

August 3, 2016

# Issue Resolution Process Project

## Packet Contents

1. Agenda
2. Project Summary
3. Prior Meeting Synopsis
4. DHCS IRP Process
5. Selected County IRP Processes
6. Donna Shestowsky
  - Biography
  - PowerPoint
7. Barbara Pelletreau
  - Biography
  - CANDOR Press Release
8. Sarah Eberhardt-Rios
  - Biography
  - PowerPoint
9. Article by Professor Tom R. Tyler,  
Yale University

MENTAL HEALTH SERVICES OVERSIGHT  
AND ACCOUNTABILITY COMMISSION

# *Agenda*

# MHSOAC

Mental Health Services  
Oversight and Accountability Commission

## ISSUE RESOLUTION PROCESS SUBCOMMITTEE AGENDA

August 3, 2016 1:00 PM to 4:00 PM

Steinberg Conference Room, 1325 J Street, Suite 1700,

Sacramento, CA 95814 (916) 445-8696

Call-in Number: 866-817-6550 (Listen Only) Participation code: 3190377

TIME	TOPIC	AGENDA ITEM
1:00 PM	<b>Welcome and Introductions</b>  <i>Commissioner Khatera Aslami-Tamplen, IRP Subcommittee Chair Commissioners Larry Poaster and Assembly Member Tony Thurmond, Subcommittee members</i> <ul style="list-style-type: none"><li>• Introductions</li><li>• Opening remarks</li><li>• Review agenda</li></ul>	
1:10 PM	<b>Presentation: Issue Resolution Process Design: Lessons from Psychology and Law</b>  <i>Presenter: Professor Donna Shestowsky, J.D., Ph.D. UC Davis School of Law</i> <ul style="list-style-type: none"><li>• Open Discussion and Public Comment</li></ul>	1
1:50 PM	<b>Presentation: Best Practices in Issue Resolution and Complaint Processes in Large Health Care Organizations.</b>  <i>Presenter: Barbara Pelletreau, R.N., MPH, Senior Vice-President Dignity Health</i> <ul style="list-style-type: none"><li>• Open Discussion and Public Comment</li></ul>	2
2:30 PM	<b>Presentation: How Counties Use Issue Resolution and Complaint Processes for Quality Improvement.</b>  <i>Presenter: Sarah Eberhardt-Rios, MPA, Deputy Director Behavioral Health – Program Support Services San Bernardino County Department of Behavioral Health</i> <ul style="list-style-type: none"><li>• Open Discussion and Public Comment</li></ul>	3

Meetings may be recorded. All meeting times are approximate and subject to change. Agenda items are subject to action by the MHSOAC and may be taken out of order to accommodate speakers and to maintain a quorum, unless noted as time specific. Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Mental Health Services Oversight and Accountability Commission meeting may request assistance at the Commission offices, 1325 J Street, Suite 1700, Sacramento, CA 95814, by calling 916-445-8696, or by emailing the MHSOAC at [mhsoac@mhsoac.ca.gov](mailto:mhsoac@mhsoac.ca.gov). Requests should be made one week in advance whenever possible. To accommodate people with chemical sensitivity, please do not wear heavily scented products to MHSOAC meetings.

TIME	TOPIC	AGENDA ITEM
3:10 PM	<p data-bbox="350 310 850 342"><b>Issue Resolution Process Solutions</b></p> <p data-bbox="350 380 1252 411"><i>Khatera Aslami-Tamplen, Subcommittee Chair, Discussion Facilitator</i></p> <ul data-bbox="399 449 948 480" style="list-style-type: none"> <li data-bbox="399 449 948 480">• Open Discussion and Public Comment</li> </ul>	4
3:50 PM	<p data-bbox="350 548 889 579"><b>Wrap-up, Action Items, and Next Steps</b></p> <p data-bbox="350 596 956 627"><i>Khatera Aslami-Tamplen, Subcommittee Chair</i></p>	
4:00 PM	<p data-bbox="350 667 537 699"><b>Adjournment</b></p>	

Meetings may be recorded. All meeting times are approximate and subject to change. Agenda items are subject to action by the MHSOAC and may be taken out of order to accommodate speakers and to maintain a quorum, unless noted as time specific. Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Mental Health Services Oversight and Accountability Commission meeting may request assistance at the Commission offices, 1325 J Street, Suite 1700, Sacramento, CA 95814, by calling 916-445-8696, or by emailing the MHSOAC at [mhsoac@mhsoac.ca.gov](mailto:mhsoac@mhsoac.ca.gov). Requests should be made one week in advance whenever possible. To accommodate people with chemical sensitivity, please do not wear heavily scented products to MHSOAC meetings.

# *Project Summary*

## MHSOAC ISSUE RESOLUTION PROCESS (IRP) PROJECT SUMMARY

### Background

The Issue Resolution Process, known as the Mental Health Services Act (MHSA) Issue Resolution Process (IRP), has been operational since 2009, after development by the former Department of Mental Health (DMH) sponsored IRP Workgroup. The IRP Workgroup envisioned a process for consumers, family members, members of the public and others to raise concerns regarding access to care, the quality of that care, and the appropriate implementation of the various components of the Act. In response, DMH established an IRP for handling complaints and grievances related to the MHSA. The Department of Health Care Services (DHCS) now manages the Issue Resolution Process on behalf of the state.

In recent years, stakeholders have expressed concern that the current IRP process is inadequate. Stakeholders have asserted the process is not consistently publicized or well known, the filing processes are inconsistent and lack transparency, and there are fears that people raising issues might face retaliation if they pursue the IRP process. The MHSOAC is in the process of exploring the existing IRP policies and practices, assessing their strengths and challenges, and proposing reforms. In addition to the MHSA IRP, the Commission is exploring other local complaint and grievance processes, including the Medi-Cal grievance process.

The scope of MHSA issues covered under the existing Issue Resolution Process include:

- Appropriate use of funds
- Consistency between approved MHSA Plan and implementation
- Local Community Program Planning Process
- Access to MHSA Programs and Services
- Prohibitions on supplantation (i.e., using MHSA funds to pay for services that previously were paid for with other funds.)

The IRP policy states that issues should be addressed first at the local level, in an expedient and appropriate manner. If the Issue Filer is unsatisfied with the local resolution process, he or she may submit concerns to the Department of Health Care Services (DHCS). Once DHCS receives an Issue Filing, the review process begins within 10 business days. DHCS confirms whether (1) the local county IRP was exhausted, and (2) the issue is related to the MHSA and related state-county contracts, regulations, or statutes. If DHCS determines that these two conditions are not met, the Issue Filer will be referred back to their local process or to other resources. If they are met, then DHCS will pursue an investigation.

A Filer also can submit an issue directly to the MHSOAC, the California Mental Health Planning Council, or any agency or entity the Filer feels may assist in resolving the issue. The issue would then be referred to DHCS.

State law provides that if the Director of the Department of Health Care Services determines that there is or has been a failure to appropriately follow the law, and that administrative sanctions are necessary, the department has the authority to withhold part or all of state mental health funds from a county, require the county to enter into negotiations to address the issue, and if necessary, bring legal action to compel compliance. (Welfare and Institutions Code section 5655.)

DHCS has reported to the MHSOAC that it has received six complaints from July 1, 2012 until January 6, 2016.

## **Project Scope**

The core goals of the project are to develop some shared understanding with and some technical assistance to the county behavioral health departments in the following respects:

- 1) Understand the status quo on issue resolution/dispute resolution/complaint procedures in county behavioral health departments and at the state-level;
- 2) Identify “best practices” and the evidence behind those practices in issue resolution and related procedures;
- 3) Identify “best practices” and the evidence behind those practices in data collection and utilization from issue resolution procedures to shape larger organizational planning and management activities in a “continuous quality improvement” context.
- 4) Develop strategies and recommendations for improvement.

**Estimated Project Duration:** 6 months

## **Project Activities**

- A Commission subcommittee has been convened to support this process. The subcommittee met on April 8, 2016.
- A panel made up of clients, county staff, and DHCS staff presented on IRP issues and processes at the April 26, 2016 Commission meeting.
- An additional subcommittee meeting will be held on August 3, 2016 to identify models that could guide improvements to existing practices and to develop strategies and recommendations for improvement.
- The subcommittee will present its findings and recommendations for improving the IRP and complaint processes to the MHSOAC in October 2016.

# *Prior Meeting Synopsis*

## **MHSA Issue Resolution Process Review and Work Plan – May 2016**

The IRP issue has been a concern for MHSOAC since 2007. A number of personnel changes, department reorganizations, funding cuts, and legislation have hampered the project's course.

In January 2016, the MHSOAC adopted four short-term focused project assignments to explore existing policies and practices, assess planning developments, and propose reforms in support of the transformative goals of the MHSA. The IRP was one of the projects selected as an MHSOAC undertaking this calendar year.

After an initial IRP Subcommittee Advisory Group meeting on 8 April and a subsequent panel presentation incorporating the State, several Counties, and consumers, at the Commission meeting on 28 April, several concerns, problems, recommendations, and solutions emerged. The general concepts gleaned from the meetings, notes, and summary documents show the perception from the Counties and State that the process works (low number of complaints, they are handled locally, complaints are not all related to MHSA, no Fair Hearing requests). From the constituents' point of view, the process is a fail (inability to understand the process, do not know how to file, no transparency of how case is handled, difficulty understanding forms, no assistance or help).

Even though it was not the intent to solicit solutions or remedies this early in the process, certain compelling recommendations emerged such as: Conduct client satisfaction surveys; have independent third-party reviews outside of the State or county purview; print complaint forms in different languages; simplify IRP/Complaint procedures; and present a stronger marketing and outreach plan to inform constituents of IRP and complaint procedures.

The project outline set assignments to hear from various stakeholder entities such as the State, Counties, clients, families, law enforcement, interested persons, and Commissioners. Subsequently, the Subcommittee Chair, Commissioner Aslami-Tamplen, would then present the findings at a future Commission meeting.

### **Following is a list of IRP and Grievance Issues as Reported by Consumers**

- Barriers (language, personal assistance, cultural, accessibility).
- Fear of retaliation for filing a complaint and loss of benefits.
- Inadequate information about how to file an IRP complaint.
- Inadequate or non-existent promotional outreach or marketing for IRP Process.
- Lack of complaint records, tracking, reporting.
- Lack of knowledge about the Identification, reporting mechanisms, and various methods to report grievances, disputes, conflicts, and IRPs.
- Lack of transparency in case handling process.
- Process and policy inconsistencies among Counties.

### **Recommendations and Possible Solutions as Reported by Consumers**

- Better outreach and marketing of the IRP.
- Better tracking and complaint reporting.
- Client satisfaction surveys both before and after IRP process is completed.
- County contractors develop a grievance process for IRPs.
- Develop a better anonymous complaint process.
- Develop an internal and external complaint process.
- Each County have an assigned Ombudsman, peer navigator, coordinator, or advocate for IRP or grievances.
- Enhance county performance contracts with a more definitive IRP clause.
- Improve county complaint transparency to build credibility.
- Improved data gathering and sharing.
- Include consumers and family members on new IRP Boards and Advisory Committees.
- Initial complaints are submitted to the OAC for distribution.
- Market the IRP process as an opportunity for growth and not a punitive measure.
- More interactivity and communication between agencies that handle grievances.
- Post IRP complaint signs in each clinic.
- Produce complaint materials in various languages.
- Put an emphasis on quality improvement initiatives.
- Reduce fear of retaliation for filing complaint.
- Rename "complaint process" to invite participation.
- Review and processing of all complaints by an independent third party.
- Streamline and simplify the IRP and complaint processes and forms.
- Technical assistance.
- Track all complaints; not just IRP reports.
- Uniform complaint procedure.

