

MINUTES

Alternative Dispute Resolution Advisory Committee
1501 West Washington Avenue
Phoenix, AZ 85007
January 19, 2001

MEMBERS PRESENT

Nicole Ack

Jeremy Butler

Joseph Cuffari

Judge Kenneth Fields

Lee M. Finkel

Levon Kasarjian

Melita Mulligan-Ferry

Dorothy G. Paine

Joan Tobin

Hon. Raymond W. Weaver, Jr.

Ann Woodley for Robert Dauber

MEMBERS ABSENT

Stanley Marks

Judge Robert Moon

Calvin Morrill

VISITORS

Gerald W. Connor, Chair, Alternative Dispute Resolution Section, State Bar of Arizona

Karen Kretschman, Staff Attorney, Family Law Unit, AOC

AOC STAFF

Patrick Scott

I. CALL TO ORDER

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

II. OLD BUSINESS

The December 15, 2000 meeting minutes were approved unanimously as written.

III. DISCUSSION OF DRAFT RULE

The Chair informed the committee a letter has been sent to the presiding judge in each county. The letter requests information about implementing Rule 16 as proposed by the committee. Two responses have been received orally by staff, from Greenlee and Maricopa Counties. Both support implementing the proposed rule.

Jeremy Butler distributed a draft of a new Rule 28 petition to amend Rule 16, Arizona Rules of Civil Procedure. The draft addresses concerns enumerated by the Arizona Judicial Council on December 13, 2000. Additionally, the draft provides a reference to Rule 72(d) ARCP that contemplates the use of alternative dispute resolution rather than compulsory arbitration.

Levon Kasarjian entered the meeting at 9:40 a.m.

Jeremy Butler outlined the Rule 28 procedure and inquired about the next Supreme Court Rules Agenda date. The next Supreme Court Rules Agenda is scheduled for April 24, 2001.

Nicole Ack entered the meeting at 9:45 a.m.

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

Jeremy Butler stated he will speak with Gerry Conner, Chair of the State Bar, Alternative Dispute Resolution Section and Shirley Wahl to enlist their support for the petition. They in turn could seek the support of the State Bar Board of Governors. Levon Kasarjian asked if the original petition would need to be formally withdrawn. Jeremy believed that would be true but will verify the proper procedure with Patience Huntworth at the Supreme Court.

Joan Tobin asked if the members of the committee needed to arrange for support of the proposed rule. Judge Weaver stated that he hoped the response from the presiding judges would be useful in that area. Jeremy also suggested that the Arizona Dispute Resolution Association draft a letter in support. Joan stated that will not be a problem.

Levon Kasarjian asked if the petition addressed all the concerns expressed by AJC. Jerry responded that he believes those concerns were covered but would review the AJC minutes and verify the accuracy of the petition.

Judge Weaver asked Dorothy Paine to predict the response from the insurance industry. Dorothy stated that they will resist change, like other industries, because of the addition of another form or procedure but did not believe there would be organized opposition. Dorothy believes that those companies that try to settle are using ADR now and those that are opposed to it will go through the motions as required by the rule. The area where this will be of assistance is where one party favors ADR and the other party resists. The court could then intervene if appropriate. The change will also get the parties talking about ADR earlier in the process rather than on the eve of trial.

The committee discussed how the rule would work in conjunction with mandatory arbitration. Judge Fields believes there will be a need to educate the bench if the rule is approved. Dorothy speculated that there will be attorneys that use the rule for tactical advantage. She also believes that this will be an education issue for arbitrators. Dorothy drew parallels to when short trials were first used.

Melita Mulligan-Ferry questioned how the committee contemplated this ADR function would work within the court context. In some counties the judge will need to serve as the ADR specialist because of limited staff or because they can crack the whip. It may not be that way in Maricopa County due to the case volume. Judge Weaver wants to see the response from the presiding judges.

IV STRATEGIC PLANNING

Judge Weaver stated that the next meeting of the committee is a strategic planning session that will be facilitated by Deb King from the Human Resources Department at AOC. Judge Weaver asked if there was any preparation the committee could do prior to the session. Patrick Scott suggested that in the strategic planning sessions he has participated in they usually began by identifying the core responsibilities of the group or organization. Patrick suggested that the committee use Administrative Order 91-30 as a starting point for the session. Nicole Ack suggested that Deb King either contact the members for input or distribute a questionnaire for them to complete. Nicole also suggested that a representative of the committee or AOC staff have a conversation with the Chief Justice to determine what the role of the committee should be in the future. Nicole noted that the Administrative Order is ten years old. Patrick will distribute a questionnaire to the committee to obtain input before the next meeting.

Levon Kasarjian noted AOC has said they would like input on how to evaluate the grant applications. Levon suggested the committee include that issue as a part of the strategic planning meeting. Joan Tobin reminded the committee that even though the Administrative Order calls for the committee to advise on ADR program administration they have not reviewed the grants due to potential conflicts. Several committee members are grant applicants or their courts request funds.

V. ARBITRATION TRAINING FOR ATTORNEYS

Nicole Ack recounted a brief history of a proposal to provide arbitration training to attorneys. It was suggested that the AOC should take responsibility for training arbitrators since the courts require them to do arbitration in conjunction with the State Bar. Coconino County will be used as a pilot. Diane Sweeney from the Education Services Division of AOC distributed a draft curriculum for a half day training in late March or early April.

Melita Mulligan-Ferry informed the committee that prior to moving to Arizona she had been an arbitration administrator in Illinois and had materials from that program if members had an interest. Dorothy Paine related that there is an arbitrators' certification program in Nevada that is run by the court. There is a panel of approved people from which to chose for non-binding arbitration.

Judge Weaver asked Nicole if attorneys from other counties could attend. Nicole and Diane both agreed that the program could be a regional presentation. Judge Weaver suggested that notice be given as early as ten weeks prior to the date. Nicole also noted that this program would be free and that an evaluation would be conducted afterwards.

VI. GOOD OF THE ORDER

Karen Kretschman, Family Law Unit Staff Attorney, presented a recap of legislation that has been introduced in the 45th Legislature, first regular session. Karen informed the committee that the Arizona chapter of the Association of Family and Conciliation Courts would be holding their annual conference February 9, 10, 11, 2001, in Sedona.

Joan Tobin introduced Gerald W. Connor, Chair of the State Bar, Alternative Dispute Resolution Section and president of Arizona Dispute Resolution Association. Mr. Connor wanted to invite the members to attend a CLE at the University Club in Phoenix sponsored by the ADR section of the Bar. The program will have two tracks, one for neutrals and one for advocates.

Levon Kasarjian asked Mr. Connor if the Arizona Dispute Resolution Association would be willing to indicate their support for the rule as proposed by the committee. Mr. Connor informed the committee that Arizona Dispute Resolution Association Board would be meeting on Saturday, January 27, 2001, and he would put that topic on the agenda. Mr. Connor indicated that based on his knowledge of the Board he felt certain that they would support the rule as proposed by the committee.

VII. CLOSING REMARKS AND NEXT MEETING DATE

Judge Weaver instructed members to send comments on the proposed Rule 28 petition to Patrick Scott at AOC. Levon Kasarjian asked if it would be possible to correct the approved minutes for grammatical errors. Judge Weaver stated that Levon should forward the corrections to Patrick.

The next meeting of the Committee is scheduled for February 23, 2001, from 9:30 a.m. to 1:30 p.m., in conference room 429.