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# Implementation of California's Dispute Resolution Programs Act: A State-Local Government Partnership

Mary-Alice Coleman\*

## I. INTRODUCTION

After a ten-year legislative struggle, the California Dispute Resolution Programs Act of 1986<sup>1</sup> (the Act) is now paving the way for a system of community dispute resolution programs throughout California. Already, revenues to fund local, non-court dispute resolution programs are being collected in a third of California's counties.<sup>2</sup> After only one year of local implementation, twenty-one new or established dispute resolution programs have received grant awards.

These programs are providing a wide range of dispute resolution services, including mediation, conciliation, and arbitration. This significant and long-awaited Act provides for the joint statewide implementation of community dispute resolution programs by the State of California and individual county governments. The Act was co-sponsored by the State Bar of California, the Los Angeles County Bar Association, and the California Chamber of Commerce with strong support from a wide spectrum of public and private organizations.<sup>3</sup>

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1. 1986 Cal. Stats. ch. 1313 (S.B. 2064—Garamendi) (as amended by 1987 Cal. Stats. ch. 28 (S.B. 123—Garamendi); 1987 Cal. Stats. ch. 1431 (A.B. 2294—Killea); and 1988 Cal. Stats. ch. 188 (S.B. 2224—Beverly)). The Dispute Resolution Programs Act (the Act) is codified at section 465 of the California Business & Professions Code. See CAL. BUS. & PROF. CODE §§ 465-471.5 (West Supp. 1989).

2. By Spring, 1989, at least 17 of California's 58 counties began implementing this legislation. These counties include: Alameda, Butte, Contra Costa, Fresno, Inyo, Los Angeles, Marin, Mono, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Cruz, Ventura, and Yolo.

3. Endorsements for the legislation came from many sources, including the Na-

A surprising number of legislative proposals on the subject of community dispute resolution and alternatives to litigation had been considered by the California Legislature during the ten years preceding the enactment of this legislation. Some bills did not survive the legislative process; others made their way to the Governor's desk, but were vetoed; still others received the Governor's signature, but never achieved full implementation. Each legislative effort helped create a more solid foundation on which community dispute resolution is now flourishing in California.

## II. EARLY PROPOSALS TO ESTABLISH PROGRAMS

A brief review of the legislative histories of these various proposals provides an insightful basis for interpreting the difficulties that faced proponents of legislation to introduce this new and alternative dimension to the justice "system" in California.

Obviously, numerous factors are at play in any legislative effort and it is difficult to pinpoint exactly what leads a particular piece of legislation to success or failure. Independent of the ordinary dynamics of the political process, early legislation to promote informal dispute resolution was no doubt affected also by certain unique characteristics. First, informal non-judicial dispute resolution involves, by its nature, inexact processes based in large part on social science principles. Not surprisingly, some policymakers were skeptical about its merits and long-term benefits and were therefore reluctant to support legislation to promote its institutionalization. Second, national-level programs and legislation signaled that leadership and funding for community dispute resolution would emanate from the federal government. California attempted to follow the federal lead, but these efforts eventually proved fruitless and delayed the development of independent state-level action by several years. Finally, as efforts to establish dispute resolution programs became more formal, fundamental disagreements among dispute resolution activists within the state grew so that the natural proponents of statewide legislation became polarized. Without a unified voice of support, the cooperative development of a single community dispute resolution bill was nearly impossible.

As each legislative proposal made its way through the legislative process, other factors began to play a role: policy differences over the basic goals of community dispute resolution; discord over the

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tional Arbitration Association, the Association of Municipal Court Clerks, Tandem Computers, the District Attorney of San Francisco, the Marin County Board of Supervisors, the Santa Clara County Human Relations Commission, the City of San Diego, the California Council on Mental Health, the California Union on Mental Health, and the University of California at Santa Cruz.

amounts or methods of public funding to be provided by legislation; disagreements about the scope of local implementation and whether the programs should be mandatory or optional; and varied opinions about the proper role of state government in a statewide effort of this type.

To fully understand the evolution of California's statewide support for community dispute resolution, it is necessary to place the state's legislative efforts within the context of ongoing national efforts. In the early 1970s, due largely to growing numbers of public complaints about traditional court procedures, the national policymakers became acutely aware of the need for alternatives to litigation. Proposals for national support and funding of informal dispute resolution and alternatives to litigation received serious congressional attention.

Soon, federal funding of experimental dispute resolution programs began, initiated by pilot projects financed by the now-defunct Law Enforcement Assistance Administration (LEAA).<sup>4</sup> Given the nature and goals of the programs, some commentators assessed the projects cynically as "fad" programs which would be unlikely to outlive their federal sponsorship. Despite these uncertain beginnings, early federal leadership and support of community dispute resolution gave enough life and legitimacy to these "experimental programs" to stimulate state and local efforts to continue and expand community dispute resolution funding.<sup>5</sup>

In California, the federal policies as well as the very successful Los Angeles Neighborhood Justice Center,<sup>6</sup> one of the federally funded "pilot projects," gained favorable attention. Policy discussions among local groups and dispute resolution advocates eventually produced state legislation to promote community dispute resolution programs and funding in California.