### **Possible Next Steps**

- Solicit input from CLCC and CFLC at the next meetings on 9 June.
- Hold another meeting to focus on solutions/recommendations only.
- Draft a response from what we have currently accumulated and make recommendations.
- Send back to the Subcommittee for their input (with briefing papers).

# ***DHCS IRP PROCESS***

## **Mental Health Services Act Issue Resolution Process**

This Mental Health Services Act (MHSA) Issue Resolution Process (IRP), developed in collaboration with various public mental health stakeholders, provides information regarding the resolution process to address local issues related to MHSA, access to services and MHSA requirements. The IRP is subject to revision as needed.

### **A. Local Issue Resolution Principles**

Issues regarding the MHSA should initially be addressed at the local level.<sup>1</sup> The local process should be completed in an expedient manner, with decisions being consistent with MHSA statutes and regulations. General principles and processes for a local MHSA issue resolution process may include:

1. The right for an Issue Filer to bring an issue forward.
2. The review of an issue by an impartial body.
3. Written notification of the outcome to the Issue Filer.

### **B. Issues Appropriate for this Process**

1. Access to mental health services
2. Violation of statute or regulations relating to use of MHSA funds
3. Non-compliance with the General Standards pursuant to Welfare and Institutions Code §3320<sup>2</sup>
4. Inconsistency between the approved MHSA Plan and its implementation
5. The local MHSA Community Program Planning Process
6. Supplantation

### **C. How to Submit an MHSA Issue**

If the Issue Filer has exhausted his or her county's local issue resolution process, including the local mental health board,<sup>3</sup> without satisfactory resolution, the following steps may be taken:

1. The Issue Filer may submit the MHSA issue in writing or by e-mail or by calling the Department of Health Care Services (DHCS) at:

---

<sup>1</sup> As a general rule, DHCS will require that the local issue resolution process be accessed and exhausted but understands that, in some instances, this may not be possible. Each case will be reviewed accordingly.

<sup>2</sup> Community Collaboration, Cultural Competence, Client Driven, Family Driven, Wellness, Recovery, and Resilience Focused, and Integrated Service Experiences for clients and their families.

<sup>3</sup> In some instances this may include communicating with the local mental health board. Section 5848 provides for the board to conduct a public hearing on three-year plans and updates and provide recommendations to the county mental health department.

Department of Health Care Services  
Mental Health Services Division  
Attention: MHSA Issue Resolution Process  
1500 Capitol Avenue, MS 2702  
P.O. Box 997413  
Sacramento, CA 95899-7413  
Phone: (916) 319-9758  
Email: [mhsa@dhcs.ca.gov](mailto:mhsa@dhcs.ca.gov)

2. The Issue Filer may also submit the MHSA issue to any of the following entities:
  - Mental Health Services Oversight and Accountability Commission (MHSOAC)
  - California Mental Health Planning Council
  - Any agency and/or entity the Issue Filer feels may assist in resolving the MHSA related issue.
3. The Issue Filer may authorize another person to act on his or her behalf in filing an MHSA issue. Due to confidentiality restrictions, DHCS and/or other agencies may be required to request a Release of Information from the Issue Filer allowing DHCS to share information with all appropriate parties, including the Issue Filer's representative. If the Issue Filer does not respond to a request for a Release of Information within 14 days, DHCS will close the case and notify all appropriate parties in writing.

**D. DHCS Review Process:**

1. Within 10 business days of receipt of the letter, e-mail or phone call identifying the issue, DHCS will begin the review process, including determining the organization responsible for addressing the issue.
2. If the issue does not fall within the scope of the MHSA Issue Resolution Process, the issue will be referred to other resources such as Patient Rights, the Ombudsman, Medi-Cal, or other State and local resources. No further action will be taken. DHCS will send a letter or email to the Issue Filer summarizing the status and disposition of their issue.
3. If the MHSA issue does fall within the scope of the MHSA Issue Resolution Process, DHCS will contact the Issue Filer to obtain further information. DHCS may ask for documentation that the county issue resolution process was accessed and exhausted at the local level. As a general rule, DHCS will require that the local issue resolution process be accessed and exhausted but understands that, in some instances, this may not be possible. Each case will be reviewed and, as appropriate, DHCS will either continue to attempt to

- resolve the issue or refer the Issue Filer back to his or her county to address the MHSA issue.
4. The Issue Filer has the right to request anonymity and/or confidentiality. If this request is made, DHCS will continue to pursue a resolution with the appropriate parties, with the understanding that this may limit DHCS's effectiveness in resolving the MHSA issue.
  5. DHCS will contact the county and obtain the status regarding the MHSA issue. DHCS will review the county's response, seek clarification and/or further information, if needed, from the involved parties and determine whether the county's action and response to resolving the issue was consistent with the MHSA regulations and statutes.
  6. If the county's response to the MHSA issue is consistent with the MHSA regulations and statutes, DHCS will send a summary letter stating this determination to the Issue Filer and the county. At this point, DHCS has fulfilled its responsibilities and considers the issue resolution process to be complete.
    - If the Issue Filer disagrees with DHCS's determination, the Issue Filer will be urged to seek remedy through his or her local county mental health board. In addition, DHCS reserves the right to contact the MHSOAC to request county technical assistance regarding the MHSA issue that was raised.
  7. If DHCS determines that the activity by the County was inconsistent with the MHSA regulations and/or statutes, DHCS will contact the Issue Filer and the county to determine next steps. As appropriate, DHCS will notify the MHSOAC, the local board of supervisors and the local county mental health board of DHCS's determination. DHCS may participate to help resolve the issue.



JENNIFER KENT  
DIRECTOR

State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

**DATE:** April 1, 2015

ALL PLAN LETTER 15-007

**TO:** ALL MEDI-CAL MANAGED CARE HEALTH PLANS

**SUBJECT:** DISPUTE RESOLUTION PROCESS FOR MENTAL HEALTH SERVICES

**PURPOSE:**

The purpose of this All Plan Letter (APL) is to provide guidance to Medi-Cal managed care health plans (MCPs) on how to submit a service delivery dispute that cannot be resolved at the local level to the Department of Health Care Services (DHCS). This guidance was developed by DHCS's Managed Care Quality and Monitoring Division (MCQMD) and Mental Health Services Division (MHSD).

MCQMD is issuing this APL to describe the existing regulatory requirements that govern the dispute resolution process and to provide instructions on submitting a dispute between an MCP and a mental health plan (MHP). MHSD will provide parallel guidance through a Mental Health and Substance Use Disorders Information Notice to MHPs. MCPs are hereby advised that if an MHP submits a dispute resolution request to DHCS, DHCS will request information, including a position statement, from the affiliated MCP.

**BACKGROUND:**

Title 9, California Code of Regulations (CCR), Section (§) 1850.505 *et seq.* governs the dispute resolution process between MCPs and MHPs and has been in effect since the onset of the Medi-Cal Specialty Mental Health Services (SMHS) program.

Effective July 1, 2012, the state administrative functions for the operation of Medi-Cal SMHS and applicable functions related to federal Medicaid requirements transferred from the former California Department of Mental Health (DMH) to DHCS. The current requirements found in Title 9, CCR, §1850.505 *et seq.* were promulgated prior to the state administrative functions transfer from the former DMH to DHCS. Notwithstanding the transfer of these functions, DHCS will administer and continue to follow the dispute resolution process set forth in Title 9, CCR, §1850.505 *et seq.*

**POLICY:**

Pursuant to Title 9, CCR, §1810.370, the MCP is required to enter into a memorandum of understanding (MOU) with the MHP in each of the counties where the MCP operates. Whether or not the MCP and MHP have an executed MOU, the parties are required to document attempts to resolve the disputed issue(s) (Title 9, CCR, §1850.505 (d)(2)).

If an MCP is unable to resolve a dispute with an MHP, the MCP may submit a written "Request for Resolution" (see content requirements below) signed by the MCP's Chief Executive Officer (CEO) or his or her designee, to DHCS. If the MCP has an MOU with the MHP, the Request for Resolution must be submitted within 15 calendar days of the completion of the dispute resolution process described in the MOU. If there is no MOU, a Request for Resolution must be submitted within 30 calendar days following the disputed event.

A Request for Resolution should be submitted via secure email to Sarah Brooks, Chief, MCQMD, at [sarah.brooks@dhcs.ca.gov](mailto:sarah.brooks@dhcs.ca.gov).

**REQUEST FOR RESOLUTION SUBMISSION REQUIREMENTS:**

A Request for Resolution submitted to DHCS must contain all of the following:

1. A summary of the disputed issue(s) and a statement of the desired remedies, including any disputed services that have been or are expected to be delivered to the beneficiary by either party;
2. History of attempts to resolve the issue with the MHP;<sup>1</sup>
3. Justification for the MCP's desired remedy; and
4. If applicable, any additional documentation that the MCP deems relevant to resolve the disputed issue(s).

**DHCS DISPUTE RESOLUTION PROCESS:**

Within seven calendar days after DHCS's receipt of a Request for Resolution from an MCP, a copy of the Request for Resolution will be forwarded to the director of the affiliated MHP via secure email ("Notification"). The MHP will have 21 calendar days to submit a response to the Request for Resolution and any relevant documents to support the MHP position ("MHP Documentation") (Title 9, CCR, §1850.505 (e) and (f)). If the MHP fails to respond, DHCS will render a decision on the disputed issue(s) based on the documentation submitted by the MCP.

At its discretion, DHCS may allow both MCP and MHP representatives the opportunity to present oral arguments.

---

<sup>1</sup> Pursuant to Title 9, CCR, § 1850.505 (d)(2), whether or not the MCP and MHP have an executed MOU, the parties are required to document attempts to resolve the issue in the request for resolution.

DHCS will review disputes involving the following:

- The obligations of the MCP or the MHP under their contract(s) with DHCS;
- State Medi-Cal laws and regulations; and/or
- The MCP-MHP MOU as described in Title 9, CCR, §1810.370.

MCQMD and MHSD will make a joint recommendation to the DHCS Director, or his or her designee, based on their review of the submitted documentation, applicable statutory, regulatory, and contractual obligations of the MCP and the MHP, and any oral arguments presented.

Within 30 calendar days from: 1) DHCS's receipt of the MHP documentation; or 2) 21 calendar days after the Notification date, whichever is earlier, the final decision will be communicated via secure email to the MCP CEO and MHP Director. DHCS's decision will state the reasons for the decision, the determination of rates of payment (if the rates of payment were disputed), and any actions the MCP and MHP are required to take to implement the decision (Title 9, CCR, §1850.520(b)).

