

MINUTES
Alternative Dispute Resolution Advisory Committee
1501 West Washington Avenue
Phoenix, AZ 85007
August 10, 2001

MEMBERS PRESENT

Nicole Ack

Joseph Cuffari

Robert Dauber

Judge Kenneth Fields

Lee M. Finkel

Stanley Marks

Melita Mulligan-Ferry

Dorothy Q. Paine

Joan Tobin

Hon. Raymond W. Weaver, Jr.

MEMBERS ABSENT

Jeremy Butler

Levon Kasarjian

Judge Robert Moon

VISITORS

Judge Dolny, Pima County Consolidated Justice Courts

Craig Fuji, Office of the Attorney General

AOC STAFF

Chris Claxton

Karen Kretschman

Patrick Scott

I. CALL TO ORDER

The meeting was called to order by Judge Weaver at 9:05 A.M. The Judge welcomed several guests including: Judge Dolny, Associate Presiding Judge of the Pima County Consolidated Justice Courts and Kathy McCormick and Craig Fuji of the Conflict Resolution Program at the Attorney Generals Office.

The judge announced that Kathy McCormick has accepted the position of Alternative Dispute Resolution (ADR) Coordinator in Yavapai County.

II OLD BUSINESS

The minutes were approved as amended. A correction was made on page three changing "arbitrary" to "mandatory."

III ARIZONA CODE OF JUDICIAL ADMINISTRATION

Patrick Scott outlined for the Committee the conversion of Administrative Order (AO) 91-30 to Administrative Code 5-104. The code deals with the Alternative Dispute Resolution fund and its administration. It was noted that the committee has been removed from the administration of the fund in keeping with actual historical practice. The second point noted for the committee was that the directive to appoint the ADR committee was removed from this section and placed in the revision of AO 91-31.

The committee next reviewed the conversion of portions of Administrative Orders 91-30, 91-31 and 2000-5 to code. The code details the appointment of the Committee by the Supreme Court, terms of appointment, and provides for specific membership. Additionally, the code details a charge to the committee and requires the Committee to formulate rules for the transaction of committee business.

The committee discussed the both codes. The committee voted to approve Administrative Code 5-104 (the Fund) as written. The committee amended the code membership section to specify additional attorney positions and a position for a statewide ADR organization. The reference to the ADR Committee was discussed and the reference will be the "Committee." The Committee code as amended was approved unanimously by the Committee.

The committee discussed AO 96-36 which outlined ADR program guidelines and standards for the courts. The committee discussed the history of AO 96-36. The committee discussed the issue of whether it is necessary to mandate standards or to pare down the requirements. The committee agreed that counties will need flexibility to formulate programs that address local issues but that address common minimum requirements. The committee decided to form a separate work group to review AO 96-36. The work group will bring a recommendation to the full committee.

WORK GROUP REPORTS

- ! **Education of the Public:** Lee Finkel reported that the work group had not met but they will schedule a meeting prior to the Committee's next meeting.
- ! **Education of the Bar:** Stan Marks questioned what the committee does until the rule is approved. Stan hypothesized that the work group could plan a seminar to present the uniform rule and educate the local Bar Associations members on ADR. Judge Fields suggested contacting Bill Haggerty of the State Bar ADR section about running mini-seminars so that it would not be necessary to gain the approval of the CLE committee. Dorothy Paine suggested contacting additional bar sections, such as commercial or corporate sections, that might not be traditionally thought of when discussing ADR.

- ! **Education of the Bench:** Judge Weaver stated that the work group had not met but they will schedule a telephonic meeting prior to the Committee's next meeting. Staff noted that the Judicial College Committee will be meeting on September 18, 2001 and suggested that a representative of the ADR Committee address them about future collaborations. The Chair asked that staff provide him a copy of the membership of the Judicial College Committee.
- ! **Funding and Resources:** Nicole Ack informed the Committee that the work group met with David Sands, the AOC Legislative Liaison, and Mike DeMarco, the AOC Budget Officer. The group was informed that they could go to the legislature for an appropriation or a fee increase for ADR programs. The group was told that to approach the legislature without a mandate would be difficult at best in tough economic times. It was recommended that the Committee make a legislative proposal in the next cycle for seed money and also to propose an increase to the ADR fees. The work group noted that if the rule 16.g. passes, we would have a quasi mandate.
- ! **Mandatory Arbitration:** The work group was scheduled to meet but emergency matters intruded on the members calendars. Dorothy Paine has been accumulating information about current statewide practices. The work group plans to invite additional attorneys to participate in their discussions. A plan to address fees for arbitrators was scrapped after a decision by the Ninth Circuit.
- ! **Certification:** The work group met and came up with a draft mediation certification procedure. The work group was expanded to include three Arizona Dispute Resolution Association members, two attorney mediator and the Director of the Lodestar Mediation Clinic at ASU. The work group has one issue left to resolve and will then present a draft of their recommendations to the Committee.

IV ADR SURVEY

Professor Bob Dauber presented a draft of the results of the ADR survey sent to members of the Civil Litigation Section of the State Bar and all attorneys in Coconino County. Bob noted that the initial analysis was done pro bono by Roselle Wissler and if further analysis is to be done, a funding source will need to be obtained. Bob reviewed the survey with the Committee and reminded them that this would be the baseline data for a future study if rule 16.g. is approved by the Supreme Court.

V NEXT MEETING

The next meeting is scheduled for September 7, 2001 9 A.M. to 1 P.M.

The chair adjourned the meeting at 11:30. The members utilized the remaining time to meet as work groups.