suite C
Towson, MD  21286
(410) 321-2398
http://www.courts.state.md.us/macro/index.html
lou.gieszl@courts.state.md.us

NEW YORK
The New York State Unified Court System
Office of Alternative Dispute Resolution Programs
Community Dispute Resolution Programs

New York City Office
25 Beaver Street, 8th Floor
New York, N.Y. 10004
(212) 428-2863

Capital District Office
98 Niver Street
Cohoes, N.Y. 12047
(518) 238-2888

http://www.courts.state.ny.us/adr/CDRCP/cdrcp.HTML

OTHER LINKS:

Colorado:  http://www.courts.state.co.us/chs/court/mediation/odrindex.htm

District of Columbia:  http://www.debar.org/for_lawyers/courts/superior_court/multi_door_dispute_resolution_division/

Florida:  www.flcourts.org (under “Judicial Administration”)

Hawaii:  http://www.courts.state.hi.us/page_server/Services/AlternativeDispute/4E3D896DFE782019EB28F79FE3.html

Maine:  http://www.courts.state.me.us/courtservices/adr/

Nebraska:  http://court.nol.org/odr/index.html


Ohio:  http://www.state.oh.us/cdr/index.htm

Oregon:  http://www.odrc.state.or.us/toc.htm
### Appendix B

**Court-Community Collaboration Catalog Template**

<table>
<thead>
<tr>
<th>State</th>
<th>Court/Community Partnership</th>
<th>Evolution of Partnership</th>
<th>Types of Cases Involved With Partnership</th>
<th>Revenue Source(s) for the Partnership</th>
<th>Location of Court/Comm. ADR Processes</th>
<th>Diversity/Makeup of Neutral Pool</th>
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<thead>
<tr>
<th>Advisory Board, Board of Directors Makeup</th>
<th>Referral to &amp; Screening of Cases at the CMC</th>
<th>Fees/Compensation for Cases</th>
<th>Additional Benefits</th>
<th>Concerns Regarding the Partnership</th>
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**The categories of this catalog roughly correspond to the characteristics present in “exemplary” court-community ADR partnerships.**