If DHCS's dispute resolution determination includes a finding that the unsuccessful party has a financial liability to the other party for services rendered by the successful party, the MCP or MHP is required to follow the financial liability criteria set forth in Title 9, CCR, §1850.530, which specify the provisions regarding financial liability rates and proof of reimbursement. If necessary, DHCS shall enforce the decision, including withholding funds to meet any financial liability established pursuant to Title 9, CCR, §1850.530 (Title 9, CCR, §1850.520(c)).

**PROVISION OF SERVICES DURING DISPUTE RESOLUTION PROCESS:**

The provision of medically necessary specialty, and other mental health services, physical health care services, or related prescription drugs and laboratory, radiological, or radioisotope services to beneficiaries shall not be delayed during the pendency of a dispute between an MHP and an MCP (Title 9, CCR, §1850.525). Therefore, to ensure medically necessary services are not delayed, the respective medical directors of the MCP and MHP are expected to immediately discuss which party will provide the medically necessary mental health services to the beneficiary during a pending dispute (Title 9, CCR, §1850.525(a)).

If the parties cannot agree to an arrangement satisfactory to both parties, and the dispute concerns an MCP's contention that the MHP is required to deliver SMHS to a beneficiary, the MCP shall manage the care of the beneficiary under the terms of its contract with DHCS until the dispute is resolved. The MHP must identify and provide the MCP with the name and telephone number of a psychiatrist or other qualified licensed mental health professional available to provide clinical consultation, including

consultation on medications to the MCP provider responsible for the beneficiary's care (Title 9, CCR, §1850.525(b)).

If the parties cannot agree to an arrangement satisfactory to both parties, and the dispute concerns an MHPs' contention that the MCP is required to deliver the treatment of a mental illness, or to deliver prescription drugs or laboratory, radiological, or radioisotope services required to diagnose or treat the mental illness, the MHP shall be responsible for providing or arranging and paying for those services to the beneficiary until the dispute is resolved (Title 9, CCR, §1850.525(c)).

In the event that Title 9, CCR, §1850.525(b) or (c) does not apply, and the parties cannot agree to a satisfactory arrangement regarding how the services will be provided, the party that was providing the medically necessary mental health services prior to the rise of the dispute should continue to provide such services during the dispute resolution process. If neither party has commenced the provision of medically necessary mental health services, then the party from whom the beneficiary first requested the medically necessary mental health services should provide the services during the dispute resolution process.

If you have any questions regarding this APL, contact Sarah Brooks, Chief, MCQMD at [sarah.brooks@dhcs.ca.gov](mailto:sarah.brooks@dhcs.ca.gov).

Sincerely,

*Original Signed by Sarah C. Brooks*

Sarah Brooks, Chief  
Managed Care Quality and Monitoring Division  
Department of Health Care Services

# *Selected County IRP Processes*

*- Alameda*

*- Los Angeles*

*- Napa*

*- San Diego*

*- San Luis Obispo*

**Statement of Kimberly Coady, LCSW, Alameda County Behavioral Health Care Services, Quality Assurance Office**

**Prepared for Presentation to the Mental Health Services Oversight and Accountability Commission Meeting Panel Presentation on the Issue Resolution Process, San Andreas, CA, April 28, 2016**

As an operator of a State- recognized Mental health Plan (MHP), Alameda County Behavioral Health Care Services is required by the California Code of Regulations (Title 9, Sec. 1850.205-215 and 42 CFR Sec. 438.406) to have Beneficiary Problem Resolution Processes that enable a beneficiary to seek resolution to a problem or concern about any issue related to the MHP's performance of its duties, including the delivery of specialty mental health services.

Alameda County is committed to providing high-quality service to beneficiaries and to offering a problem resolution process that is easy to access, timely, and responsive to the concerns and experiences of beneficiaries. Our manual describes the process for addressing such concerns or problems. It details the steps that are taken to advertise, receive, and resolve beneficiary grievances and appeals received by the Alameda County Mental Health Plan. It also provides summary information regarding the complaint procedures of other public and private agencies that beneficiaries may connect with and an overview of certain other consumer rights.

Beneficiaries must have adequate information about the Mental Health Plan's (MHP's) Problem Resolution Process to be able to take advantage of the process if they so choose. Information about how to make a grievance or appeal must be consistently available in the MHP beneficiary booklet and at all sites where MHP services are delivered. This includes County-operated and all contracted providers. Each site is required to prominently display a poster or posters in all threshold languages provided by the MHP which contain information about the process and the Consumer Assistance Line phone number.

All sites are also required to have available the form for making a written request and pre-addressed, postage paid envelopes. The information, forms and envelopes must be available to the beneficiary or their representative without them having to make a verbal or written request to anyone for them. The information must also notify beneficiaries that they may authorize another person to act on their behalf, that the process maintains their confidentiality, and that the beneficiary is not subject to discrimination or any other penalty for filing a grievance, appeal, or expedited appeal. The written form collects information on the person filing the grievance or appeal, information about the problem, and suggestions for its potential resolution. Whenever the MHP issues a Notice of Action (NOA) of any type it must include information about the Appeal process, State Fair Hearings, and how to access them. The Quality Assurance Office and Mental Health Association of Alameda County (contracted to staff the Consumer Assistance Line) receives and responds to calls during normal business hours. Beneficiaries and their representatives, along with providers are oriented to every step in the grievance and appeals process.

The Problem Resolution Process includes a procedure by which the issues identified as a result of a grievance or appeal are transmitted to the Mental Health Plan's Quality Improvement Committee for consideration in the quality improvement program. On an annual basis, the Quality Assurance Office

produces a presentation summarizing the number and type of grievances received during the year and reviews any trends or patterns emerging from the data. The QA Office also prepares the Annual Medical Beneficiary Grievance and Appeal Report (ABGAR reporting form), sent to the State on October 1<sup>st</sup> of each year. The report follows State requirements including number and type of grievances, appeal and expedited appeals received, grievance and appeals categories, and number of State Fair Hearings, including whether they have been referred, resolved, or are still pending at the time of the report.

From time to time BHCS may receive calls from consumers or others seeking to grieve services or an interaction with another public agency or health care provider. These calls are not considered grievances or appeals, and are logged as “informational” contacts, however The QA Office and Consumer Assistance Staff make every effort to connect the caller with the appropriate party to hear and resolve their complaint. Consumer Assistance staff also track the number and types of calls of this nature to identify areas where greater information to consumers and providers may be beneficial and to expand or improve the information provided in the Problem Resolution Process manual.



Do you need help or support?  
**1-800-854-7771**  
 ACCESS Center 24/7 Helpline

Contact Us

[About DMH](#) | [Our Services](#) | [For Providers](#) | [Contract Opportunities](#) | [Press Center](#) | [Client Portal](#)

Search  **Search**

Home > [Mental Health Services Act](#) > [MHSA Detail](#)

[DMH Home](#) | [Contact Us](#) | [AAA](#)

Mental Health Services Act

- [Community and Service Supports](#)
- [Prevention and Early Intervention](#)
- [Workforce Education and Training](#)
- [Capital Facilities](#)
- [Technology](#)
- [Innovation Programs](#)

MHSA Issue Resolution Process

**Mental Health Services Act (MHSA) Issue Resolution Process**

The Los Angeles County Department of Mental Health is committed to resolving issues related to the implementation and ongoing operations of its programs. The resolution of issues associated with MHSA-funded programs is part of the Department's overall issue resolution process. Issues may be raised through any of the existing offices, including:

**For MHSA Program Issues Specifically:**

- **MHSA Implementation & Outcome Unit**  
 In-Person: 695 South Vermont Avenue, Suite 800, Los Angeles, CA 90005  
 E-mail: [MHSAlssueResolution@dmh.lacounty.gov](mailto:MHSAlssueResolution@dmh.lacounty.gov)  
 Telephone: (213) 251-6817  
 Fax: (213) 351-2762

**For clients receiving mental health services including Medi-Cal Beneficiaries:**

- **Patients' Rights Office**  
 Non-Hospital Grievances/Appeals: (213) 738-4949  
 Hospital Grievances/Appeals: (800) 700-9996 or (213) 738-4888

We strive to address and resolve issues as quickly as possible, with an emphasis on increasing service quality. If a MHSA planning, implementation, or operations issue cannot be resolved by the MHSA Implementation & Outcome Unit, it will be reviewed by the Department's appointed Systems Leadership Team (SLT).

For more information, contact Debbie Innes-Gomberg, Ph.D., at [DIgomberg@dmh.lacounty.gov](mailto:DIgomberg@dmh.lacounty.gov) or at (213) 251-6817.

**Types of MHSA issues that may be resolved through this process:**

- Concerns about access or quality of MHSA programs and services
- Inconsistencies between the approved MHSA Plan and implementation
- County MHSA Planning Process

**What to Expect When Filing an Issue**

1. The MHSA Implementation & Outcome Unit will investigate the issue and try to resolve it within the Unit.
2. If the issue is resolved, the Issue Filer will receive a notification of resolution in writing.
3. If the issue cannot be resolved by the MHSA Implementation Unit, the issue will be referred to the SLT for further review.
4. If the issue was resolved by the SLT, the Issue Filer will receive a notification of resolution in writing.
5. If the SLT did not resolve the issue, the Issue Filer will receive a notification of resolution in writing and he/she may appeal to the State.

Please click on the links below to download the following documents:

- [MHSA Issue Resolution Form](#)
- [MHSA Issue Resolution Process Overview](#)