The first in a series of California legislative proposals was introduced in 1978. This initial legislation, Assembly Bill 2763, by then-

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4. See D. McGillis, *Community Dispute Resolution Programs and Public Policy*, in NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, ISSUES AND PRACTICES IN CRIMINAL JUSTICE 10 (Dec. 1986).

5. *Id.*

6. The Los Angeles Neighborhood Justice Center was among the initial projects funded by the now-defunct federal Law Enforcement Assistance Administration (LEAA). The project began in April 1978 and was sponsored and administered by the Los Angeles County Bar Association. It was provided with full funding from the LEAA through December 31, 1979, and with 50% funding through July 1, 1980. The program resolved disputes between individuals with "ongoing relationships" such as landlords and tenants or between neighbors. Most of the cases were initiated on a voluntary basis by the parties in the dispute.

Assemblyman Vic Fazio,<sup>7</sup> proposed a state-level pilot program to directly fund community dispute resolution centers. The bill proposed that the new Neighborhood Resolution Center Program be administered through the state's Office of Criminal Justice Planning (OCJP). The program would have dispersed \$1.5 million in grants from the state general fund to local dispute resolution centers that resolved both civil and criminal disputes.

The Fazio bill proposed that a Neighborhood Resolution Centers Committee, composed of five persons appointed by the Governor and staff-support from the OCJP, would not only develop rules and regulations governing the local centers, but would also select those that would receive grant awards. Only non-profit corporations would have qualified for funding, and then only if the majority of the corporate boards of directors did not consist of "active or retired attorneys, or active or retired judges or judicial officers, including commissioners or referees."<sup>8</sup>

The fate of this first legislative effort turned ultimately on another popular California movement—the "property tax revolt." Proposition 13 of 1978 was passed by California voters just as Assemblyman Fazio's bill moved through the California Legislature. With little hope of securing the revenues required by the legislation, Fazio dropped the bill.

The following year, the first of several bills attempting to coordinate state policy with existing and anticipated federal funding was introduced. Assembly Bill 1186, the first of two bills introduced by then-Assemblyman Mel Levine,<sup>9</sup> proposed state policy recognition and coordination of prospective federal revenues for the support of California dispute resolution programs. This bill would have implemented a state-level administrative model similar to that proposed by the Fazio bill, but without an appropriation of state funds. It too proposed the establishment of a new body—the Neighborhood Dispute Resolution Centers Advisory Committee—though its proposed role was reduced to that of an advisory body. The Governor would have named the seven members of the committee based on relevant education or job experience as specified in the bill.

The director of the OCJP would have had direct responsibility over the implementation of the statewide program, the establishment of the rules and regulations, and the selection of grant recipients. The scope of grant eligibility expanded to include dispute resolution cen-

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7. Vic Fazio is currently a Member of Congress, representing California's 4th Congressional District.

8. A.B. 2763, 1977-1978 Reg. Sess., art. 4 (proposed as section 1143.15 of the California Code of Civil Procedure).

9. Mel Levine is currently a Member of Congress, representing California's 27th Congressional District.

ters operated by cities or counties, as well as those provided by non-profit corporations "organized exclusively for the resolution of disputes . . . ." <sup>10</sup> Non-profit corporations would have been subject to a unique restriction, that a "majority of [their] directors . . . shall not consist of members of any single licensed profession." <sup>11</sup> The bill passed both houses of the legislature, but was vetoed by Governor Edmund G. Brown, Jr., ostensibly because of potential state fiscal impacts identified by the state Department of Finance. <sup>12</sup> In recommending the veto, the Department of Finance reasoned that even with federal revenues the bill "would create strong pressure to use State General Funds" to support the programs. <sup>13</sup>

Meanwhile, the Federal Law Enforcement Administration Agency (LEAA) and, consequently its pilot projects, lost their funding. This renewed the predictions of the end of the "dispute resolution movement." <sup>14</sup> However, with strong political momentum from a broad range of groups, including the National Chamber of Commerce, Ralph Nader's Public Interest Research Group, the American Bar Association, the American Arbitration Association, the Institute for Mediation and Conflict Resolution, the Ford Foundation and others, Congress promptly passed the Dispute Resolution Act of 1980. <sup>15</sup> The Federal Act proposed an appropriation of \$45 million to support funding and experimentation of various approaches to community dispute resolution. Once again, federal legislation gave renewed hope for sustained funding and support of local dispute resolution programs. <sup>16</sup>

With the expectation of permanent federal support for these programs, Assemblyman Levine persisted. In 1980, his second bill, Assembly Bill 2730, was passed and was signed by Governor Brown. <sup>17</sup>

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10. A.B. 1186, 1979-1980 Reg. Sess., art. 4 (proposed as sections 1143.15 and 1143.16 of the California Code of Civil Procedure).

