

Book Review

Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations, Costatino, Cathy A. & Sickles Merchant, Christina (Jossey-Bass, 1996 pp. 252. \$36.00)
reviewed by Harvey Gee†

I. INTRODUCTION

The legal community is increasingly turning to various forms of alternative dispute resolution (ADR), a consensual alternative to adjudicative dispute resolution. From its modest beginnings about twenty-five years ago, the ADR movement has expanded rapidly. ADR urges the legal profession to move away from its exclusive focus on the use of courts to resolve conflicts and to consider a broader spectrum of problem-solving approaches.¹ This movement reflects what some scholars claim is a close relative of the current practice of law, in which most cases are resolved by negotiation rather than by trial.

Lawyers and law firms are finding that the time and money saved through mediation is an ideal alternative to trials. Interestingly, this legal trend towards conflict resolution is being followed by the corporate sector as large businesses and organizations are finding it increasingly more productive and more cost effective to design systems that manage disputes and conflicts in the work place.

In *Designing Conflict Management Systems: A Guide to Creating*

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1. See e.g., Pam Marshall, *Would ADR Have Saved Romeo and Juliet?*, 36 OSGOODE HALL L.J. 771 (1998); Craig A. McEwen, *Pursuing Problem-Solving or Predictive Settlement*, 19 FLA. ST. U.L. REV. 77 (1991); Richard C. Reuben, *Public Justice: Toward a State Action Theory of Alternative Dispute Resolution*, 85 CAL. L. REV. 577 (1997); Edward F. Sherman, *The Impact on Litigation Strategy of Integrating Alternative Dispute Resolution into the Pretrial Process*, 15 REV. LITIG. 503 (Summer 1996).

Productive and Healthy Organizations,² Cathy Costatino & Christina Sickles Merchant present an important contribution to the ADR field. The authors are mediation practitioners who share some of their practical knowledge and experience of the functioning of alternative dispute resolution.

The co-authors know their subject matter well. Cathy Costatino, an adjunct professor at George Washington National Law Center, has enjoyed a stellar career in the law. She is an experienced attorney, mediator, and conflict management systems designer, widely known for her work with alternative dispute resolution in the federal government, the legal community, and the banking industry. Costatino is the director of the ADR program at the Federal Deposit Insurance Corporation, and she also co-chairs the Dispute Systems Design/Organization Development sector of the Society of Professionals in Dispute Resolution (SPIDR). Christina Sickles Merchant is director of Labor-Management Cooperation at the Federal Labor Relations Authority, a Fellow with Syracuse University's Maxwell Center for Advanced Public Management, and the current president of SPIDR.

In their significant book, Costatino and Merchant present a practical step-by-step approach that integrates organization development, alternative dispute resolution, and dispute systems design principles to aid organization development, human resources, and alternative dispute resolution professionals and management consultants assess conflict and evaluate processes within their respective organizations.

Costatino and Merchant use three composite case studies from the health care, government, and manufacturing sectors to demonstrate how to plan and implement programs.

Designing Conflict Management Systems is one of the few works in the discipline which successfully integrates the reachings of organization development into the fields of alternative dispute resolution and dispute systems design. One great strength of the book is that its contents are both theoretical and pragmatic. Also, few books provide such discussions about systems design in such a great detail, and are so clearly written.

II. SYNOPSIS

Costatino and Merchant divide the book into three parts, each examining a component of the design process. Part I explains how to cope with conflict in organizations. At the outset the authors state that the idea of ADR as alternative dispute resolution is less useful than the concept of

2. See CATHY A. COSTATINO & CHRISTINA SICKLES MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS: A GUIDE TO CREATING PRODUCTIVE AND HEALTHY ORGANIZATIONS* (1996).

dispute or problem.³ They suggest that the method of dispute resolution must be appropriate for the particular dispute or problem with a corresponding "fit" between the procedural method and the problem.⁴ Given an appropriate design, systems can prove to be very effective.

Chapters in Part I also discuss the process of identifying and responding to conflict in organizations. Other chapters describe how conflict can be managed effectively through alternative dispute resolution and dispute systems design.

Part II discusses designing and improving conflict management systems. Within this section, the authors discuss the construction of conflict management models, and the training and education of the stakeholders. Also addressed is the process of implementation. According to Costantino and Merchant, "[i]mplementation efforts alone are not enough to assure the use of and satisfaction with the revised conflict management system."⁵ They believe that essential to any system design is the evaluation stage where a determination can be made as to whether the system is working and if it is addressing the issues raised in the organization-wide assessment.⁶ An effective evaluation process requires participation, openness, and feedback.

Part III explains how to make the system work. In these remaining chapters, the authors also discuss the potential constraints that may be placed on an ADR system which may accelerate or amplify disputes or devalue a particular resolution technique.⁷ These include structural and resource constraints.

III. ASSESSMENT

Each chapter offers pragmatic advice. The reader will benefit from explanations of the techniques for developing, sustaining, and improving system designs.

Moreover, the concrete examples in the volume give the reader detailed guidance on how to apply the advice. For example, in various parts of the book, the authors pose scenarios in which they apply their theories and discuss potential outcomes and their effects.

Each chapter naturally flows into the next one. As a result, the book is very coherent throughout. The scope of the book is targeted to a wide audience. Both readers who are familiar with alternative dispute resolution and those who are not, will find an accessible book which is informative

3. *See id.* at 41.

4. *See id.*

5. *See id.* at 167.

