

MINUTES

Alternative Dispute Resolution Advisory Committee  
1501 West Washington Avenue  
Phoenix, AZ 85007  
February 23, 2001

MEMBERS PRESENT

Nicole Ack	Stanley Marks
Jeremy Butler	Melita Mulligan-Ferry
Joseph Cuffari	Dorothy Q. Paine
Robert Dauber	Joan Tobin
Judge Kenneth Fields	Hon. Raymond W. Weaver, Jr.
Levon Kasarjian	

MEMBERS ABSENT

Lee M. Finkel	Calvin Morrill
Judge Robert Moon	

VISITORS

Deb King, Human Resources Officer, AOC

AOC STAFF

Chris Claxton	Patrick Scott
Isabel Gillet	

**I. CALL TO ORDER**

The meeting was called to order by Judge Weaver at 9:35 a.m. The Chair welcomed committee members and introductions were made of all present. Nicole Ack joined the committee telephonically.

**II. OLD BUSINESS**

The December 15, 2000 meeting minutes were unanimously approved as amended. The January 19, 2001 minutes were amended on page two, substituting Alternative Dispute Resolution (ADR) for mediation, in the comments of Dorothy Paine. The amended February minutes were unanimously approved.

**III. DISCUSSION OF DRAFT RULE**

Jeremy Butler distributed a draft of a letter addressed to Dee Dee Samet seeking clarification about her concern expressed at the December 2000 AJC meeting in Yuma. Mr. Butler will

attempt to resolve the issue with Ms. Samet and will report back to the committee.

The committee discussed section b(3) of the proposed rule. Levon Kasarjian stated that parties may be confusing the section referring to a conference with a settlement conference. Various alternative new drafts were discussed by the committee. The committee voted to adopt the suggestion of Judge Fields to remove “in a conference” from line four of section b(3).

The committee continued the discussion by questioning if it were necessary to have the proposal section as a lead in to the revised rule. The rule is clear that the parties may confer by telephone or if they desire, meet in person. The court may direct the parties to confer by telephone or to meet in person. Jeremy Butler was unable to continue the discussion due to another appointment. Jeremy stated that he would be in contact with Patience Huntwork about the details of filing the rule and the withdrawal of the original petition. Jeremy distributed a new draft of the rule petition and exited the meeting.

Judge Weaver requested committee members thoroughly review the draft and forward comments to Patrick Scott at the Administrative Office of the Courts (AOC). Patrick’s address and email are included on the committee list.

#### **IV STRATEGIC PLANNING**

Judge Weaver asked Stan Marks to briefly explain the history of the committee.

Stan recollected that ten years ago superior court judges were attending settlement conference training sponsored by the Supreme Court. There was excitement among the bench and the Bar. ADR was in its’ infancy, but that people did not understand the difference between mediation and arbitration. In the mid-nineties, the committee began on the quest to mandate that people consider ADR at an earlier stage. Stan discussed early efforts in Coconino County. Stan noted the concern by the Supreme Court at that time that parties pay nothing more than the filing fees. Maricopa and Pima Counties did not wish to participate under those circumstances. It was suggested that parties be allowed to opt out of ADR. Now we want to require the parties to advise the court that at a minimum they have considered ADR.

Stan stated that we have come a long way down the road and many people now understand ADR. People have participated in ADR processes other than mandatory arbitration. There have been many questions about what the Bench and Bar expected of this committee. The goal of the committee was to develop a uniform rule that had meaning. We now have drafted a rule that could pass the approval process where litigants give notification that they have considered ADR and then do what they consider best for their particular case.

Bob Dauber noted that the committee had filed and circulated a petition to compel ADR but effectively abandoned the petition when it became obvious that it would not be adopted.

Subsequently, the committee began working on an amendment to Rule 16.

Stan distributed a copy of minutes from October 1996 that questioned whether the Committee should continue to exist and how they should redefine the mission statement. The discussion that ensued concluded that the committee should continue to exist because many unresolved statewide issues remain to be resolved.

Judge Weaver explained that he had attempted to contact the Chief Justice Zlaket to clarify his expectations of the Committee. The Judge did speak with the Chief Justice however the Chief Justice was leaving for a conference and the Judge had no additional information to convey to the committee.