11. *Id.*

12. See Governor's Veto Message, A.B. 1186 (Sept. 30, 1979).

13. See CALIFORNIA DEP'T OF FINANCE BILL REPORT—A.B. 1186, (Sept. 14, 1979).

14. See D. McGillis, *supra* note 4, at 10.

15. Dispute Resolution Act, Pub. L. No. 96-190 (codified at 28 U.S.C. §§ 1-10 (1982)).

16. See D. McGillis, *supra* note 4, at 7. See also Memorandum from Lee R. Petillon, Co-chair, Alternative Dispute Resolution Committee to Patricia Phillips, President, Los Angeles County Bar Association, Dec. 31, 1984 (regarding "Proposed Legislation Establishing Dispute Resolution Centers in California") (located in California State Bar Association bill files, S.B. 1215 (1986) Sacramento, California) [hereinafter Petillon Memo].

17. 1980 Cal. Stats. ch. 1176, § 1 (repealing former California Code of Civil Procedure section 1143.10, effective Jan. 1, 1982).

The substance of this legislation, however, was almost cautious, reflecting the uncertainty that existed at that time. Basically, it authorized the OCJP to make grant awards to local programs in the event that federal funding for such purposes materialized. Ironically, federal budget cutbacks prevented the appropriations pursuant to the Federal Dispute Resolution Act. The new California legislation ultimately expired by its own terms on January 1, 1982, with little impact on community dispute resolution in the state.

This chain of events effectively suspended state legislative efforts on behalf of community dispute resolution. As hope for federal revenues evaporated, so too did legislative enthusiasm and action to achieve statewide funding or coordination of community dispute resolution programs. Advocates were forced to reassess their strategies and goals. Interestingly, as California community dispute resolution supporters regrouped, their counterparts in New York were successful with their own statewide legislation. In 1981, a comprehensive dispute resolution bill, very similar to the California legislation proposed in 1979 (AB 1186—Levine), passed the New York Legislature. The New York bill received very strong support from members of the Legislature, the judiciary, state and local law enforcement agencies, as well as from state and local bar associations. A state-level Dispute Resolution Office was created within the New York Administrative Office of the Courts; revenues from the state's judicial budget are allocated to fund grants to community dispute resolution programs.

State-level advocacy of community dispute resolution in the California Legislature did not resume for almost four years. Even in the absence of legislation, use of informal dispute resolution continued to grow, and commitment to passing statewide legislation continued.<sup>18</sup> By 1984, issues regarding the admissibility of statements or evidence revealed in mediation sessions had become a subject of discussion within both the State Bar of California and the California Law Revision Commission.<sup>19</sup> In 1985, an amendment to the Evidence Code adding section 1152.5, sponsored by the California Law Revision Commission and supported by the State Bar, became law.<sup>20</sup>

Simultaneously, existing community-based programs were mobilizing their own legislative efforts to obtain recognition and funding for

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18. See Petillon Memo, *supra* note 16.

19. See Letter from California State Bar Board Governor Dixon Q. Dern to California Law Review Commission, Dec. 11, 1984, (located in California State Bar Association bill files, S.B. 2064 (1986) Sacramento, California).

20. 1985 Cal. Stats. ch. 731 (A.B. 1030—McAlister). A subsequent technical amendment to California Evidence Code section 1152.5 was sponsored by the California Department of Consumer Affairs in 1988. See 1988 Cal. Stats. ch. 188 (S.B. 2224—Beverly).

"community-based" versus "agency-based" dispute resolution programs.<sup>21</sup> Two bills in successive years, both carried by Assemblyman John Vasconcellos (Assembly Bill 3854 in 1984 and Assembly Bill 978 in 1985) proposed appropriations of state general fund revenues for demonstration training projects by "an existing" community-based conflict resolution center. The 1984 bill proposed an appropriation of \$750,000; the 1985 bill proposed \$450,000. Though Vasconcellos was successful in securing passage of both bills, each was vetoed by Governor Deukmejian because of the fiscal impact.<sup>22</sup>

During the 1984-1985 legislative session, proponents of a broader spectrum of dispute resolution centers also began coordinating their efforts to secure state funding. The State Bar of California, the Los Angeles Bar Association, and the California Chamber of Commerce joined forces to obtain passage of legislation that would create a network of state-funded local dispute resolution programs. At their recommendation, Senator John Garamendi introduced legislation early in 1985. The bill, Senate Bill 1215, proposed the creation of a state-level Dispute Resolution Commission to award and administer a statewide program of grants to local dispute resolution programs. The seven-member Commission would be composed of five members appointed by the Governor (one to be selected from a list submitted by the Judicial Council and one from a list submitted by the State Bar); one member appointed by the Senate Rules Committee; and one member appointed by the Speaker of the Assembly.

Under Senate Bill 1215, both public entities and non-profit corporations would qualify for funding. The bill proposed an appropriation of \$900,000 from the state general fund, and authorized the Commission to appoint a full-time director. The bill further directed that the Commission adopt rules and regulations to achieve statewide uniformity, and specified that certain eligibility requirements be met before programs might qualify for funding.