Related Information

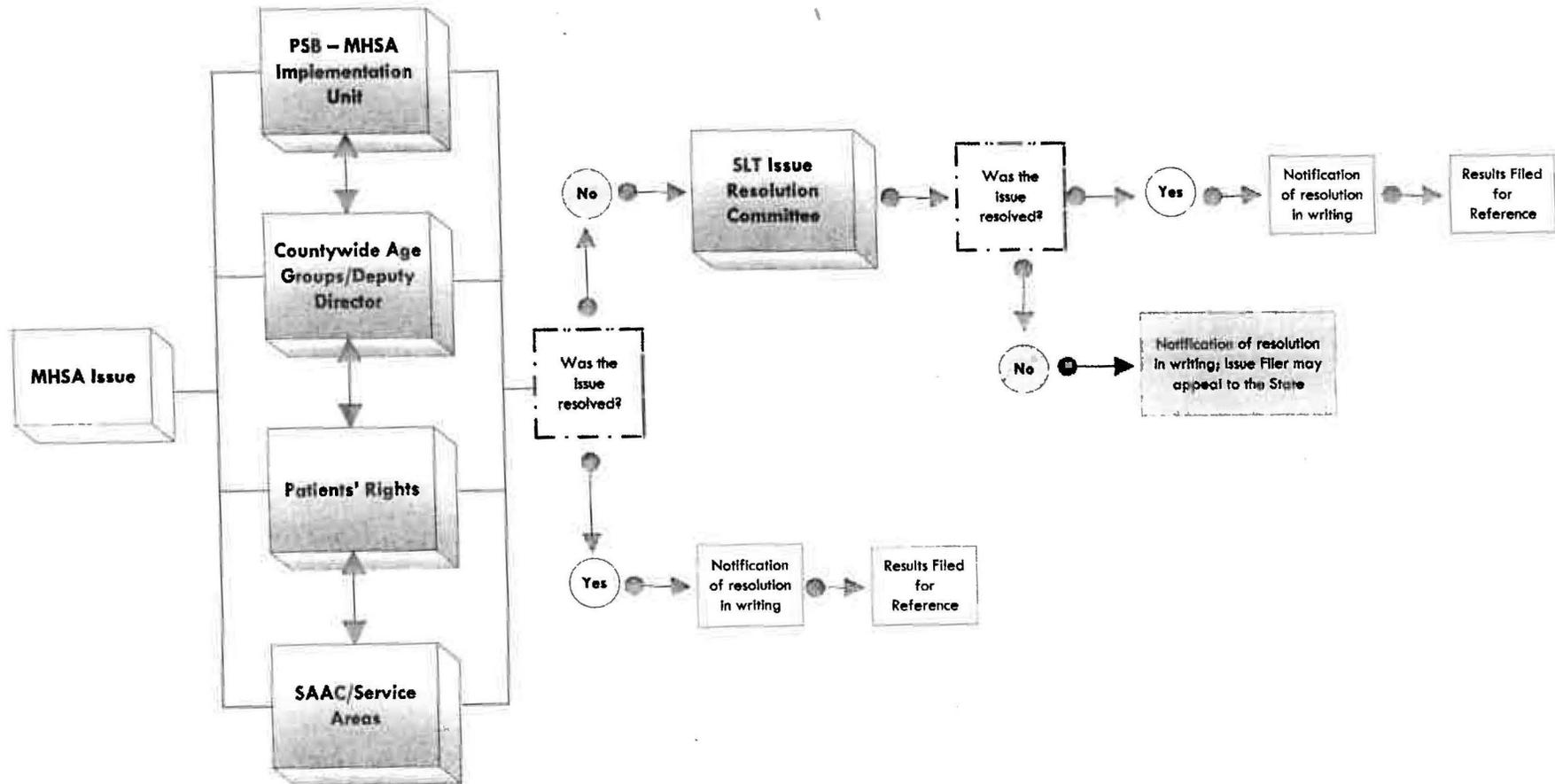
- Prevention & Early Intervention  
[MHSAPEI@dmh.lacounty.gov](mailto:MHSAPEI@dmh.lacounty.gov)  
 Phone: (213) 251-6712  
 Fax: (213) 252-8749
- Workforce Education Training Division  
[MHSAWET@dmh.lacounty.gov](mailto:MHSAWET@dmh.lacounty.gov)  
 Phone: (213) 251-6879  
 Fax: (213) 252-8776

Links

- [MHSA Issue Resolution Process](#)
- [Announcements](#)
- [Planning](#)
- [MHSA Archives](#)

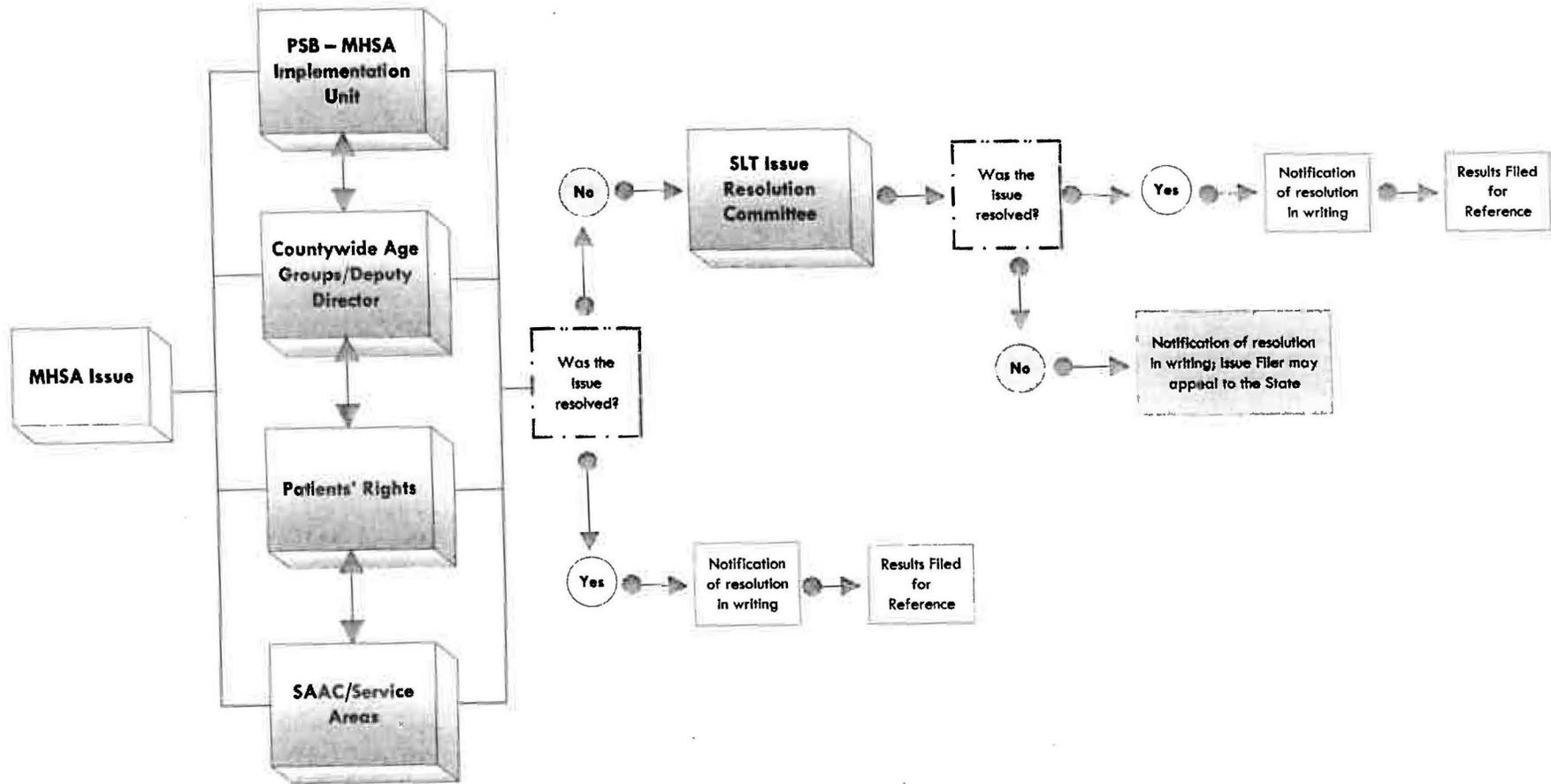
1 2

County of Los Angeles – Department of Mental Health  
Program Support Bureau – Mental Health Services Act (MHSa) Implementation Unit  
**MHSa Issue Resolution Process Overview**



County of Los Angeles – Department of Mental Health  
Program Support Bureau – Mental Health Services Act (MHS) Implementation Unit

# MHSA Issue Resolution Process Overview



Mental Health Services Act (MHSA) Issue Resolution Form  
County of Napa  
Health and Human Services Agency  
Mental Health Division



A Tradition of Excellence  
A Commitment to Service

I wish to remain anonymous

Yes

No

Name

Telephone Number

Street Address

City

State

Zip  
Code

E-mail

Please describe the issue you would like addressed - please be specific (attach a separate sheet if more space is needed).

What do you propose as a solution?

Signature

Date

For Office Use Only

Issue Received by (the employee)

Date Issue was Received

Resolution Status

Date of Status

In review

Referred to Sr. Mgmt/Director

Resolved

Action Taken/Comments

Reason(s) for Decision

Print Reviewer's Name

Reviewer's Signature

**Submit your form to**

Felix A. Bedolla, Project Manager/MHSA Coordinator

Napa County Mental Health Division

2261 Elm St. Bldg. N, Napa, CA 94559

E-mail to: [Felix.Bedolla@countyofnapa.org](mailto:Felix.Bedolla@countyofnapa.org) or Fax: 707/299-2199



## County of San Diego

### Mental Health Services Act (MHSA) Issue Resolution Process

Revised March 28, 2016

#### **Purpose:**

This procedure supplements the Beneficiary and Client Problem Resolution Policy and Process, which provides detailed guidelines for addressing grievances and appeals regarding services, treatment and care, by providing a process for addressing issues, complaints and grievances about MHSA planning and process.

The Department of Health Care Services (DHCS) requires that the local issue resolution process be exhausted before accessing State venues such as the Mental Health Services Oversight and Accountability Commission (MHSOAC), and the California Mental Health Planning Council (CMHPC) to seek issue resolution or to file a complaint or grievance.

San Diego County Behavioral Health Services Division has adopted an issue resolution process for filing and resolving issues related to Mental Health Services Act (MHSA) community program planning process, and consistency between program implementation and approved plans.

The County's Behavioral Health Services Division is committed to:

- Addressing issues regarding MHSA in an expedient and appropriate manner;
- Providing several avenues to file an issue, complaint or grievance;
- Ensuring assistance is available, if needed, for the client/family member/provider/community member to file their issue; and
- Honoring the Issue Filer's desire for anonymity.

Types of MHSA Issues to be Resolved in this Process:

- Appropriate use of MHSA funds
  - Allegations of fraud, waste, and abuse of funds are excluded from this process. Allegations of this type will be referred directly to the County Compliance Office for investigation.
- Inconsistency between approved MHSA Plan and implementation
- San Diego County Community Program Planning Process

**Process:**

- An individual may file an issue at any point and avenue within the system. These avenues may include but are not limited to: the County Behavioral Health Director, County Behavioral Health Assistant Director, County Behavioral Health Deputy Directors, Mental Health Councils, County Compliance Officer, Consumer and Family Liaisons, Patient Advocacy Program, and Mental Health Provider.
- The MHSA issue shall be forwarded to the Consumer and Family Liaisons (Recovery Innovations (RICA) and Family Youth Roundtable (FYRT)) for review within one (1) business day of receipt.
- Consumer and Family Liaisons (CFL) shall provide the Issue Filer a written acknowledgement of receipt of the issue, complaint or grievance within two (2) business days.
- CFL shall notify the County's MHSA Internal Coordinator of the issue received while maintaining anonymity of the Issue Filer.
- CFL will investigate the issue.
  - CFL may convene the MHSA Issue Resolution Committee (MIRC) whose membership includes unbiased, impartial individuals who are not employed by the County of San Diego.
  - CFL will communicate with the issue filer every seven (7) days while the issue is being investigated and resolved.
- Upon completion of investigation, CFL/MIRC shall issue a committee report to the Behavioral Health Director.
  - Report shall include a description of the issue, brief explanation of the investigation, CFL/MIRC recommendation and the County resolution to the issue.
  - CFL shall notify the Issue Filer of the resolution in writing and provide information regarding the appeal process and State level opportunities for additional resolution, if desired.
- The Behavioral Health Director will provide a quarterly MHSA Issue Resolution Report to the Behavioral Health Advisory Board.

