

Got conflict?

States can avoid costly litigation and unhappy outcomes by relying more on alternative dispute resolution.

BY ALBERT HARBERTSON



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King Solomon gained fame by settling a fight between two mothers over which one had switched her dead infant with the other's living baby. The king called for a sword to divide the baby and give half to each. The first woman then said not to kill the baby, but to give it to the other, while the second asked the child be cut in two. Then Solomon ruled: "Give the living baby to the first woman. Do not kill him; she is his mother."

The story is a familiar one. A leader must settle a difficult dispute that promises an outcome that could create more controversy than it resolves. State leaders often are asked to provide King Solomon's wisdom to "split the baby" on critical issues involving the environment, health care, education, land use, criminal justice or other crucial matters. Often they struggle to find a solution to a seemingly intractable controversy and satisfy constituents with the results.

In the nearly 3,000 years since King Solomon's time, the nature of conflict hasn't changed, but methods for resolving conflict are changing. Today, more than two dozen states have created offices of alternative dispute resolution, or ADR. Some offices are court connected. Others are located at universities or in the executive branch. But, their goal is the same: to implement methods for resolving conflict that are faster and less costly than traditional methods, such as litigation.

"The added benefit of ADR," said Thomas J. Stipanovich, law professor at the University of Kentucky, "is that methods like mediation put control of a dispute's outcome where it should be — with the parties involved."

Mediation, long used to resolve labor disputes, increasingly has been employed in the past 25 years in other contexts. Unlike litigation or arbitration where a judge renders a decision, mediation relies on a third party — the mediator — to assist with settlement negotiations. A resolution is reached only if the disputing parties agree. In other words, the disputing parties themselves control the outcome. That control leads to solutions tailored to the unique circumstances of the dispute and more durable resolutions.

Satisfying all sides

Even the most complex and controversial disputes are amenable to mediation. For example, consider the following

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case involving the National Park Service, Kentucky, state and national environmental groups, the city of Middlesboro, Ky., and Appollo Fuels, Inc., a coal mining company. The state issued a permit to Appollo to mine near the Cumberland Gap National Historic Park without first consulting with the park service. In response, the park service, the city and environmental groups protested the decision because the mining would interfere with visitors' views of the park and have negative environmental impacts.

If the park service had sought an administrative hearing, the outcome would have been easy to envision. Either the state would win and the park service would appeal, or the park service would win and the state would appeal. In short, the parties would have fought over whose name would appear at the top of the next court filing.

To their credit, the parties recognized not only the value of a mediated resolution, but worked hard to achieve one.

In the end, they reached an agreement for scaled-back mining and planting additional trees to reduce the mining's visual impact on the park. In addition, the state and federal government agreed to enter into a memorandum of understanding to help avoid similar disputes in the future.

“There's no question that mediated solutions are faster, cheaper and more satisfactory for the parties involved,” said Kentucky Gov. Paul E. Patton. “We've resolved hundreds of environmental disputes in Kentucky. We know mediation works.”

CSG assists states

Patton, president of The Council of State Governments, champions the use of alternative dispute resolution. Indeed, he has endorsed and supported an initiative of CSG headquarters and the University of Kentucky that created the National Institute for State Conflict Management.

The CSG Governing Board and Executive Committee at December's annual meeting created the institute to provide a variety of conflict management and dispute resolution services to states and territories. “Dealing with conflict is your job. Helping you manage it effectively is ours,” said Dan Sprague, CSG executive director.

CSG headquarters in Lexington, Ky., has worked closely with representatives at the University of Kentucky to develop the institute. Among its services, the institute will oper-

ate as a clearinghouse for information about dispute resolution, help states design effective, low-cost alternative dispute resolution programs and offer training tailored to the state government community. The institute will be funded by a combination of corporate support, grants and fees for professional services.

The institute will be launched June 8-10 at a first-ever “Summit of the States on Conflict Management and Dispute Resolution.” Additional information about the summit is available on the CSG Web site, www.csg.org, or by contacting Albert Harberson with the Center for Leadership, Innovation and Policy at CSG, (859) 244-8228, e-mail: bharberson@csg.org. ★