Though this bill generated significant support, it also intensified the philosophical differences among the state's dispute resolution advocates and providers. The types of dispute resolution programs that should receive grants and the types of disputes that should be resolved seemed to be the most fundamental points of disagreement.

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21. See, e.g., Letter from Raymond Shonholtz, President, San Francisco Community Boards, to Dixon Dern, Chair, State Bar Committee on Alternative Dispute Resolution, Feb. 25, 1985.

22. See Governor's Veto Message, A.B. 3854 (Sept. 29, 1984); Governor's Veto Message, A.B. 978 (Sept. 28, 1985).



More particularly, some proponents of community dispute resolution objected strongly to funding programs which would work closely with the courts or with other "institutions."<sup>23</sup>

Despite intense debate over specific provisions in the bill, its author and sponsors retained broad language so that a variety of program models and philosophies could be supported by the legislation. Senate Bill 1215 was passed by the Legislature, but was subsequently vetoed by Governor Deukmejian for fiscal reasons. Though the Governor acknowledged and endorsed the goals of community dispute resolution, his veto message expressed his own philosophy that community-based programs should be supported by local funds and user fees.<sup>24</sup>

Despite its veto, Senate Bill 1215 represented a significant milestone in the evolution of the legislation promoting dispute resolution in the state. As the bill progressed through the legislative process, the range of policy disagreements had narrowed and its political support base had grown. Legislative success appeared, finally, to be within reach.

### III. THE DISPUTE RESOLUTION PROGRAMS ACT OF 1986

The following year, another community dispute resolution bill—Senate Bill 2064—was introduced by Senator Garamendi, and co-sponsored by the State Bar of California, the Los Angeles Bar Association, and the California Chamber of Commerce. After intense negotiation and coordination among the wide range of interested parties, success was achieved: the bill passed the legislature and was signed by Governor Deukmejian.<sup>25</sup>

Known as the Dispute Resolution Programs Act of 1986 (the Act), the provisions of Senate Bill 2064 and those contained in a "clean-up bill" by Senator Garamendi the following year,<sup>26</sup> together constitute the comprehensive California community dispute resolution model. From a historical perspective, the policy parameters and the substantive provisions of the Act clearly reflect the meetings, communications, and negotiations that took place among the multitude of agencies, organizations, and individuals that were active and vocal in obtaining its passage.<sup>27</sup>

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23. See, e.g., Shonholtz Letter, *supra* note 21; see also Memorandum from Judith A. Harper to Joe Gray, State Bar Legislative Representative, May 20, 1985 (California State Bar bill files, S.B. 1215 (1985) Sacramento, California).

24. See Governor's Veto Message, S.B. 1215 (Sept. 28, 1985).

25. 1986 Cal. Stats. ch. 1313 (S.B. 2064—Garamendi).

26. 1987 Cal. Stats. ch. 28 (S.B. 123—Garamendi).

27. The legislative bill files of Sen. John Garamendi as well as those of the California State Bar Association contain numerous examples of the communications and negotiations that took place prior to passage of S.B. 2064. See Memorandum from

By comparison to other statewide community dispute resolution models, the California Act is unique in several respects. Most significantly, the state-level oversight authority is placed within the executive branch of state government, the Department of Consumer Affairs. In most other states which have created statewide programs, oversight authority is placed within the judicial branch.<sup>28</sup> The Act also provides that the Dispute Resolution Advisory Council (the Council) perform specific tasks, then expire or "sunset" within a short period of time. In the few states which have created advisory or citizen committees, the committees ordinarily are given permanent status with broad-ranging, albeit advisory, responsibilities.<sup>29</sup>

Another unusual aspect of the Act is its distribution of authority: discretion over policy issues is reserved to the state, through the Department of Consumer Affairs; selection of grant recipients and direct administration of the programs is delegated to county governments. By comparison, other states generally centralize both the policy and administrative responsibilities at either the state or the local government levels.<sup>30</sup> The Act generates new revenues to support the community programs by authorizing special one- to three-dollar civil filing fee increases in counties that choose to implement the local programs.<sup>31</sup> The Act also authorizes the use of any other public or private funds, including user fees, so long as no fees

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Judith A. Harper, State Bar Legislative Representative to Assembly Member McClintock, July 31, 1986 (copy located in State Sen. Garamendi's S.B. 2064 bill file (1986)); "S.B. 2064 Work List" of Masako Dolan, Legislative Aide and Policy Director to Senator Garamendi (located in Sen. Garamendi's S.B. 2064 bill file (1986)). *See also* Memorandum from Lee R. Petillon to Charles S. Vogel, President, Los Angeles County Bar Association, Apr. 2, 1986 (located in State Bar Association of California bill files, S.B. 2064 (1986)); Memorandum from Lee R. Petillon to Sen. Garamendi, Sept. 5, 1985 (regarding "Analysis of Department of Finance Objections to S.B. 1215") (located in State Bar Association of California bill files, S.B. 1215 (1985), Sacramento, California).