**Consumer and Family Liaisons:**

**Judi Holder**

Recovery Innovations (RICA)  
3838 Camino Del Rio North, Suite 380  
San Diego, CA 92108  
(858) 274-4650  
Fax (858) 274-4662  
Email: [Judi.Holder@recoveryinnovations.org](mailto:Judi.Holder@recoveryinnovations.org)

**Donna Ewing Marto**

Family Youth Roundtable (FYRT)  
5005 Texas St., Suite 104  
San Diego, CA 92108  
(619) 546-5852  
Email: [donna@fyrt.org](mailto:donna@fyrt.org)

**Policy:**

San Luis Obispo County's Behavioral Health Department's Mental Health Services has a system for community members and stakeholders to resolve concerns or grievances regarding the activities of the Mental Health Services Act (MHSA).

Mental Health Services is committed to:

- Addressing MHSA-related issues and concerns in an expedient and appropriate manner.
- Providing several avenues to file an issue, complaint or grievance.
- Ensuring assistance is available, if needed, for the community member to file their issue.
- Honoring the Issue Filer's confidentiality.

Types of MHSA Issues to be resolved in this process are:

- Appropriate of use of MHSA funds
- Inconsistency between approved MHSA Plan and implementation
- San Luis Obispo County Community Program Planning Processes
- Access to MHSA Programs

The State requires that the local issue resolution process be exhausted before accessing State entities [including Department of Health Care Services (DHCS), the Mental Health Services Oversight and Accountability Commission (MHSOAC) or California Mental Health Planning Council (CMHPC)] to seek issue resolution or to file a complaint or grievance. San Luis Obispo County Behavioral Health Department's Mental Health Services provides this issue resolution process for filing and resolving issues related to MHSA services, community program planning processes, and consistency between program implementation and approved plans.

**Reference:**

- 1) CCR, Title 9, Chapter 14, Section 529 (Mental Health Board Composition)
- 2) AB100

**Procedures**

This procedure supplements the current beneficiary *Grievance Process* Policy and Procedure, which provides detailed guidelines for filing grievances and appeals regarding services, treatment, and care. This policy provides a process for addressing issues, complaints and grievances about the County's MHSA planning process and subsequent activities.

If any community member or stakeholder (including consumers/family members, providers, or members of the general public) is dissatisfied with any MHSA activity or process, the individual may file a grievance at any point with the Grievance Coordinator or the MHSA Division Manager.

1. Issues are forwarded to the Grievance Coordinator (i.e. Patient's Rights Advocate), either orally or in writing, by completing a Consumer Request Form (See Attachment A) or in a letter.

2. Within one (1) working day of the Grievance Coordinator's receipt of the grievance, the Grievance Coordinator determines if the issue is to be addressed through the MHSA Issue Resolution Process or if it

is an issue of service to be addressed by the County Grievance Process. The Grievance Coordinator acknowledges the receipt of the complaint in writing to the filer within two (2) working days.

If the issue is MHSA-related and not regarding service delivery to consumers:

3. The Grievance Coordinator notifies the County's MHSA Coordinator of the issue received. The Grievance Coordinator communicates with the Issue Filer regarding the grievance and informs him/her of the resolution to the grievance within 60 days.
4. The County MHSA Coordinator attempts to resolve the issue, at which point the Grievance Coordinator is informed and directed to provide a response to the Issue Filer within 60 days from filing the grievance.
5. In case the MHSA Coordinator cannot resolve the issue, an ad-hoc panel subcommittee of the Mental Health Board known as the MHSA Issue Resolution Committee (IRC) (including consumers/family members, community members, and other stakeholders) is convened to address the issue. If needed, the IRC conducts a review of the issue and hold interviews or other investigative actions to determine a pathway to resolution. In this case, the 60-day window for a resolution will be extended.
6. Upon completion of review, the IRC issues a committee report to the Behavioral Health Administrator. The report includes a description of the issue, brief explanation of the review, and the IRC's recommendation for the County resolution to the issue.
7. The Grievance Coordinator responds to the Issue Filer of the resolution in writing and provides information regarding the appeal process and State level opportunities for additional resolution, if desired.
8. The Behavioral Health Administrator provides a quarterly MHSA Issue Resolution Report to the Mental Health Board.

**Attachment A**

# Behavioral Health Services

County of San Luis Obispo

Behavioral Health Services

2178 Johnson Avenue

San Luis Obispo CA 93401

Ph: 805-781-4738

Fax: 805-781-1232

# Consumer Request Form

Complaint     Second Opinion     Change Provider     Grievance     Appeal     Expedited Appeal

See other side for full descriptions of categories of request

If you need assistance in completing this form, please contact the Patient's Rights Office at Ph: 805-781-4738

Date: \_\_\_\_\_

Gender:

Name of Consumer: \_\_\_\_\_

M     F

Address: \_\_\_\_\_

Phone (Daytime) \_\_\_\_\_ Phone (Evenings) \_\_\_\_\_

Medi-Cal Number: \_\_\_\_\_ Client No: \_\_\_\_\_  
(If Known) (If Known)

Clinic Site/Program \_\_\_\_\_

Name of person filing this form  
If other than consumer: \_\_\_\_\_

Describe circumstances regarding your request:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Send completed Request form to:  
Patients Rights, Behavioral Health Services  
2178 Johnson Avenue  
San Luis Obispo CA 93401

\_\_\_\_\_  
Signature of Person Completing this Form      Date

For Office Use Only Below This Line

Resolution/Action Taken by MH:  
\_\_\_\_\_  
\_\_\_\_\_

Confirmation Sent

Date Resolved

Approved by Behavioral Health Administrator: Karen Baylor, PhD, LMFT  
Date: 1/20/2012

<p><b>Consumer Request Form</b> You may submit your request by mailing or faxing this form to the Patient's Rights Advocate or you can telephone your request. Upon receipt of your request you will be sent a written confirmation. Services in place at the time of the request will continue through to resolution.</p> <p><b>YOUR REQUEST WILL NOT BE HELD AGAINST YOU IN ANY WAY. Send To:</b> Patients Rights, Behavioral Health Services 2178 Johnson Ave San Luis Obispo CA 93401 Ph: 805-781-4738 Fax: 805-781-1232</p> <p><b>Complaints</b> Complaints are referred to the appropriate supervisor and handled at that level. Complaints may be submitted by anyone.</p> <p><b>Second Opinion</b> If you have received a Notice of Action (NOA-A) stating that you do not meet Medical Necessity for treatment you may ask for a second opinion. You will be notified whether you will have another face to face evaluation or whether the second opinion will be made from materials already gathered.</p>	<p><b>Change of Provider/Clinician</b> You may request a change in doctor, therapist, Case Manager or clinic at any time. Your request will be handled quickly.</p> <p><b>Grievances*</b> If you are dissatisfied about any of the services received, you may file a grievance. Within one working day the Grievance Coordinator acknowledges receipt in writing to you. The matter will be resolved within 60 calendar days from the date the Grievance is filed. There may be a 14-day extension given if you request it or if the Mental Health Plan determines that there is a need for additional information and that the delay is in your interest. You are informed in writing of any extensions. If the grievance regards a clinical issue, the decision maker must also be a healthcare professional with the appropriate clinical expertise in treating your condition. If the grievance is not a clinical issue appropriate staff are designated to render a decision. In either case, the Mental Health Plan notifies you and the provider in writing of the decision. This notification ends the Grievance Process. If you are not satisfied with the Grievance decision, you may apply for a Standard Appeal (or an Expedited Appeal if appropriate). *Medi-Cal Recipients Only</p>	<p>You may authorize another person to act on your behalf, including the Mental Health care provider. You may authorize a representative in the grievance process. This representative can be authorized to provide information regarding the status of your grievance.</p> <p><b>Standard Appeal*</b> Appeals are a request for a review of an MHP Action (any denial, limitation, reduction, or suspension of services, failures of Mental Health to provide services in a timely manner or act on Grievances or Appeals within established time frames). Appeal must be filed within 90 days from the receipt of the Notice of Action or 90 days from the date the Notice of Action was mailed. Appeals are typically resolved within 45 days.</p> <p><b>Expedited Appeal*</b> Choose this if a Standard Appeal time frame would place you at risk. Expedited Appeals are typically resolved within 3 days, a 14 day extension may be put in place.</p> <p><b>State Fair Hearing</b> <i>If at the conclusion of your Appeal you are dissatisfied you may request a State Fair Hearing. You will be instructed how to do that in the letter you get telling you about the decision on your Appeal.</i></p>
--	--	--

*Donna Shestowsky*

*- Biography*

*- PowerPoint*

**DONNA SHESTOWSKY**

[dshest@ucdavis.edu](mailto:dshest@ucdavis.edu) (<mailto:dshest@ucdavis.edu>)

530-754-5693

Rm. 2135 King Hall

Legal Scholarship at SSRN (<http://ssrn.com/author=402976>)

High Resolution Headshot Photo ([../images/people/h/shestowsky-donna.jpg](http://../images/people/h/shestowsky-donna.jpg))

***Donna Shestowsky***

---

**Professor of Law*****Education***

B.S. Psychology, Yale University

M.S. Psychology, Yale University

J.D., Stanford University

Ph.D. Psychology, Stanford University

***Biography***

Dr. Shestowsky teaches Criminal Law, Negotiation Strategy, Alternative Dispute Resolution (ADR) and a Seminar in Legal Psychology. Her main research objective is to examine basic assumptions underlying the structure of the legal system and to explore ways in which the legal system might be improved using the methodological and analytic tools of psychological theory and research.

Dr. Shestowsky is the sole principal investigator of a multi-year research project, funded by the National Science Foundation and the American Bar Association, which examines how litigants evaluate legal procedures. Her recent scholarship based on this work was awarded the 2016 Mangano Dispute Resolution Advancement Award.

Dr. Shestowsky's legal and psychological commentary has appeared in national sources such as CNN, NPR, and the New York Times. She advises courts in the development of court-connected ADR programs and provides negotiation education services to corporations, law firms, and national organizations. She also coaches the King Hall Negotiations team, which ranked 1st in the world in the international law student negotiations competition in 2009. She was the 2007 recipient of the Distinguished Teaching Award.

Dr. Shestowsky was awarded a J.D. and Ph.D. in Psychology from Stanford University. During the 2003-2004 academic year, she was jointly appointed to the faculty at Northwestern University School of Law and the Kellogg School of Management.

***Subject Areas***

**PowerPoint Presentation:**

***Issue Resolution Process Design: Lessons from Psychology and Law***

**Professor Donna Shestowsky, J.D., PhD.**

**This item will be provided as a handout at the meeting and posted to the MHSOAC website at a later date.**

# *Barbara Pelletreau*

- *Biography*

- *CANDOR Press Release*

**Barbara Pelletreau, RN, MPH**

*Senior Vice President Patient Safety*

Since joining Dignity Health in December 2002, Barbara Pelletreau earned a reputation for her incredible energy and success in leading several highly successful system-wide initiatives. These initiatives include "Safe Patient Handling" (to reduce employee injuries from manual patient lifting and transfers); an electronic Events Reporting System (ERS); Executive WalkRounds (to improve accountability and safety in the high-risk areas); implementation of technology for patient safety officers to monitor and improve compliance with National Patient Safety Goals; Sponge ACCOUNTing (a process to eliminate the occurrence of retained sponges during surgery); and Shared Learnings. Shared Learnings involve monthly "stories" of near misses and actual events that are shared by hospitals with senior leadership (physicians, nursing, risk managers and patient safety officers from each hospital). The calls serve to share stories and learnings with specific actions real time in order to prevent a repeat event at another hospital. In partnership with the legal department, Ms. Pelletreau has led the organization to be a Patient Safety Organization per federal regulations.

