

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

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

|                      |                |
|----------------------|----------------|
| Joseph Cuffari       | Lee M. Finkel  |
| Judge Kenneth Fields | Calvin Morrill |

**VISITORS**

Judge Dolny, Pima County Consolidated Justice Courts  
Roselle Wissler, ASU Lodestar Mediation Center  
Kathy McCormick, Attorney General's Office

**AOC STAFF**

|               |               |
|---------------|---------------|
| Chris Claxton | Patrick Scott |
|---------------|---------------|

**CALL TO ORDER**

The meeting was called to order by Judge Weaver. The Judge welcomed several guests including: Judge Dolny, Associate Presiding Judge of the Pima County Consolidated Justice Courts; Roselle Wissler, of the ASU Lodestar Mediation Center, and Kathy McCormick, Arizona Attorney General's Office. Judge Moon joined the committee telephonically.

**OLD BUSINESS**

The minutes were approved as written.

**DOMESTIC RELATIONS REFORM STUDY SUBCOMMITTEE**

Karen Kretschman of the Family Law Unit of the Administrative Office of the Courts reported on legislation passed or considered during the current legislative session.

## **DISCUSSION OF DRAFT RULE**

The Supreme Court has distributed for comment the rule change proposed by the Committee. The comment period runs until August 10, 2001. The Court will review comments received in September. The Committee discussed what, if any, action to take during the comment period. Melitta Mulligan-Ferry distributed a handout from Judge Burke, presiding civil judge in Maricopa County, dealing with the logistics concerning implementation of the rule. Bob Dauber raised an issue of how the rule will work with the appointment of arbiters. The Committee discussed ARCP 72. The Committee concluded that the issues raised were local issues best left to the county presiding judges and court administrators.

Jerry Butler asked if the Committee wanted to contact the Bar to gauge their reaction to the petition. The consensus of the Committee was to wait until comments are received.

## **STRATEGIC PLANNING**

The Committee discussed the comments of the Chief Justice. Levon Kasarjian referred to his notes from the prior meeting. Levon identified several of the items the Chief Justice identified including: keeping up with progress around the country on the delivery of ADR; formulating a long term plan for ADR and feeding it to the Court a little at a time; an expectation that the Committee work with the law schools to include ADR as part of their curriculum; consider ADR education programs for judges and preparation of a program for new judge orientation.

Judge Weaver recapped the priorities as voted on by the Committee. Nicole Ack noted that if the rule passes and the courts begin actively encouraging ADR, there will need to be funding to help establish programs. Stan Marks informed the Committee that in years past, judges were invited to attend retreats in order to learn and practice settlement techniques. It was suggested that this would also be a good opportunity to discuss other types of ADR, like short trials. A time when all the judges are together in one place is at the annual judicial conference.

Levon noted that Patience Huntwork suggested that this Committee will set the tone for ADR statewide. Patience also suggested the Committee become active in supporting funding of ADR programs. Joan Tobin asked for a calendar of events that the Committee could use as judicial educational opportunities like the Arizona Judicial Council meetings. Nicole suggested that after the Committee determines the priorities, the priorities be assigned to smaller work groups for implementation.

Bob Dauber suggested that the Committee not be involved with the Judicial training but rather with formulating a curriculum to be taught by experienced judges. Staff was asked to find out when the judicial College meets and membership information. Judge Weaver will check on the agenda for the presiding judges meeting to see if there is time to discuss ADR at the June meeting. Bob Dauber discussed an article by Wayne D. Brazil that highlights ADR methods that can be used by Judges.

Stan Marks will contact Judges Schneider and Kaufman about formulating a training session for Judges on ADR. Judge Weaver cautioned that any of the programs the Committee was discussing would require funding.

Bob Dauber made the point that we need to compile a knowledge base of what the current practice is statewide. Roselle Wissler is present as a guest to address the Committee about performing a survey to obtain current baseline data.

Roselle is a research fellow at the ASU Lodestar Mediation Clinic. She has worked with the Ohio Supreme Court and their Dispute Resolution Committee. Roselle distributed executive summaries of three studies she completed in Ohio. The first study was with attorneys on why they use ADR. The biggest factor was if they had been through an ADR procedure in a case. The second study was conducted to gauge the quality of mediation for a week-long mediation program using volunteer attorneys. The final study was done in conjunction with the states of Ohio and Maine. The study showed that mediated cases were likely to settle but that five percent still went to trial. Non-mediated cases were more likely to be dismissed with three percent going to trial. Neither method had an effect on the amount of time it took to resolve the case. Part of the problem was that the referral rate was so high that it created a backlog. Roselle also discussed studies completed by Minnesota and Missouri by Bobbie Macadoo. Both studies were conducted several years after their rules were changed.

Bob Dauber pointed out that we have the opportunity to conduct a good study prior to implementation of the proposed rule. Roselle stated that the return rate for the mailed survey is approximately 66%. Bob stated that there are two big problems with the study: getting a good return ratio and getting funding for the study.

Jeremy Butler made a motion to support conducting a baseline study with no financial commitment. The motion was amended to explore seeking financial support from the Supreme Court. The motion passed unanimously. The Committee discussed how it might be involved in obtaining financial support for the survey.

The Committee discussed the topics that had been ranked at a prior meeting. Members asked if the top ranked items were automatically the most important priorities. The Committee discussed formulating a mission statement. Stan Marks suggested that the mission of the Committee was to promote ADR in all its manifestations that makes the system more efficient and effective. Jeremy Butler suggested that if the rule passes, the top priority will be to have certification of mediators. Jeremy stated that the Bar is concerned that people are holding themselves out as mediators who are ill trained and are practicing law without a license. Judge Weaver asked that staff invite Deb King to attend the June meeting.

Judge Weaver suggested that the members pick out five items from the list and send those to staff before the next meeting. Nicole requested that people be prepared to vote on the priorities.

**ARIZONA DISPUTE RESOLUTION ASSOCIATION STATEWIDE RESOURCE CENTER**

Joan Tobin informed the Committee about the Arizona Dispute Resolution Association (ADRA) Resource Center. ADRA has created a website and obtained a toll free 800 number that people around the state can use to identify the resources that are available in each county. The resources are both internal to the court and private providers. Joan suggested that the Committee focus on connecting with the legal community and the courts and ADRA can focus on the general public. Joan also informed the Committee that ADRA is actively investigating a certification program in conjunction with the University of Georgia.

## **FUTURE MEETINGS**

The Committee scheduled five future meeting dates:

- June 22, 2001                      9 a.m. - 1 p.m.
- August 10, 2001                  9 a.m. - 1 p.m.
- September 7, 2001
- October 19, 2001
- December 7, 2001

## **GOOD OF THE ORDER**

Nicole Ack informed the Committee about the events at American Bar Association Dispute Resolution Conference. Judge Weaver informed the Committee that he had been contacted by Judge Jacqueline McVay of the northeast Phoenix Justice Court volunteering to serve on the Committee.