Patrick Scott informed the Committee that one of the purposes of the strategic planning session was to prepare for the June AJC meeting when each Committee Chair will report issues of interest to the court. Not only the issues of primary importance to the Committee but those issues perceived to be important to the judicial department. The issues presented to AJC will be important high priority issues or issues that if not addressed would have severe negative implications for the courts.

Patrick noted that the Committee had clearly not met the mandate in Administrative Order (AO) 91-30 appointing the Committee to advise the court use of the ADR fund. The committee previously chose not to review the grant applications due a perception that to do so presented a conflict for the members. Patrick also suggested that should the rule be adopted, the committee might wish to review the standards established for ADR programs at the Justice Court level by Administrative Order 96-36. AO 96-36 was to apply equally to matters in municipal courts and the superior court. However, five years have passed and the order has not been reviewed or amended.

Patrick suggested that if the committee did not wish to actively review applications they could assist staff by prescribing the criteria used to evaluate the application. Patrick noted that the Administrative Orders of the Supreme Court were in the process of being converted to Judicial Code so the timing was perfect for redefining the role of the Committee.

Patrick introduced Deb King from the AOC Human Resources department to lead the strategic planning session. Deb stated that strategic planning is simple. It is the process of determining where we are now; where we want to be; how we know we are there; and how we get there. Deb stated that we are going to try to answer the first two questions. Deb reviewed several national issues in the courts and challenged the committee to think outside the box. Deb informed the committee that the procedure would be to go around the room asking each member to identify an issue or trend that should be part of the strategic plan. Isabel Gillet from the Family Law Unit transcribed the topics for display.

The committee listed multiple topics for discussion (attached).

After the Committee completed the list Deb asked them to vote on each topic to establish priorities. The rank was established by assigning points from one to four with one as the lowest and four being the highest priority. Deb noted that many of the items on the list were actually solutions and suggested that the committee may wish to take them and group them under an issue. The committee can then determine what issues to address and what issue to identify for AJC.

Judge Fields suggested grouping the list by: educate and communicate with the Bench and the Bar; work on legislation and/or rules; monitoring and evaluating the effect of ADR. Judge Weaver asked how quickly the data would be available. Deb stated that the information could be easily printed but that Nicole Ack's responses would need to be added. Stan Marks questioned if the committee was to share with AJC what we believe our role was and if we would receive feedback down from that committee. Stan noted that the statement on Deb's handout implied a broader charge than we had discussed. The statement asked that we identify issues that impact the court system as a whole. The members noted that if we are discussing the whole court system, then the focus is different than what the committee discussed.

Members noted that the committee has established its own agenda and AJC has never given the committee a direction in the past. Patrick mentioned that his experience in dealing with AJC was that when an item was placed on their agenda, it was identified as an information item or an action item requiring a vote. The committee could, if they wanted, ask AJC to approve a plan. Bob Dauber noted that the committee had been formed when the legislation enacting an ADR fund financed by a surcharge became effective in 1991. He stated that at that time the committee had two purposes: to advise how the funds should be distributed and to determine what types of programs should be implemented or adopted. Historically, the committee has not waited for direction from AJC.

Dorothy Paine stated that the committee needs to determine who they are. Dorothy asked if the committee felt their role was to micro-manage or if they were several levels above acting as a clearing house of ideas. Dorothy urged the committee to take a long term view, with a big amorphous goal such as 90% of the cases being resolved through ADR. Dorothy cautioned that "the shorter term for the goal, the shorter the view."

Judge Weaver suggested that the committee meet again within thirty days in order to continue the momentum created at this meeting. Patrick suggested two possible dates and the committee settled on March 29, 2001.

Levon Kasarjian asked for clarification about what it was the committee was doing in regards to AJC. Deb King stated that the committee was being asked to do two things; first to identify issues and trends in the court system independent of this committee and second identifying what this committee is about, what it is you will be doing and working on. Melita Mulligan-Ferry stated that there would be a benefit if the committee could get buy-in from

AJC before beginning new projects.