Ms. Pelletreau, completed the Patient Safety Fellowship through the American Hospital Association. Prior to joining Dignity Health, Ms. Pelletreau was the head of operations for self-insured health care clients at Health Net where she led a client centered team to reduce employee injuries and established model practices resulting in a significant reduction in savings for small and large clients. She has also managed the Workers' Compensation program for the University of California in the Office of the President, which included nine campuses, two laboratories, and five medical centers. Ms. Pelletreau spent thirteen years in various clinical and managerial roles at John Muir Healthcare System, including nursing in medical surgical, cardiac rehab and occupational health.



*Advancing Excellence in Health Care*

---

FOR IMMEDIATE RELEASE  
May 23, 2016

Contact: AHRQ Office of Communications  
(301) 427-1864

**AHRQ Toolkit Helps Health Care Organizations and Providers Communicate With Patients and Families When Harm Occurs**

The Agency for Healthcare Research and Quality (AHRQ) today released a new online toolkit to help hospital and health system leaders and clinicians communicate accurately and openly with patients and their families when something goes wrong with their care.

The toolkit will help expand use of an AHRQ-developed communication and resolution process called Communication and Optimal Resolution, or CANDOR, which gives hospitals and health systems the tools to respond immediately when a patient is harmed and to promote candid, empathetic communication and timely resolution for patients and caregivers.

Despite the best efforts of hospitals, doctors, nurses and other health care professionals, about 1 in 10 patients are harmed by the care they receive. Effective communication following harm can be challenging, leaving patients and families to wonder what happened and possibly seek legal action to find answers. The toolkit, which includes facilitator notes, slides, and online videos, enables health care organizations to make care safer by implementing the CANDOR process to encourage proactive, open communication with patients and their families when harm occurs.

“Medical harm can impact patients twice — first by the harm itself, and then by the wall of silence that can follow,” said AHRQ Director Andy Bindman, M.D. “This toolkit helps foster honest and transparent communication in an effort to rebuild trust and support safer care for patients.”

The CANDOR process was developed by AHRQ and is based on expert input and lessons learned from the agency’s \$23 million Patient Safety and Medical Liability grant initiative launched in 2009, the largest federal investment in research linking improved patient safety to reducing medical liability.

(more)

CANDOR is an example of a communication and resolution program, which some hospitals are already using. These programs help remove barriers to the reporting of near misses and errors and encourage open communication about how to prevent future harms. The CANDOR process was tested and applied in 14 hospitals across three health systems, which plan to expand its use: Christiana Care in Delaware, Dignity Health in California, and MedStar Health in the Baltimore/Washington, D.C., metropolitan area.

“Every day in American hospitals, countless doctors, nurses and other caregivers perform miracles for patients. And while one incident is one too many, sometimes errors occur,” said Richard J. Pollack, President and CEO of the American Hospital Association, whose Health Research and Educational Trust foundation developed the CANDOR tools under a contract with AHRQ. “This toolkit helps everyone involved – patients, families, clinicians, and administrators – discuss what happened, agree on a resolution and make care safer in the long run.”

The CANDOR toolkit, which is customizable and available at no charge, is the latest in a series of AHRQ materials to teach, train, and catalyze health care providers to build capacity to make care safer. Read more about CANDOR and the importance of honesty when patient harm occurs in a new blog by Dr. Bindman.

AHRQ is a health services research agency within the U.S. Department of Health and Human Services that invests in evidence and research to understand how to make the health care system safer and improve quality. AHRQ also generates measures and data used to track and improve performance and evaluate progress of the U.S. health system. Its mission is to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within HHS and with other partners to make sure that evidence is understood and used.

###

*Editor's Note: An introductory video, factsheet, blog and additional statements of support for the CANDOR process from consumers, doctors, nurses and hospital leaders, are available by contacting Lorin Smith at [Lorin.Smith@ahrq.hhs.gov](mailto:Lorin.Smith@ahrq.hhs.gov) or 301-427-1864.*

*Sarah Eberhardt-Rios*

*- Biography*

*- PowerPoint*

**Sarah Eberhardt-Rios, MPA**  
**Deputy Director-Program Support Services**  
**Department of Behavioral Health**

As Deputy Director for the County of San Bernardino Department of Behavioral Health (DBH), which is the region's Local Mental Health Plan, Ms. Eberhardt-Rios oversees the Department's Quality Management (QM), Workforce Education & Training (WET), Research & Evaluation (R&E), Mental Health Services Act (MHSA) coordination and program planning, including Prevention and Early Intervention as well as Integrated Health efforts and Managed Care for the public mental health system. She is the Department's subject matter expert on Health Care Reform, behavioral health parity and managed care structures for both private and public health plans, including the administration of behavioral health benefits. Ms. Eberhardt-Rios also oversees the Office of Innovation, a program under Mental Health Services Act (MHSA) that explores and evaluates the current behavioral health delivery system in an effort to learn about novel, creative, ingenious behavioral health approaches that are expected to contribute to learning, transformation, and integration of the public behavioral health system within other community/social service delivery systems.

Ms. Eberhardt-Rios obtained her bachelor's degree in Biology from San Francisco State University in 2000 and her Master's degree in Public Administration from California State University, San Bernardino in 2007. She has 15 years of experience in behavioral health administration, including alcohol and drug services, specifically, gender specific treatment for pregnant and parenting women. She has been working at the local and state policy level to integrate processes related to the changing landscape of behavioral health and healthcare including Medi-Cal/Managed Care Expansion, improvements in coordination of and quality of care across multiple systems, payors and providers.

As a student at San Francisco State, she was a volunteer at Laguna Honda Hospital, a skilled nursing and rehab center established in 1866 and one of the most extensive therapeutic care environments for seniors and adults with disabilities. It was there that she met Dallas B., a gentleman that influenced her entire career through his courageous struggle and recovery from drug addiction, depression and homelessness.

She is a family member descending from a family whose illness is mental illness, with considerable experience from inside the private and public mental health system, which helps her tremendously in her work every day. She loves vintage fashion, old cars, good music and a good bowl of PHO, a Vietnamese noodle soup, any day of the week.

**PowerPoint Presentation:  
Sarah Eberhardt-Rios**

**This item will be provided as a handout at the meeting and posted to the MHSOAC website at a later date.**

*Article by*  
*Professor Tom R. Tyler*

- *“Procedural Justice  
and the Courts”*

# Procedural Justice and the Courts

Tom R. Tyler

People come to the courts about a wide variety of problems and disputes. Although this has always been the case, in recent years the court system has become the branch of government in which people deal with an ever broader variety of issues and concerns. And the people who bring their problems to court have themselves become increasingly diverse in terms of their ethnic and social backgrounds. In addition, more and more of these people choose to represent themselves, rather than acting through lawyers. Finally, these changes are occurring in an environment in which people have generally lower levels of trust and confidence in all forms of governmental authority. All of these trends pose a challenge for the courts.

In dealing with these problems and disputes, one core goal of the judicial system is to provide people with a forum in which they can obtain justice as it is defined by the framework of the law. This is the traditional concern of judges, and the goal emphasized in legal education—the correct application of the law to particular legal disputes.

A second goal of the courts is to handle people's problems in ways that lead them to accept and be willing to abide by the decisions made by the courts. The effectiveness of the courts in managing social conflicts depends upon their ability to issue decisions that are authoritative, i.e., that shape the conduct of the parties that come before them. Courts want that deference to continue over time, with people adhering to court judgments long after their case, so that the parties are not continually bringing the issues back into the courts for re-litigation. Finally, the courts want to retain and even enhance public trust and confidence in the courts, judges, and the law. Such public trust is the key to maintaining the legitimacy of the legal system.

## THE IDEA OF PROCEDURAL JUSTICE

The concepts behind procedural justice have developed from research showing that the manner in which disputes are handled by the courts has an important influence upon people's evaluations of their experiences in the court system.<sup>1</sup> The key finding of that research is that how people and their problems are managed when they are dealing with the courts has more influence than the outcome of their case on the issues noted above. Judgments about how cases are handled are generally referred to as assessments of procedural justice to dis-

tinguish them from assessments of the favorability or the fairness of the outcomes that people received. Studies suggest first that procedural justice has an impact on whether people accept and abide by the decisions made by the courts, both immediately and over time. Second, procedural justice influences how people evaluate the judges and other court personnel they deal with, as well as the court system and the law.

Problems with noncompliance with the decisions of judges are long-standing.

One major motivation for the alternative dispute resolution movement, which seeks alternative forums to traditional courtrooms, is the effort to find a way to increase the willingness to accept the decisions made by third-party authorities. In family court, for example, judges have struggled to find ways to make decisions about child custody and child support that would be willingly followed by both fathers and mothers and that would, to the degree possible, create positive post-separation dynamics in which both parents took responsibility for supporting their children financially and emotionally. And, procedural justice is found to be effective in both creating positive dynamics within families and in facilitating long-term adherence to agreements.<sup>2</sup> In other words, the use of fair procedures encourages a positive climate among the parties, which is more likely to promote both a long-term relationship and adherence to the agreements made about how to handle issues, such as child custody, that are related to that relationship.

## MISCONCEPTIONS ABOUT PROCEDURAL JUSTICE

Before discussing the implications of the procedural justice approach, let me comment on a common misconception about this perspective. That is that it suggests that people are happy when they lose. On the contrary, no one likes to lose. However, people recognize that they cannot always win when they have conflicts with others. They accept "losing" more willingly if the court procedures used to handle their case are fair. This is true both for formal procedures such as trials and for informal procedures, including settlement conferences, mediation sessions, and arbitration hearings.

One reason the procedural justice approach results in "losing" being more acceptable to litigants is that it minimizes the degree to which problems are framed in terms of winning and losing, as well as generally shifting the focus of attention away

## Footnotes

1. E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988); Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117 (2000).
2. PENELOPE E. BRYAN, *CONSTRUCTIVE DIVORCE: PROCEDURAL JUSTICE AND SOCIOLEGAL REFORM* (2005); Peter A. Dillon & Robert E. Emery, *Divorce Mediation and Resolution of Child Custody Disputes: Long-term Effects*, 66 AM. J. ORTHOPSYCHIATRY 131 (1996); Robert

E. Emery, Sheila G. Matthews & Katherine M. Kitzmann, *Child Custody Mediation and Litigation: Parents' Satisfaction and Functioning One Year After Settlement*, 62 J. CONSULTING & CLINICAL PSYCHOL. 124 (1994); Katherine M. Kitzmann & Robert E. Emery, *Procedural Justice and Parents' Satisfaction in a Field Study of Child Custody Dispute Resolution*, 17 LAW & HUM. BEHAV. 553 (1993).

from outcomes and toward the procedures through which the dispute is being resolved. As a consequence, fair procedures lead to a concern about delivering gains to all parties rather than winning over others.<sup>3</sup> For example, all parties have the opportunity to present their story and to have it considered by the relevant authorities. Further, all parties have their right to seek justice from the courts, recognized and acknowledged by the courts.