28. *See, e.g.*, COLO. REV. STAT. § 13-22-301 (1987); FLA. STAT. ANN. § 44.201 (West 1988); ILL. ANN. STAT. ch. 37, para. 853 (Smith-Hurd Supp. 1988); MASS. ANN. LAWS ch. 218; § 43E (Law. Co-op 1988); MINN. STAT. § 494.01 (1988); N.Y. JUD. LAW § 849-b (McKinney Supp. 1989); OKLA. STAT. ANN. tit. 12, § 1807 (West Supp. 1989); TEX. CIV. PRAC. & REM. CODE ANN. § 152.002 (Vernon Supp. 1989) (statutes establishing community dispute resolution programs in the state or local judicial branches); *but see* N.J. REV. STAT. ANN. § 52:27E-40 (West 1986) (establishing an Office of Dispute Settlement within its Executive Branch State Department of the Public Advocate).

29. *See, e.g.*, FLA. STAT. ANN. § 44.201 (West 1988); OKLA. STAT. ANN. tit. 12, § 1807 (West Supp. 1989).

30. *See supra* note 28.

31. *See generally* CAL. BUS. & PROF. CODE §§ 470, 467.2(c) (West Supp. 1989). In 1987, the Act was amended. *See* 1987 Cal. Stats. ch. 1431 (A.B. 2294—Killea) (correcting a technical oversight which failed to authorize increases in justice court civil filing fees).

are assessed upon indigents. Funding methods provided in other states include, in addition to civil filing fees and user fees, appropriations directly from state or local judiciary budgets.<sup>32</sup>

#### A. State-Local Cooperation

From a policy perspective, the Act is a strong endorsement of cooperation between state and local governments to provide informal dispute resolution at the community level. Both the legislative findings and legislative intent provisions acknowledge the great societal costs of litigation and encourage increased usage of community dispute resolution processes by both state and local governments and by the private sector. More specifically, the Act encourages courts, prosecuting authorities, law enforcement agencies, and administrative agencies to make "greater use of alternative dispute resolution techniques whenever the administration of justice will be improved."<sup>33</sup> Counties are encouraged to "consider increasing the use of alternative dispute resolution" in their "plans for court reform,"<sup>34</sup> and several methods for carrying out the purposes of the Act are specified. These include the development and use of "alternative dispute resolution techniques" and structures, community participation and education, and cooperative arrangements among courts, prosecuting authorities, public defenders, law enforcement agencies, and administrative agencies.<sup>35</sup> The State Judicial Council is expressly encouraged to include information on "options for alternative dispute resolution" in its redrafting of trial court pleading forms.<sup>36</sup>

The responsibility given to the state Department of Consumer Affairs (the Department) is quite broad and constitutes one of the most unique features of the Act.<sup>37</sup> Ultimately, the Department will provide all state-level oversight of the local programs, and be responsible for monitoring compliance by programs and counties with the provisions of the Act and the rules and regulations adopted by the Council.<sup>38</sup> During the tenure of the Council, the Department's

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32. See *supra* note 28.

33. CAL. BUS. & PROF. CODE § 465(d) (West Supp. 1989).

34. *Id.* § 465(e). Since the passage of the Dispute Resolution Programs Act, legislation creating optional state funding of the trial courts has been implemented. See 1988 Cal. Stats. ch. 944 (A.B. 1197), ch. 945 (S.B. 612). Even so, the implementation of much court reform remains at the county level.

35. CAL. BUS. & PROF. CODE § 465.5 (West Supp. 1989).

36. *Id.* § 465(f).

37. Ongoing state-level responsibility for oversight and evaluation of the programs and amendment of the regulations is delegated to the Department of Consumer Affairs. See *id.* § 471(d).

38. The sponsors of the bill considered several "homes" for the state level oversight and administration of the program. The judicial branch of government manages similar programs in several other states (i.e., New York and Hawaii). However, the California Judicial Council/Administrative Office of the Courts was not receptive to

responsibilities involved primarily the staff and administrative assistance necessary to help the Council meet its statutory obligations.<sup>39</sup> With the Council's recent "sunset," the department's exercise of its independent authority is now rapidly evolving. The Act directs the Department to "periodically review the effectiveness" of the guidelines and regulations and to "adopt changes thereto as necessary."<sup>40</sup> The Department is also directed to "monitor and evaluate the programs funded pursuant to [the Act] as to their compliance with [the] rules and regulations."<sup>41</sup> By implication, any uncompleted responsibilities delegated to the Council are also to be assumed by the Department.

The full scope of county government authority and discretion is also now unfolding; among the seventeen counties now participating,<sup>42</sup> unique program characteristics are already evident. Though the Act gives considerable discretion to counties regarding the way they organize and manage their local programs, a few statutory requirements are specified. For example, if a county chooses to participate, it must comply with certain procedures and recordkeeping requirements.<sup>43</sup> Except for amounts expressly authorized to cover county administrative costs,<sup>44</sup> all new revenues generated by the increased filing fees must be used exclusively for the support of author-

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the invitation by the sponsors to assume this responsibility. Both the Office of Criminal Justice Planning (OCJP) and the Office of the Attorney General were also considered, but were generally ruled out because of their focus on criminal justice matters.