Patrick Scott noted that the committee has an opportunity to amend the directive given to them in the AO 91-30 forming the committee rather than ignoring it. Patrick suggested that the committee had formed a focus by promoting the use of ADR, the adoption of a uniform rule and education about ADR services in the community. The education component can be identified as an issue to the judicial college for inclusion into new judge orientation and future judicial conferences. Nicole Ack stated that she was surprised by the dual purpose of the planning. Nicole proposed that we formulate three broad categories for AJC but also create a more substantive detailed list after having an opportunity to discuss the items on the list. Dorothy Paine agreed but suggested that the committee have a general broader mission statement identifying the committees big picture role.

Judge Weaver discussed a letter from Christine Powell of AOC. She asked him to identify critical issues effecting the court community and who will be impacted and in what manner. The committee discussed how to identify the issues to Ms. Powell.

## **VI. GOOD OF THE ORDER**

Bob Dauber discussed a possible study that could be done to collect base line data prior to the implementation of the proposed ADR rule. Bob has had conversations with a researcher currently performing a study in Michigan or Ohio. Bob suggested that we discuss how we could support this type of study in Arizona. The committee asked if this would be a duplication of the current study. Bob did not believe so and will obtain an estimate of the cost of performing a study for Arizona. The committee was curious if the ADR fund could be used to support such a study. Bob was asked to obtain specific funding requirements. The committee discussed other possible funding sources including the State Justice Institute, law schools, graduate sociology studies, and others . Bob stated that any one of those suggested could be a source but that typically you need funding to pay for the design of the survey instrument and the analysis.

The committee asked if there had been any response to Judge Weaver's letter about the effect of implementing an ADR rule. Patrick will summarize the responses prior to the next meeting.

Patrick asked the committee to review a draft of the rule included in the handouts that he believes addresses the concerns identified by AJC. The proposed rule presented to AJC in December did not address what would happen if the parties did not believe ADR was appropriate in this case. The Committee discussed the suggestion. It was determined that Section 2(b) be amended to add "or in the alternative why ADR is not appropriate" with a corresponding change to the form. A change was also made to delete the word "most". A change to section b(1)B was made to change "process" to "proceeding" that conforms the language to section b(2)A. Patrick will make the changes and send them to Bob Dauber for

review.

The committee discussed how this rule and form will mesh with the rule on mandatory arbitration.

Joseph Cuffari distributed 5 USC §§ 571-584 (1996) concerning mediation. Dorothy Paine distributed a copy of the Nevada Supreme Court arbitration rules. Judge Weaver suggested the members review the materials prior to the next meeting.

Judge Weaver asked that members be prepared to schedule meetings for the next six months. The meeting adjourned at 1:15 p.m.

## **VII. CLOSING REMARKS AND NEXT MEETING DATE**

The next meeting of the Committee is scheduled for March 29, 2001, from 10:30 a.m. to 2:30 p.m., in conference room 230.

<b>ITEM</b>	<b>One</b>	<b>Two</b>	<b>Three</b>	<b>Four</b>	<b>Total</b>
T	0	0	18	16	34
O	0	4	9	20	33
BB	0	2	18	12	32
E	0	0	24	8	32
LL	0	4	21	4	29
Y	0	6	18	4	28
K	0	6	18	4	28
MM	0	8	15	4	27
Q	0	8	15	4	27
I	3	2	9	12	26
II	1	8	9	8	26
H	1	8	9	8	26
C	1	8	9	8	26
HH	0	12	6	8	26
X	3	4	9	8	24
R	2	8	6	8	24
B	2	6	12	4	24
CC	2	6	15	0	23
P	1	10	12	0	23
KK	2	10	6	4	22
N	3	4	15	0	22
V	2	8	12	0	22
AA	2	8	12	0	22
DD	1	12	9	0	22
FF	3	8	6	4	21
S	3	8	6	4	21
G	4	6	6	4	20
J	4	4	12	0	20
JJ	3	8	9	0	20
M	1	16	3	0	20
W	3	12	0	4	19
D	3	10	6	0	19
L	3	10	6	0	19
NN	4	8	6	0	18
GG	4	8	6	0	18
EE	3	12	3	0	18
F	5	8	3	0	16
U	6	6	3	0	15
Z	6	6	3	0	15
OO	5	6	3	0	14
A	8	4	0	0	12