Because it provides all parties with desirable experiences with the courts, procedural justice is a key to the development of stable and lasting solutions to conflicts. The beginning point of such solutions is a better and generally less conflictual relationship among the parties to a case. When people have settled their conflict in a less adversarial way, they have better feelings toward one another. For example, as previously noted, in child custody hearings both parents are likely to be involved in their children's lives a year or even several years after the hearing if they view the hearing as fair. And this is true irrespective of the outcome. Fathers, who typically lose such hearings, are more likely to have contact with their children in the future if the hearing is one they evaluate as being fair. In addition, having a fair hearing encourages people to view the authority involved and their decision as more legitimate. Consequently, people feel more obligation to accept and obey the decision. This leads to long-term rule following.

One example of this long-term effect is provided by a study of adult rule following conducted in Australia. Adults who were arrested for driving while drunk had their case disposed through different legal procedures, including traditional courts. After their case was disposed each person was interviewed. As expected, the fairness of the legal procedure was related to the legitimacy of the legal system. Two years later, those involved were reinterviewed and it was found their views about the legitimacy of the law were related to their initial perceptions of the fairness of their cases. Peoples' obedience to the law was then tracked for the two years following this second interview, and it was found that people who experienced their hearing as fairer, and therefore viewed the law as more legitimate two years later, reoffended at around 25% the rate of those who viewed the law as less legitimate during the two years following their second interview. In other words, the reduction in reoffending caused by experiencing a hearing as fairer extended to at least four years after the hearing.<sup>4</sup> It is striking that people's experiences in a courtroom or at a conference with legal authorities, something that lasts at best a few hours, can be strongly affecting their behavior several years later.

### THE INFLUENCE OF PROCEDURAL JUSTICE

As the findings outlined suggest, judges and court personnel should be interested in procedural justice because studies indi-

	Willingness to accept the decision	Evaluation of the courts and the law
<b>Experience-based judgements</b>		
Procedural justice	.68***	.36***
Distributive justice	.20**	.15^
Outcome favorability	-.11*	-.11
<b>Background factors</b>		
Ideology	.08	.07
Age	-.06	.02
Education	-.12	.05
Income	.13*	.07
Gender	.02	.00
African-American	-.03	-.17^
Hispanic	-.10	.07
City of residence	-.06	.04
Was contact voluntary?	-.04	.02
<b>Adjusted R<sup>2</sup></b>	<b>58%***</b>	<b>21%***</b>
^p < .10; *p < .05; **p < .01; ***p < .001.		

cate that it encourages decision acceptance and leads to positive views about the legal system. A particularly telling example comes from a study of willingness to accept decisions made by police officers and judges in two California communities—Oakland and Los Angeles.<sup>5</sup> This study considered both those who came to these authorities seeking help, and those being regulated by the authorities. It also considered a diverse sample of White, African-American, and Hispanic residents. The sample included 1,656 people in Los Angeles and Oakland with a recent personal experience with the police or the courts. Fourteen percent (239 people) had contact with a court.

Why did people accept court decisions? The study asked participants about their willingness to accept such decisions. In particular, it focused upon willing acceptance, rather than mere compliance. It also asked about overall evaluations of the law, the courts, and the legal system.

Reactions to the court could potentially be linked to three judgments: whether the procedures used by the court were just; whether the outcome was just; and/or whether the outcome was favorable or unfavorable. In addition, the study measured and controlled for other potentially important factors, including the person's ideology, their age, their level of

3. Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 LAW & SOC. INQUIRY 473 (2008).

4. Tom R. Tyler et al., *Reintegrative Shaming, Procedural Justice, and Recidivism: The Engagement of Offenders' Psychological Mechanisms*

*in the Canberra RISE Drinking-and-Driving Experiment*, 41 LAW & SOC'Y REV. 553 (2007).

5. TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (2002).

**[F]ocusing on procedural justice is a very good way to build trust and encourage compliance irrespective of who the people using the courts are.**

education, their income, their gender, the city they lived in, their ethnicity (African-American, Hispanic, white); and whether they appeared in court voluntarily.

Regression analysis was used to explore the influence of these various factors on the willingness to accept decisions made by the court. The results of that analysis are shown in Table 1. The numbers shown are standardized

regression coefficients, which indicate the relative influence of different factors. As expected, the primary factor shaping the willingness to accept decisions was the fairness of court procedures (standardized regression coefficient,  $r = .68$ ,  $p < .001$ ). Procedural justice was also the primary factor shaping the influence of personal experience upon overall views about the court system (standardized regression coefficient,  $r = .36$ ,  $p < .001$ ).

The findings noted above are especially important because they are true of people irrespective of their social or economic background. The California study was designed to compare the experiences of white, Hispanic, and African-American members of Los Angeles and Oakland. The members of all three groups reacted in basically the same ways to their experiences. The same is true of those who were economically advantaged and disadvantaged, men and women, and those high and low in education. It was also true of plaintiffs and defendants, and of people who dealt with the police or the courts. In other words, people generally reacted to their experience in terms of procedural justice whatever their background, suggesting that focusing on procedural justice is a very good way to build trust and encourage compliance irrespective of who the people using the courts are.

These findings are typical of studies of the courts. Early experimental research on trials by John Thibaut (a psychologist) and Laurens Walker (a lawyer) demonstrated that, irrespective of the outcome of a trial, the participants were more willing to accept the decisions of the judge if the trial procedure was fair.<sup>6</sup> In particular, they argued that disputants viewed adversary procedures as fair because they allowed people the opportunity to tell their side of the story before decisions were made by the authority managing the trial. Such an

opportunity is often described as having voice in the proceedings. This early experimental research has been subsequently supported by a number of laboratory and field studies of trials and other legal procedures.<sup>7</sup> At this point the influence of procedural justice is widely supported by both experimental and field research.

As I have noted, an especially important finding of studies on procedural justice is that people are more likely to continue to abide by a decision if that decision is made through a fair procedure. The process legitimates the decision and creates commitment to obeying it that is found to persist into the future. In addition, studies find that people's general commitment to obeying the law is heightened when they experience fair procedures in legal settings.

A common misconception about regulatory procedures is that you cannot deliver undesirable outcomes without being unpopular. This suggests that the police and courts are inevitably unpopular. The study of people dealing with legal authorities that I have just described indicates that as long as people view the procedures they experience as fair, they are largely unaffected by their outcomes, even when those outcomes are negative.<sup>8</sup> In addition, studies that interview people both before and after their personal experiences with legal authorities show that trust and confidence in legal authorities increases when people experience procedural justice, even in situations in which they receive a negative outcome.<sup>9</sup> It might seem paradoxical but people are found to feel more trust in authorities after receiving a negative outcome than they did before receiving that outcome, as long as the authority involved behaves in a fair way. So, legal authorities can act in ways that are necessary to be effective in their regulatory role and simultaneously build confidence among the public.

Finally, people often suggest that procedures do not matter when the stakes are high. In fact, studies suggest that people continue to care about the fairness of procedures when the outcomes involved are substantial and important to them. This includes when the monetary stakes are high, as is true in civil cases;<sup>10</sup> when people are very invested in the issues, for example in child custody hearings;<sup>11</sup> when their liberty is at stake, as is true in felony cases;<sup>12</sup> when people are incarcerated;<sup>13</sup> and when important public policy issues are being decided.<sup>14</sup>

These same procedural justice judgments are also a key factor in the evaluations made by the general public of the courts as institutions.<sup>15</sup> National surveys of public trust and confidence in state courts show that public evaluations of state

6. JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975).

7. LIND & TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE*, *supra* note 1.

8. For similar findings from research conducted in Chicago, see TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).

9. TOM R. TYLER & JEFFREY FAGAN, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?* OHIO ST. J. CRIM. L. (forthcoming 2008).

10. ALLAN E. LIND, CAROL T. KULIK, MAUREEN AMBROSE & MARIA V. DE VERA PARK, *Individual and Corporate Dispute Resolution: Using*

*Procedural Fairness as a Decision Heuristic*, 38 ADMIN. SCI. Q. 224 (1993).

11. BRIAN, *CONSTRUCTIVE DIVORCE*, *supra* note 2.

12. JONATHAN D. CASPER, TOM TYLER & BONNIE FISHER, *Procedural Justice in Felony Cases*, 22 LAW & SOC'Y REV. 483 (1988).

13. RICHARD SPARKS, ANTHONY BOTTOMS & WILL HAY, *PRISONS AND THE PROBLEM OF ORDER* (1996).

14. TYLER, *Social Justice*, *supra* note 1.

15. DAVID B. ROTTMAN, *TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS* (2005).

courts are based heavily upon evaluations of the fairness of court procedures.<sup>16</sup> In particular, people are found to be sensitive to whether the courts protect their rights and to whether they think that judges are honest. While these procedural justice judgments are the most important factor shaping trust and confidence in the courts, those interviewed are also sensitive to whether the courts treated the members of different groups equally, as well as to other structural issues about the courts, such as cost and delay. But, their primary basis for evaluation is procedural justice.

The strong linkage between procedural justice and evaluations of the courts was recently affirmed by a study conducted within the State Courts of California. The Administrative Office of the Courts undertook a study in 2005 in which a random sample of the residents of the state were interviewed about their trust and confidence in the California courts. An analysis of that information<sup>17</sup> suggests that “[h]aving a sense that court decisions are made through processes that are fair is the strongest predictor by far of whether members of the public approve of or have confidence in the California courts.”<sup>18</sup> The California courts are rated as being very fair in terms of treating people with dignity and respect, but as not particularly fair in terms of allowing them to participate in decisions that affect them. The report argues that “[p]olicies that promote procedural fairness offer the vehicle with the greatest potential for changing how the public views the state courts.”<sup>19</sup>

Interestingly, the report points to experiences with low-stakes courts, such as traffic court, as a particular source of dissatisfaction, and argues that all experiences with legal authorities, even relatively trivial interactions, are important to members of the public and need to be the focus of court design efforts. Finally, the report argues that there need to be mechanisms for the ongoing evaluation of people’s experiences with the courts, mechanisms institutionalized through periodic surveys of members of the public, especially those who have had experiences with the courts.

One reason that these findings are particularly important is that they provide an independent confirmation that issues of procedural justice matter in real court settings. This study was not conducted or evaluated by the academic researchers who have been responsible for many of the early studies of proce-

dural justice. Instead, the need for this study arose within the framework of court concerns in California; the study was designed and conducted within the framework of the administrative offices of the courts; and the report was written by David Rottman, a researcher at the National Center for State Courts.

Hence, the confirmation of core procedural justice findings is especially important.