The California Department of Consumer Affairs was invited to assume the responsibility because of its longtime involvement and commitment to helping consumers resolve their own problems. The principles and goals of community dispute resolution are consistent with the Department's purpose and organizational goals. The Department of Consumer Affairs was, therefore, a logical administrative agency for the new program.

39. CAL. BUS. & PROF. CODE § 467(a) (West Supp. 1989).

40. *Id.* § 471(d).

41. *Id.*

42. *See supra* note 2. As intended by the Act, a variety of program types have been funded.

43. *See generally* CAL. BUS. & PROF. CODE §§ 467.2, 467.6, 468, 468.1, 468.2, 468.3, 469, 470.2, 470.3, 471(b), & 471.5 (West Supp. 1989). Also, pursuant to its authority, the Council adopted temporary guidelines and proposed regulations defining or clarifying certain obligations for reporting and accountability.

44. Section 469 of the Business & Professions Code permits counties to deduct their administrative costs, up to fixed percentages tied to county population, from the new revenues generated pursuant to the Act. CAL. BUS. & PROF. CODE § 469 (West Supp. 1969). Counties of more than 500,000 persons may appropriate up to 10% toward administrative costs; counties with fewer than 500,000 persons may appropriate up to 20% for administrative purposes. *Id.*

ized dispute resolution programs.<sup>45</sup> Counties are required to deposit the fees into a special dispute resolution fund,<sup>46</sup> and to maintain financial records that are public and available for inspection on request.<sup>47</sup> To facilitate and encourage joint efforts among counties, the Act authorizes local agreements by boards of supervisors to pool revenues and create regional dispute resolution programs.<sup>48</sup>

Participating counties are also required to establish grant application procedures that will publicize the availability of the funds, and encourage existing as well as new dispute resolution programs to apply for grants.<sup>49</sup> Counties are authorized to select grant recipients from among public, private, or nonprofit applicants that meet basic eligibility criteria,<sup>50</sup> and that address specific issues identified in the Act.<sup>51</sup> Applicants must also meet special requirements imposed by the county.<sup>52</sup>

The Act limits the amount of any grant awards to fifty percent of the "approved estimated cost of the program"<sup>53</sup> and requires a contractual relationship between the counties and the funded programs.<sup>54</sup> The contract terms must comply with the provisions of the Act and with the rules and regulations adopted by the Council.<sup>55</sup>

#### *B. Rules and Regulations*

The Act deferred a large number of policy issues for later determination by the Dispute Resolution Advisory Council and subsequently the Department of Consumer Affairs.<sup>56</sup> In so doing, the Legislature created a dynamic and responsive process for refining the implementation and development of the new statewide program.

The Council is noteworthy not simply because of its creation, but also because of its mandated composition.<sup>57</sup> Unlike prior legislation

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45. This requirement is expressed in three separate provisions. See CAL. BUS. & PROF. CODE §§ 468, 469, & 470.3(a) (West Supp. 1989).

46. *Id.* § 470.3(b).

47. *Id.*

48. *Id.* § 467.1(b). This provision is especially important to rural counties where numbers of civil filings are low.

49. *Id.* §§ 468.1-468.2.

50. *Id.* § 467.2.

51. *Id.* § 468.2.

52. *Id.* § 468.2(h).

53. *Id.* § 470.2. This provision would not, however, prohibit a county from awarding county revenues in excess of this 50% limit so long as they are generated from other sources.

54. *Id.* § 467.1(a).

55. *Id.*

56. See generally *id.* §§ 471(a), 471(d).

57. *Id.* § 467. The legislation provided for a short-term seven-member Dispute Resolution Advisory Council within the Department of Consumer Affairs. Appointment to the Council was designated as follows: five members by the Governor; one member by the Senate Rules Committee; and one member by the Speaker of the As-

which was generally silent on the composition of an advisory body,<sup>58</sup> the Act mandated that the Council include at least four persons holding active membership in the California State Bar, and at least four persons who "have a minimum of two years of direct experience in utilizing dispute resolution techniques."<sup>59</sup> The Act limited the duration of the Council's existence by directing that it complete its duties on or before January 1, 1989,<sup>60</sup> after which its responsibilities would be carried out by the Department of Consumer Affairs.<sup>61</sup>

The Council was charged with adopting rules and regulations to "effectuate the purposes of" as well as supplement the statutory provisions of the Act.<sup>62</sup> The legislation specified that the rules and regulations "shall be formulated to promote statewide uniformity,"<sup>63</sup> and directed the Council to consider and make certain policy recommendations. Specifically, the Act stated that the Council shall adopt rules and regulations "including but not limited to" recruitment and training of persons who provide dispute resolution services; the periodic monitoring and evaluation of the individual programs; and overall evaluation of the performance and impact of the Act statewide.<sup>64</sup> The rather general authority vested in the Council served to expand its authority and prerogative to address other non-specified policy issues related to the purposes of the Act.

