

Alternative Dispute Resolution Fund FY2006

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Alternative Dispute Resolution Fund FY2006

Introduction

The 1989 Commission on the Courts Report recommended the expanded use of alternative dispute resolution (ADR) in the Arizona judicial system. The ADR Fund was created in 1991 to fund local, regional or statewide projects that establish, maintain, improve or enhance ADR programs in the superior court and justice of the peace courts (A.R.S. §12-135). Since October 1991, a portion of the civil filing fees collected in the superior court and justice courts has been designated for deposit in the ADR Fund. Pursuant to A.R.S. §12-135 through fiscal year 2003, courts wishing to participate in the alternative dispute resolution program applied to the supreme court for funding. The statute requires that funds collected in the superior court be used to pay for superior court ADR programs and ADR funds collected through the justice of the peace courts shall be used for ADR programs in the justice of the peace courts.

ADR funds may be used for new court programs or for expansion or continuation of existing programs. However, the funds must be used to supplement, not supplant, local funding that would otherwise be available for ADR programs.

In May 2003, Arizona courts were notified that FY2003 would be the last year in which individual county grants would be awarded in order to allow the ADR fund to be used for centralized education and other statewide programs. This decision was based on a combination of the budget deficit in FY2004, and the limited amount of ADR Fund revenues. Combining this with the anticipated increase demand for mediation services related to ARCP 16(g), centralized use of the funding was a logical decision.

ADR revenues totaled \$158,852.17 including interest accrued in the justice courts and \$ 65,004.77 in the superior courts. During FY06, continued emphasis was placed on the facilitation of training for volunteer mediators statewide.

Training Volunteer Mediators

In a continued effort to provide all of the counties in the state with more qualified mediators to assist in mediation and arbitration, the Administrative Office of the Courts contracted with the Attorney General's Office to provide training across the state for interested attorneys.

As shown below 288 hours of training were provided in this area and a total of 122 new volunteer mediators exist in the state due to these efforts.

Date	County	Class	Number of Attendees Completing Course
December 1, 2, 7, 8, and 9	Maricopa	Basic Mediation Training-40 Hours	13
January 12, 13, 19, 20, and 26	Cochise	Basic Mediation Training-40 Hours	10
February 22, 23, 24, March 2, and 3	Mohave	Basic Mediation Training-40 Hours	11
March 16, 17, 22, 23 and 24	Maricopa	Basic Mediation Training-40 Hours	16
April 3, 4, 5, 10, and 11	Pinal		15
April 26 th	Pima	Victim Offender Mediation Training-8 hours	22
May 10, 11, 12, 18, and 19	Coconino	Basic Mediation Training-40 Hours	15
June 7, 8, 9, 19, and 26	Maricopa	Basic Mediation Training-40 Hours	13
Total Number Trained			122

Statewide Arbitration Studies

The 2006 Fiscal Year has been a period of investigation into arbitration. Analysis of what is working and what can be improved has been done through a number of different mechanisms.

In July of 2005, the Arizona State University College of Law delivered a report on the study of court-connected arbitration in the superior courts of Arizona. This report can be found at

<http://www.supreme.state.az.us/ajc/PDF%20Files/Executive%20Summary.pdf> .

The report investigated how arbitration programs are administered, how they are performing, the views of attorneys involved in the arbitration process and how Arizona's arbitration program results compare to those of other states.

In November of 2005, the Chief Justice created an ad hoc committee on compulsory arbitration. This committee was charged with reviewing the report from the ASU College of Law as well as other materials. Based on that review the committee was to make recommendations for any changes that could improve the arbitration program in terms of training, rules, statutes, or any other ways in which ADR could be used to accomplish more efficient case processing, reduce litigant costs, and make more effective use of judicial resources.

The Committee provided a final report to the Arizona Judicial Council on October 12, 2006, with 13 recommendations including those for changes to the rules governing compulsory arbitration in the superior court. The recommendations were as follows:

- Maintain the requirement that all attorneys with four years active membership in the State Bar of Arizona serve as arbitrators, without regard to their legal specialty or area of expertise.
- Increase from \$75 to \$150 the compensation paid to arbitrators for each matter heard and disposed. This change will require legislative enactment.
- Limit motions that the arbitrator rules on by sending all motions for summary judgment and motions to dismiss to the assigned judge.
- Raise the statutory limit on cases subject to arbitration from \$50,000 to \$75,000.
- Appoint the arbitrator as early as possible in each case.
- Maintain the requirement that the arbitration hearing be held no later than 120 days after appointment of the arbitrator.
- Require disclosure earlier in the case, including HIPPA releases in personal injury cases.
- Relax the application of the Rules of Evidence in arbitration cases.
- Develop measures to track the efficacy of the arbitration rules as amended.
- Develop a comprehensive training program for arbitrators, available in multiple formats including in-person, web based, and computer based training.
- Require dismissal of the case if no award, stipulation to dismiss, or judgment is filed within 120 days of the filing of the notice of decision.
- Provide for an interlocutory appeal if the arbitrator orders disclosure on matters a party asserts are privileged or otherwise protected from discovery.
- Require the court to enter sanctions if a motion for summary judgment or a motion appealing a ruling by the arbitrator on a claim of privilege is found to be frivolous or was filed for the purposes of delay or harassment.

The complete final report of this committee can be found on the Supreme Court website at:

http://www.supreme.state.az.us/ajc/MeetingMaterials/06Oct/Committee_on_Compulsory_Arbitration_Final_Report.pdf .