Similar conclusions have also been reached by other judicial leaders. The White Paper on procedural fairness authored by Judges Kevin Burke and Steve Leben,<sup>20</sup> presented at the annual meeting of the American Judges Association in 2007 and which is the focus of this special issue of *Court Review*, is another example. The White Paper reviews research on procedural justice, including recent studies conducted within the court systems of Hennepin County, Minnesota, under Judge Burke’s direction, and in Brooklyn, New York.<sup>21</sup> Again, these court-designed and -sponsored evaluations point to the importance of procedural justice in encouraging satisfaction, decision acceptance, and trust and confidence in the courts.<sup>22</sup>

Finally, the findings outlined do not apply only to litigants or other members of the public who come to court (the “clients” of the court system). They also apply to the people who work within the court system. Studies of employees in general indicate that employees in a wide variety of types of work organizations evaluate their own experiences on the job in terms of the procedural fairness of their treatment by their own authorities. Research suggests that the degree to which employees follow work rules, as well as doing their jobs well, is linked to the fairness of workplace procedures.<sup>23</sup> Similarly, studies of agents of social control, for example police officers, suggest that their behavior on the job is related to how fairly they are treated by their supervisors.<sup>24</sup> Hence, the same principles that can be used to design efforts to deal with the public also apply to efforts to design effective approaches to dealing with the people working within the criminal justice system.

**The procedural justice research findings "also apply to the people who work within the court system."**

16. Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want for the Law and Legal Institutions?* 19 BEHAV. SCI. & L. 215 (2001).

17. ROTTMAN, TRUST AND CONFIDENCE, *supra* note 15.

18. *Id.* at 6.

19. *Id.* at 7.

20. *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4 (this issue) (White Paper originally delivered at the annual conference of the American Judges Association, Sept. 2007, Vancouver, B.C.), available at <http://aja.ncsc.dni.us/htdocs/AJWhitePaper9-26-07.pdf>.

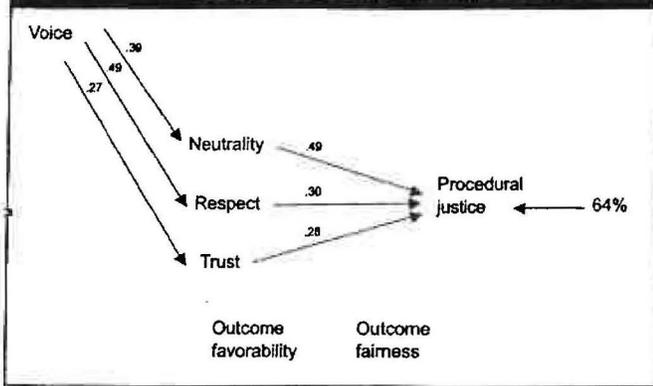
21. M. SOMJEN FRAZER, THE IMPACT OF THE COMMUNITY COURT MODEL IN DEFENDANT PERCEPTIONS OF FAIRNESS: A CASE STUDY AT THE RED HOOK COMMUNITY JUSTICE CENTER (2006), available at [http://courtinnovation.org/\\_uploads/documents/Procedural\\_Fairness.pdf](http://courtinnovation.org/_uploads/documents/Procedural_Fairness.pdf).

22. See M. Somjen Fraser, *Examining Defendant Perceptions of Fairness in the Courtroom*, 91 JUDICATURE 36 (2007); Jake Horowitz, *Making Every Encounter Count: Building Trust and Confidence in the Police*, NAT’L INST. JUST. J., Jan. 2007, at 8, available at <http://www.ncjrs.gov/pdffiles1/nij/jr000256c.pdf>.

23. Tom R. Tyler, *Promoting Employee Policy Adherence and Rule Following in Work Settings: The Value of Self-regulatory Approaches*, 70 BROOK. L. REV. 1287 (2005); Tom R. Tyler & Steven L. Blader, *Can Businesses Effectively Regulate Employee Conduct?: The Antecedents of Rule Following in Work Settings*, 48 ACAD. MGMT. J. 1143 (2005).

24. Tom R. Tyler, Patrick E. Callahan & Jeffrey Frost, *Armed, and Dangerous(?): Motivating Rule Adherence Among Agents of Social Control*, 41 L. & SOC’Y REV. 457 (2007).

**FIGURE 1: DIRECT AND INDIRECT INFLUENCES ON PROCEDURAL JUSTICE**



**TABLE 2. TOTAL INFLUENCES ON PROCEDURAL JUSTICE**

	Overall procedural justice
Voice	.55***
Neutrality	.49***
Respect	.28***
Trust	.30***
***p < .001	

**WHAT IS PROCEDURAL JUSTICE?**

Given that procedural justice matters, what are the aspects of the court experience that should be emphasized by legal authorities? There are four key procedural justice principles: voice, neutrality, respect, and trust.

**Voice.** People want to have the opportunity to tell their side of the story in their own words before decisions are made about how to handle the dispute or problem. Having an opportunity to voice their perspective has a positive effect upon people's experience with the legal system irrespective of their outcome, as long as they feel that the authority sincerely considered their arguments before making their decision. This desire for voice is found to be one of the reasons that informal legal procedures such as mediation are very popular. People value the chance to communicate with the mediator, indicating what they view the problem as being and making suggestions concerning how it should be handled.

**Neutrality.** People bring their disputes to the court because they view judges as neutral, principled decision makers who make decisions based upon rules and not personal opinions, and who apply legal rules consistently across people and over cases. To emphasize this aspect of the court experience, judges should be transparent and open about how the rules are being applied and how decisions are being made. Explanations emphasizing how the relevant rules are being applied are helpful.

**Respect.** Legal authorities, whether police officers, court clerks, or judges, represent the state and communicate important messages to people about their status in society. Respect for people and their rights affirm to people that they are viewed as important and valuable, and are included within the rights and protections that form one aspect of the connection that people have to government and law. People want to feel that when they have concerns and problems both they and their problems will be taken seriously by the legal system.

Respect matters at all stages, and involves police officers and court clerks as well as judges. It includes both treating people well, that is, with courtesy and politeness, and showing respect for people's rights. For example, when people come to court they are often confused about how cases are handled.

**COURT MANAGEMENT STRATEGIES**

How can we secure the gains associated with procedural justice? We need to design a court management framework that treats people's entire experience with the legal system from a procedural justice perspective.<sup>25</sup> Studies suggest that people are influenced by their treatment at all stages of their experience, and by all the authorities whom they encounter. This includes their experiences with the police, their out-of-court experiences with their lawyers, their treatment by jail authorities, court clerks and bailiffs, and their experience in the courtroom dealing with judges and lawyers. Consequently, we need to emphasize procedural justice during initial contacts with the police and jail authorities; during experiences with attorneys throughout the case disposition process; in contacts with court clerks and other administrative personnel; in the conduct of settlement and pretrial mediation procedures; during experiences with judges and lawyers during trials and in informal proceedings; and in posttrial experiences involving the implementation and enforcement of orders, as well as in any subsequent incarceration.

It is equally important to remember that everyone involved with the courts treats their experience as a "civics lesson" about the legal system. This includes the parties to any case, but also is true for their families, friends, and other observers; witnesses; jurors; as well as all of those who hear stories about the courts from their friends, family, neighbors, or coworkers. And, of course, everyone is affected by the stories that appear in the mass media.

Does everyone share these procedural justice concerns? Studies suggest that procedural justice judgments dominate the reactions of all of the people who deal with legal authorities across ethnic/racial groups, among the rich and poor, and for both men and women.<sup>26</sup> Most important, they dominate the concerns of the members of the major minority groups in the United States, in particular African-Americans and Hispanics.<sup>27</sup>

25. TOM R. TYLER, *PSYCHOLOGY AND THE DESIGN OF LEGAL INSTITUTIONS* (2008).

26. Tom R. Tyler, *Governing Amid Diversity: The Effect of Fair*

*Decisionmaking Procedures on the Legitimacy of Government*, 28 L. & SOC'Y REV. 809 (1994).

27. TYLER & HUO, *supra* note 5.

Providing people with information about what to do, where to go, and when to appear, all demonstrate respect both for those people and for their right to have their problems handled fairly by the courts. Brochures or websites explaining court procedures, as well as aids such as help desks, are found to be valuable.

**Trust.** Studies of legal and political authorities consistently show that the central attribute that influences public evaluations of legal authorities is an assessment of the character of the decision maker. The key elements in this evaluation involve issues of sincerity and caring. People infer whether they feel that court personnel, such as judges, are listening to and considering their views; are being honest and open about the basis for their actions; are trying to do what is right for everyone involved; and are acting in the interests of the parties, not out of personal prejudices.

### THE INFLUENCE OF PROCEDURAL CONCERNS

Using the data collected in the study of personal experiences with the courts discussed above, it is possible to examine the influence of the four antecedents of procedural justice that have just been outlined. An analysis of the four factors considered at the same time suggests that neutrality, trust, and respect directly shape overall evaluations of procedural justice, but that voice does not. However, an analysis that allows both direct and indirect influences, shown in Figure 1, indicates that voice is indirectly important because it shapes neutrality, trust, and respect. An analysis that considers both direct and indirect influences at the same time, shown in Table 2, indicates that all four factors matter. Interestingly, neither outcome favorability nor outcome fairness directly influences overall procedural justice judgments. The willingness to accept court decisions, in other words, was about the procedures used to reach those decisions, not the decisions themselves.

### DESIGN IMPLICATIONS

The courts are not a store, so "customer satisfaction" is not their primary goal. Their goal is to fairly resolve conflicts and accurately administer the law. However, the courts need to take people's concerns seriously, since the courts have the task of conflict resolution, and whether people will accept their

decisions matters. Further, whether people feel that justice has been achieved is central to their trust and confidence in the court system.

A beginning point for dealing with people's concerns is the recognition that people come to court about issues that are important to them, irrespective of the strength of their legal case. Legal authorities can communicate that their decisions reflect a sincere effort to reasonably apply the law to these problems and therefore ought to be accepted and followed in a variety of ways. Authorities can provide evidence that they are listening to people and considering their arguments by giving people a reasonable chance to state their case, by paying attention when people are making that presentation, and by acknowledging and taking account of people's needs and concerns when explaining their decisions. This is true even if the authorities cannot accept those arguments and give people what they feel they deserve.

### SUMMARY

We live in an era of scarce resources and high levels of mistrust. Procedural justice approaches provide a mechanism for managing conflicts that produces authoritative decisions while sustaining, and even building, trust and confidence in the courts and the law.



*Tom R. Tyler, Ph.D., is Chair and University Professor at New York University. He teaches in the psychology department and the law school. His research explores the dynamics of authority in groups, organizations, and societies. In particular, he examines the role of judgments about the justice or injustice of group procedures in shaping legitimacy, compliance, and cooperation. He is the author of several books, including The Social Psychology of Procedural Justice (1988), Trust in Organizations (1996), Social Justice in a Diverse Society (1997), Cooperation in Groups (2000), Trust in the Law (2002), and Why People Obey the Law (2006).*

This article is based upon presentations to the California conference on court management (September 2007) and to the Federal Judicial Center's annual training meetings for bankruptcy judges (June and August 2008).

## AMERICAN JUDGES ASSOCIATION FUTURE CONFERENCES

**2009 Midyear Meeting**  
Sanibel Island, Florida  
May 14-16  
Sundial Beach Resort  
\$145 single/double

**2009 Annual Conference**  
Las Vegas, Nevada  
September 13-18  
The Golden Nugget  
Rate to be determined

**2010 Midyear Meeting**  
Tucson, Arizona  
May 19-21  
Loews Ventana Canyon Resort  
\$179 single/double

**2010 Annual Conference**  
Denver, Colorado  
Westin Tabor Center  
October 3-8  
\$205 single/double