

MINUTES
Alternative Dispute Resolution Advisory Committee
1501 West Washington Avenue
Phoenix, AZ 85007
March 29, 2001

MEMBERS PRESENT

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

MEMBERS ABSENT

Lee M. Finkel	Calvin Morrill
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VISITORS

Judge Dolny, Pima County Consolidated Justice Courts

AOC STAFF

Chris Claxton	Patrick Scott
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I. 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; George Schade, Water Master for the State of Arizona; and Patience Huntwork, Chief Staff Attorney to the Arizona Supreme Court. Judge Moon joined the committee telephonically.

II. OLD BUSINESS

The approval of the minutes was deferred to later in the meeting.

III. DISCUSSION OF DRAFT RULE

Patience reviewed with the committee the rules agenda schedule for the Supreme Court. Patience informed the committee that the next meeting is Scheduled for May 1, 2001. The committee was cautioned that the proposed rule needs to be filed within two weeks if it is to be on that agenda or consideration would be delayed until the September agenda. Patience

informed the committee that Coconino County has requested Supreme Court approval of their local ADR rule on a permanent basis. She noted that this will be a decision point for the Court about how much uniformity they will require concerning ADR. The Court may decide that there be one uniform rule or they may allow certain counties to serve as experiments for the incubation of new programs.

Jeremy Butler asked Patience to inform the rest of the committee about what she had advised him about the existing rule petition. Patience stated that the committee could request that the current petition be dismissed and the file closed. The committee's new rule petition would then be issued a new number and the old petition dismissed as moot.

Patience was asked to review the suggested rule and comment for the benefit of the Committee. Staff, Patrick Scott, informed Patience and the committee that as part of the handouts they would find a Rule 16(g). The proposed language the committee had approved has been grafted onto the existing Rule 16(g) due to the abrogation of the prior Rule 16(b). The current rule 16(g) is conveniently labeled "Alternative Dispute Resolution." The committee discussed the prior changes and the language added as suggested by the Arizona Judicial Council. Bob Dauber suggested a change to the staff version that would substitute section three and become section C of the proposed Rule 16(g). The language of section 2(B)(2) was amended, deleting "a pretrial" and substituting "that the court conduct a" before the word conference.

Levon Kasarjian raised the issue whether it were now necessary for section four to remain. Bob Dauber pointed out that the 2001 Rule 16(b) requires the court schedule a pre-trial conference upon written request of a party except in medical malpractice cases.

The committee voted unanimously to remove section four from the rule.

Chief Justice Zlaket joined the Committee at 11:15 am. Judge Weaver informed the Chief Justice that the committee had completed a strategic planning session at their last meeting but wanted to verify that the direction being pursued by the Committee was compatible with the desires of the Supreme Court. Judge Weaver asked for guidance on where the Chief Justice believed the focus of the committee should be for the future.

The Chief Justice thanked the Committee for their diligence and perseverance in pursuing the revision to Rule 16. The Chief Justice noted that the committee has identified many topics worthy of attention. Additionally, the Chief Justice cautioned the Committee against waiting for direction from the Supreme Court and encouraged the Committee to establish a blueprint for promoting ADR to the judges and the Bar. The Chief especially encouraged the Committee to promote ADR to the public stating more often it is the demands of its' citizens that moves government to action.

The Chief Justice encouraged the Committee to find the best national practices in ADR and to bring them to the attention of the bench and the Bar in Arizona. The Chief Justice left the meeting at 12 noon. (A full transcript of the Chief Justices comments are attached)

The Committee resumed discussion on the rule after lunch. Patience Huntwork notified staff that all new language added to the rule should be underscored not bolded. The amended rule was approved unanimously by the committee. Staff was instructed to include a reference to the form in the rule patterned after existing form references in the Arizona Rules of Court. A new version of the rule was distributed by staff. The rule as amended is attached.

The committee discussed the forms structure and language at length. Staff was instructed to:

- S Use “Yes” and “No” in place of “True” and “False;”
- S To add a question as number 2 asking if the case is subject to mandatory arbitration, with a note that compulsory arbitration shall be waived if the parties chose a different ADR method;
- S Distinguish between agreements to attend ADR for cases subject to compulsory arbitration and cases not requiring mandatory arbitration;
- S Add “short trial” to the list of options available for ADR and remove “non-binding arbitration;”
- S Distinguish between programs provided by the court or private providers;
- S add “if known” before the name of a person providing the ADR service;
- S strike “pretrial” in the original number 5.

The form as amended is attached.

The Committee approved the minutes as amended.

Bob Dauber distributed a research proposal and asked if the Committee would like to invite the researcher to attend the next meeting. The Committee agreed to invite the researcher.

Joan Tobin distributed a handout about the ADR Resource Center and asked that it be discussed at the next meeting. The next meeting of the Committee was scheduled for May 7, 2001 from 10 a.m. to 2 p.m.