To expedite disbursements of grant revenue to local programs, an unusual mandate with unusual authority was granted to the Council

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sembly. The Council was fully constituted in May 1987 and sunsetted on December 30, 1988. Members included Charles G. Bakaly, Jr., Patricia M. Eckert, Michael Goldstein, L. Randolph Lowry, Lee R. Petillon, Larry A. Rosenthal, T. Cole Williams, and Anthony J. Vulin. (Mr. Vulin succeeded Mr. Bakaly, who resigned during the Council's term.)

58. It is noteworthy that previous legislative proposals focused on the composition of the boards of directors of funded programs. A.B. 2763, introduced in 1978, would have restricted the funding of programs to organizations in which the majority of its directors did "not consist of active or retired attorneys, or active or retired judges or judicial officers, including commissioners or referees." See A.B. 2763, *supra* note 8. Likewise, A.B. 1186 restricted eligibility to private nonprofit corporations in which a majority of the directors did "not consist of members of any single licensed profession." See A.B. 1186, *supra* note 10. Such funding restrictions would have precluded "legal professionals" from dominating the governing boards of eligible programs.

59. CAL. BUS. & PROF. CODE § 467(a) (West Supp. 1989).

60. *Id.* § 467(a).

61. See *id.* § 471(d).

62. *Id.* § 471(a).

63. *Id.* § 471.3.

64. *Id.* § 471.

by urgency legislation early in 1987.<sup>65</sup> The Council was mandated to adopt "temporary guidelines" within six months after its first meeting and subsequently to adopt more formal rules and regulations. To meet the six-month timeline, the temporary guidelines were specifically exempted from the rigid California Administrative Procedure Act (APA), which requires compliance with formal rulemaking procedures.<sup>66</sup> By providing that the temporary guidelines were exempted from the APA, the Act effectively accelerated the funding of dispute resolution programs by one to two years.

Soon after it was fully constituted in May 1987, the Council began the task of drafting the temporary guidelines. It conducted several statewide public hearings<sup>67</sup> and solicited written comments in response to draft versions. To the surprise of many, the Council met its unusually short mandate and adopted the temporary "Funding and Operating Guidelines" (the Guidelines) on January 19, 1988.<sup>68</sup>

The Guidelines are now in force and effect, providing guidance on the many policy issues deferred to the Council for consideration. For instance, they set forth specific organizational eligibility requirements and establish minimal program standards for grant recipients.<sup>69</sup> "Neutral persons" must meet specified training requirements in order to provide the dispute resolution services.<sup>70</sup>

To clarify and standardize the calculations of "in kind" services and donations within program budgets, the Guidelines specify the criteria and documentation that is necessary.<sup>71</sup> To assist the Department of Consumer Affairs in its monitoring and evaluation of programs, the Guidelines standardize certain recordkeeping and fis-

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65. 1987 Cal. Stats. ch. 28 (S.B. 123—Garamendi) (codified at CAL. BUS. & PROF. CODE § 471 (West Supp. 1989)).

66. CAL. BUS. & PROF. CODE § 471(b) (West Supp. 1989). The California Administrative Procedure Act provides very specific and methodical requirements for the adoption of any rules and regulations by state agencies. See CAL. GOV'T CODE §§ 11340-11528 (West Supp. 1989). Because the Dispute Resolution Advisory Council was created as a state agency, its rulemaking activities fall within the requirements of the Administrative Procedure Act. By specially authorizing the Council to adopt temporary guidelines without the restrictions of the Administrative Procedure Act, the state-level administrative "lead-time" that ordinarily would precede local ability to implement the program was reduced by one year or more.

67. The Council held publicly-attended meetings on August 4, 1987 (Sacramento), October 8, 1987 (Los Angeles), November 13, 1987 (San Francisco), and January 29, 1988 (Los Angeles).

68. CAL. BUS. & PROF. CODE § 471(c) (West Supp. 1989). Copies of the Council's "Funding and Operating Guidelines" are available from the California Department of Consumer Affairs, Legal Services Unit, 1020 N. Street, Room 504, Sacramento, CA 95814.

69. See CAL. BUS. & PROF. CODE § 200 (West Supp. 1989) (Funding and Operating Guidelines).

70. *Id.* §§ 302-303.

71. *Id.* § 400.

cal management procedures.<sup>72</sup> The Guidelines also clarify the responsibilities of county governments in administering the funds collected pursuant to the Act.<sup>73</sup>

The Guidelines will remain in effect until they are superseded by the formal regulations which are now under review by the Office of Administrative Law. The drafting of the proposed regulations began almost immediately upon the adoption of the temporary guidelines. At several subsequent meetings,<sup>74</sup> public comment and responses were invited and considered by the Council. Drafts of the proposed regulations were circulated during the Fall of 1988, and a formal public hearing was held by the Council at its final meeting on December 2, 1988, in Sacramento, in response to the draft.<sup>75</sup> Based on comments and suggestions, the Council adopted certain further amendments to the proposed regulatory language and authorized the Director of the Department of Consumer Affairs to make technical amendments to the regulatory package and submit it to the Office of Administrative Law for final approval.<sup>76</sup> In accordance with the requirements of the Act, the Council thereby completed its duties and "sunsetting" by January 1, 1989.<sup>77</sup>

#### IV. PROSPECTS FOR THE FUTURE

After only one year of county implementation,<sup>78</sup> California can already boast of remarkable results from its Dispute Resolution Programs Act. Over \$3,000,000 in new revenues have been generated, most of which is already funding the operation of twenty-one new or established local dispute resolution programs.<sup>79</sup> These new revenue

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72. *Id.* §§ 310, 401-403.