6. *See id.*

7. *See id.* at 209.

and understandable.

IV. APPLYING TRANSFORMATIVE ADR THEORY TO LABOR LAW

While the authors rely heavily on hypothetical scenarios and provide three case studies to advance their fully-developed theories, readers will nevertheless still be left yearning for "real world" examples which support the Costatino and Merchant's thesis: ADR and conflict management systems work.

As the authors illustrate throughout their book, the area of labor law benefits tremendously from ADR. A counselor assigned to the case attempts to conciliate or resolve the dispute by conveying settlement offers between the parties. If the dispute is not resolved, the employee may file a formal Equal Employment Opportunity (EEO) complaint. This formal complaint triggers an investigation, which may lead to an adjudicative EEOC hearing, and federal court litigation if earlier steps should fail to resolve the dispute.

Because the authors devote only a few paragraphs to addressing EEO cases within the context of the use of mediation method for resolving employment disputes, they forgo an opportunity to discuss the tremendous success that ADR has had in EEO/labor law cases.

Researchers have examined workplace mediation and have found that parties are highly satisfied with the process as an alternative to traditional grievance arbitration, and other adjudicative processes.⁸ In fact, the United States Postal Service (USPS), one of the nation's largest employers, is utilizing a mediation program which has proven to be very effective.⁹

In 1994, the USPS instituted the REDRESS (Resolve Employment Disputes Reach Equitable Solutions Swiftly) Pilot Program for the mediation of employees' EEO complaints. The Program affords employees a mediation alternative to the traditional EEO complaint process and utilizes the transformative approach to mediation. Professors Robert Baruch Bush, Joseph Folger, Dorothy Della Noce, and Sally Ganong Pope at Hofstra University School of Law's Institute for the Study of Conflict Transformation designed the training programs for its internal stakeholders, outside mediators, and a corps of mediation trainers.

The USPS REDRESS Program centers itself on transformative mediation which provides opportunities for personal empowerment for participants, and on empowering participants to give and receive

8. See Jonathan F. Anderson & Lisa Bingham, *Upstream Effects From Mediation of Workplace Disputes: Some Preliminary Evidence from the USPS*, 48 LAB. L.J. 601 (1997)[hereinafter *Upstream*].

9. See *id.* at 602.

recognition of the other's needs, concerns, and other interests.¹⁰ The primary work of mediators consists of the facilitation of communication, understanding, and the search for mutually beneficial solutions to problems. Significantly, the mediation framework utilized in the USPS REDRESS Program is different from the traditional problem-solving mediation model, the dominant paradigm in the dispute resolution movement. According to the REDRESS designers, the transformative mediation engenders participant satisfaction as a byproduct of empowerment and recognition, and not as an end in itself.¹¹

In the REDRESS Program, an employee with an informal EEO complaint may request dispute mediation.¹² The Justice Center of Atlanta, under a contract with the USPS, selects and supplies mediators from a list of over seventy qualified, experienced neutrals who meet with the complainant and the respondent at the work site and during regular working hours.¹³ The mediator then uses interest-based techniques to attempt dispute resolution. Interest-based mediation has a strong potential to provide a positive alternative to the traditional adversarial EEO complaint process.¹⁴ If the mediation does not resolve the dispute, the employee may return to the traditional EEO process or request arbitration.¹⁵

Coinciding with the implementation of the REDRESS Program, was the establishment by the USPS of the National REDRESS Evaluation Project in an effort to determine whether mediation is effective.¹⁶ The majority of the REDRESS Program participants were satisfied with the program, and had positive things to say about it, which signals a change in approach to conflict at USPS.¹⁷ Both employees and supervisors overwhelmingly believed that mediation was a better method of dispute resolution than the traditional EEO process.¹⁸

The USPS REDRESS has also gained a great deal of notoriety for its effectiveness. Recently, the American College of Civil Trial Mediators has honored the USPS for outstanding achievement for their institution-wide dispute resolution program.¹⁹ With these positive results in mind, perhaps other large corporations and businesses will follow the example set by the

10. *See id.* at 602.

11. *See id.*

12. *See id.* at 603.

13. *See id.*

14. *See* Lisa B. Bingham, *Mediating Employment Disputes: Perceptions of Redress at the United States Postal Service*, 17 REV. PUB. PERSONNEL ADMIN. 20, 21 (Apr. 1997).

15. *See id.*

16. *See id.* at 21.

17. *See Upstream*, *supra* note 8, at 606.

18. *See id.* at 607.

19. *See id.* *But see generally*, Patricia L. Franz, Note & Comment, *Habits of a Highly Effective Transformative Mediation Program*, 13 OHIO ST. J. ON DISP. RESOL. 1039 (1998)(offering a comprehensive critique of the transformative model of mediation).

USPS in forging an effective ADR Program which benefits all stakeholders.

V. CONCLUSION

All in all, *Designing Conflict Management Systems* is a clear, concise, well-structured resource. It provides a comprehensive analysis of the proper way to design and implement conflict design systems. Costatino and Merchant supply new and innovative approaches to systems design.

Importantly, the book avoids the incomprehensible jargon and repetition usually associated with legal "how to" books, to represent a text which is useful as a resource and guide to readers interested in conflict management design. Those new to ADR will find *Designing Conflict Management Systems* useful because it provides the necessary commentary on the basic concepts of mediation and specific contexts where these concepts have been employed. Finally, law professors will find the volume to be a useful pedagogical tool with which to prepare lawyers for the dispute resolution programs of the present and future.