

MINUTES
Alternative Dispute Resolution Advisory Committee
1501 West Washington Avenue
Phoenix, AZ 85007
December 7, 2001

MEMBERS PRESENT

Jeremy Butler

Judge Kenneth Fields

Lee M. Finkel

Levon Kasarjian

Stanley Marks

Melita Mulligan-Ferry

Dorothy Q. Paine

Joan Tobin

Hon. Raymond W. Weaver, Jr.

MEMBERS ABSENT

Nicole Ack

Joseph Cuffari

Robert Dauber

Judge Robert Moon

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. Patrick Scott informed the members that Judge Moon had resigned. Committee re-appointments have been forwarded to the Chief Justice. Two positions were not filled, a justice court administrator or clerk and a position for an attorney general appointment.

II OLD BUSINESS

The minutes were approved as amended.

III ARIZONA CODE OF JUDICIAL ADMINISTRATION

Administrative Code 5-104

Karen Kretschman 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, its administration and the Committee. It was noted that the code no longer separates the Committee from the fund as had been presented in an earlier draft at a prior meeting. Karen also explained that the position for a representative of a statewide alternative dispute resolution association had been deleted but that person could be

appointed as a "Such other members with knowledge and experience in the field of ADR..." The code will be presented to the Arizona Judicial Council at their next meeting on December 13, 2001

Rewrite of A.O. 96-36

Judge Fields informed the Committee that the draft administrative code incorporating A.O. 96-36 is generic in nature to allow flexibility. The standards and guidelines would not be enumerated in the code but would be attached as an exhibit. Both Patrick and Karen suggested to the committee that the standards and guidelines need to be examined in the context of the Supreme Court's approval of rule 16 (g) and the sunseting of the Coconino County local rule.

Melitta stated that when questions arise about mediation in the Justice Courts that she often uses the standards and guidelines as a reference.

The Committee discussed whether the rule applied to justice court and if it applied to all cases. The consensus was the rule applied wherever the Rules of Civil Procedure apply. Judge Fields noted that there is a parallel rule in the criminal rules, Rule 16.4 for a mandatory prehearing conference, that is routinely ignored. The Committee discussed the advantages of allowing flexibility and creativity versus the need for uniformity. Judge Fields suggested the issue be tabled until the next meeting when Bob Dauber would be available to add historical perspective to the genesis of the administrative order.

Melitta volunteered to examine the current practice used in Maricopa County to determine if they complied with the Administrative Order. Judge Weaver asked that she contact other programs around the state to find out if they use the standards and guidelines.

WORK GROUP REPORTS

- ! **Education of the Public:** Lee Finkel reported that the work group had not met but is planning to meet with the ADRA education committee.

- ! **Education of the Bar:** Stan Marks informed the Committee that he had been in contact with the State Bar about conducting a seminar on the new rule. A CLE session chaired by Bruce Myerson has been planned for January 30, 2002 at the new Federal courthouse. The session will be videotaped for future training opportunities. Stan suggested that planning for additional trainings through the local Bar associations be suspended until after this first seminar has been held.

- ! **Education of the Bench:** Patrick distributed a copy of the membership for the Board of the Judicial College. Their next meeting is scheduled for February 1, 2002. Patrick spoke with Agnes Felton and Diane Sweeney of AOC Education Services about having representatives of the ADR Committee on the agenda. The Committee suggested Judge Fields, Bob Dauber and Levon Kasarjian as presenters. The Committee discussed having training sessions on compliance with the rule, including new judge orientation, or a separate seminar on ADR including a mock

settlement conference.

- ! **Mandatory Arbitration:** Dorothy Paine has been accumulating information on mandatory arbitration in Coconino, Maricopa, Pima and Yavapai Counties. Dorothy stated that despite protests to the contrary, the system appears to be working. Dorothy also noted that there appears to be an inconsistency in the rules concerning witnesses and exhibits. Recent modifications to the rules concerning disclosure do not require a list of witnesses and exhibits but Rule 76(g) does when an appeal is taken from an arbitration award.

- ! **Certification:** Joan Tobin distributed a handout of a sample requirements document for certification of mediators. The initial focus is on minimum training requirements, evaluations by participants, continuing education and a grievance procedure. A future modification might include passing a competence test.

The committee discussed how the requirement would be implemented and if legislation would be required. The Committee agreed it would be best if it were done through the Supreme Court. ADRA does not now certify mediators but does certify training. The Committee agreed that at this time there is no consensus that certification is needed. The concern does exist that if some type of oversight plan does not exist, the legislature could mandate a licensing requirement. The workgroup should continue their discussion and present the Committee the pros and cons of certification.

State Bar of Arizona - Rule 31 Draft

The Committee discussed a proposed rule being circulated by the Bar that would define the term mediator. Melitta suggested that a better definition is contained in the standards section of Administrative Order 96-36. Jeremy Butler informed the Committee that he is a member of the Bar Committee working on the new Rule 31 and would be happy to express the concern of the ADR Committee to the Bar Committee. Jeremy suggested that members contact him with their suggestions.

Risk Management Program

The Committee discussed the history of the Public Funds Risk Management ADR Project. The project was instituted by Administrative Order 92-19 and administered by Judge Fleischman in conjunction with AOC staff. The Arizona Judicial Council recommended that the project be extended while a continuation plan was developed. Chief Justice Feldman signed Administrative Order 96-14 continuing the project until further order of the court. The project has declined in popularity since Judge Fleischman left the bench.

The Committee suggested that prior to any contact with outside governmental agencies or the Defense Bar, Judge Weaver should discuss the project with the Presiding Judges.

Judicial College Collaboration

Staff will contact the Judicial College Board and request time to address the need for educational programs promoting ADR to Judges. The Committee suggested that Levon Kasarjian, Bob Dauber and Judge Fields be asked to speak for the Committee. The next meeting of the Board is scheduled for February 1, 2002. (See above)

Future Meeting Dates

The Committee tentatively scheduled five meetings for the coming year:

February 22, 2002
April 19, 2002
June 21, 2002
September 20, 2002
November 15, 2002

Judge Weaver suggested that if it is necessary to meet more frequently, the Committee could meet telephonically.

The next meeting is scheduled for February 22, 2002 from 9 A.M. to 1 P.M.

The chair adjourned the meeting at 12:30.