73. *Id.* §§ 500-505.

74. The Council met and received public comment on the nature and content of the proposed regulations at meetings on June 3, 1988 (Los Angeles), September 1, 1988 (San Francisco), and December 3, 1988 (Sacramento).

75. Proposed California Code of Regulations, title 16, commencing at section 3600 have been submitted to the Office of Administrative Law. The approval process is expected to be completed in late 1989.

76. Final formal action by Dispute Resolution Advisory Council, Dec. 2, 1988 (meeting held at State Capitol, Sacramento).

77. CAL. BUS. & PROF. CODE § 467(a) (West Supp. 1989).

78. County governments could not award grants to local programs until the Council adopted the temporary guidelines. This occurred in late January 1988; county grants began in Spring 1988.

79. Seventeen counties are now implementing the Act. *See supra* note 2. Of the 17 counties, 11 opted to participate soon after the legislation was enacted. The 11 counties include: Alameda, Contra Costa, Inyo, Los Angeles, Marin, Mono, Sacramento, San Francisco, San Mateo, Santa Barbara, and Ventura. Six counties, including Butte,



and program figures are even more noteworthy given that they primarily reflect the implementation activities of only nine of the state's fifty-eight counties.<sup>80</sup>

With such incredulous beginnings, it is only reasonable to expect even greater results from the Dispute Resolution Programs Act in the near future. Yet the goal of the Act—a statewide system of community dispute resolution programs—will not be reached without continued and active shepherding by dispute resolution advocates in state and county government, in the private sector, and indeed, in the State Legislature.

At the local level, implementation activity needs to increase. Counties that already participate must strive to carry out the letter as well as the spirit of the legislation. Counties that have not yet chosen to implement the Act should fully and openly explore the potential benefits to the county and to its residents.

At the state level, policymakers must provide meaningful direction and coordination if the partnership model for implementing the Act is to succeed. Toward this end, active leadership and effective management by the Department of Consumer Affairs will be especially critical. The Department's statutory and regulatory authority under the Act provide important tools for carrying out the statewide goals and policies.<sup>81</sup> Effective monitoring of county implementation activities and adequate technical assistance for both counties and programs will be essential, especially during the formative years of this new statewide program. Simultaneously, the Department must begin to carry out certain responsibilities not completed by the Council. These include the development of standardized methodology and measurement tools to evaluate the performance of individual programs, and the development of methodology to assess the overall impact of the programs on court caseload reduction, costs savings to the state, the efficacy of the programs, and the feasibility of a statewide program of grants under state trial court funding.<sup>82</sup>

The Department's general authority under the Consumer Affairs Act<sup>83</sup> will also operate to supplement the authority provided to it by the Dispute Resolution Programs Act. However, the Department's ability to carry out its duties under the Act without express enforce-

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Fresno, San Bernardino, San Diego, Santa Cruz, and Yolo, acted late in 1988, and their filing fee increases did not become effective until January 1, 1989.

80. Only nine of the original eleven participating counties have awarded grants to local programs. These include Alameda, Inyo, Los Angeles, Marin, Mono, Sacramento, San Francisco, San Mateo, and Ventura. Contra Costa and Santa Barbara have not yet funded local programs.

81. CAL. BUS. & PROF. CODE § 471(d) (West Supp. 1989).

82. *Id.* § 471(a).

83. *See id.* § 301.

ment power may soon need reassessment.<sup>84</sup>

Ironically, the fate of the Act and the programs created thereunder will soon be subjected, once again, to the uncertainties of the legislative process. The Act expires by its own terms on January 1, 1992, "unless extended by legislation enacted before January 1, 1991."<sup>85</sup> Therefore, collective endorsements and concerted legislative advocacy may need to be mobilized to insure the Act's survival.

Given the early success of the Act, the prospects for passage of legislation to continue or make permanent its provisions seem quite good. Few can doubt that with ongoing development of programs under the Act and ongoing cooperative relationships among the State, the counties, and the local dispute resolution programs themselves, that the systematic expansion of community dispute resolution programs throughout the state will continue to occur. California can attain, with effective oversight and continued commitment to the purposes of the Act, a well-developed and very effective system of community dispute resolution programs in every county by the year 2000.

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84. The Dispute Resolution Programs Act does not grant to the Department any express enforcement authority to secure compliance with the provisions of the Act or with the rules and regulations.

85. See 1986 Cal. Stats. ch. 1313, § 2 ("sunset" clause) (codified at CAL. BUS. & PROF. CODE § 471(2) (West Supp. 1989)).

