

**ANNUAL REPORT**  
**OF THE**  
**ALTERNATIVE DISPUTE RESOLUTION COORDINATING**  
**COMMITTEE**  
**TO THE ILLINOIS JUDICIAL CONFERENCE**

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## I. STATEMENT OF COMMITTEE CONTINUATION

Since the 2006 Annual Meeting of the Illinois Judicial Conference, the Alternative Dispute Resolution Coordinating Committee ("Committee") has found that the climate for alternative dispute resolution ("ADR") continues to be favorable and the legal community has become increasingly receptive to ADR programs. This Conference year, the Committee was busy with many activities, including the consideration of a few proposed Supreme Court rule amendments and formulating a plan to accomplish the projects and priorities set forth by the Court for Conference Year 2007.

As part of the Committee's charge, court-annexed mandatory arbitration programs operating in fifteen counties continued to be monitored throughout the Conference year. The Committee was also cognizant of the Third Judicial Circuit's (Madison County) request to begin operations of a mandatory arbitration program under Supreme Court Rule 86 *et seq* and the Court's subsequent approval of the request.

In the area of mediation, the Committee continued to monitor the activities of the court-sponsored major civil case mediation programs operating in ten judicial circuits. The Committee noted the implementation of child custody and visitation mediation programs in judicial circuits. During the 2008 Conference year, it is anticipated that the Committee will continue to monitor court-annexed mandatory arbitration programs, oversee and facilitate the improvement and expansion of major civil case mediation programs, consider proposed amendments to Supreme Court rules for mandatory arbitration and continue to study and evaluate other alternative dispute resolution options. The Committee will also continue to work on the projects and priorities delineated by the Supreme Court and stand ready to accept new projects for Conference Year 2008.

Because the Committee continues to provide service to arbitration practitioners, make recommendations on mediation and arbitration program improvements, facilitate information to Illinois judges and lawyers, and promote the expansion of court-annexed alternative dispute resolution programs in the State of Illinois, the Committee respectfully requests that it be continued.

## II. SUMMARY OF COMMITTEE ACTIVITIES

### *Court-Annexed Mandatory Arbitration*

As part of its charge, the Committee surveys and compiles information on existing court-supported dispute resolution programs. Court-annexed mandatory arbitration has been operating in Illinois in excess of twenty years. Since its inception in Winnebago County in 1987, under Judge Harris Agnew's leadership, the program has steadily and successfully grown to meet the needs of sixteen counties. Most importantly, court-annexed mandatory arbitration has become an effective case management tool to reduce the number of cases tried and the length of time cases remain in the court system. Court-annexed mandatory arbitration has become widely accepted in the legal culture.

In January of each year, an annual report on the court-annexed mandatory arbitration program is provided to the legislature.<sup>1</sup> A complete statistical analysis for each circuit is contained in the annual report. The Committee emphasizes that it is best to judge the success of a program by the percentage of cases resolved before trial through the arbitration process, rather than focusing on the rejection rate of arbitration awards.

The following is a statement of Committee activities since the 2006 Annual Meeting of the Illinois Judicial Conference concerning court-annexed mandatory arbitration.

### ***Projects and Priorities Prescribed by the Supreme Court***

The Supreme Court prescribed several projects and priorities for the Committee to consider in Conference Year 2007 as well as meet the dictates of the Committee's general charge and continue projects delineated in Conference Year 2006. The Committee reviewed the list of projects/priorities from 2006 and 2007, and formulated a plan to address those projects. The Committee elected to create subgroups to study each of the projects. As part of the plan, each subgroup will study a specific project and make a recommendation to the Committee to consider as a whole. Below are the projects/priorities the Committee addressed in Conference Year 2007.

### ***Continued Conference Year 2006 Projects and Priorities***

#### ***Training of Arbitrators***

The Supreme Court charged the Committee with "reviewing materials to develop a training curriculum for mandatory arbitration personnel and conduct a needs analysis for training of arbitrators." The Committee gathered arbitrator reference manuals from every judicial circuit in the State of Illinois that has a mandatory arbitration program. The Committee subsequently developed a draft of a uniform manual that includes the required, fundamental practices of mandatory arbitration. One issue under consideration is how to include local arbitration program practices in the uniform manual. The Committee is reviewing the feasibility of appending a tabbed section to the uniform arbitrator reference manual to address local program practices. It is hoped that a uniform arbitrator reference manual will assist judicial circuits with mandatory arbitration in providing materials and training to address the requisite skill set needed to be an effective arbitrator in the State of Illinois. The Committee continues to make revisions to the draft uniform manual before submitting it to the Court for consideration.

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<sup>1</sup>The AOIC's Court-Annexed Mandatory Arbitration Fiscal Year 2007 Annual Report will be available on the Supreme Court website ([www.state.il.us/court](http://www.state.il.us/court)).

**Child Custody Mediation**

The Supreme Court charged the Committee with "studying, examining and reporting on the efficacy of mediation in child custody cases in domestic relations courts as an appropriate ADR application." During Conference Year 2006, the Committee observed the Supreme Court's adoption of the Article IX Rules with respect to child custody proceedings. As part of the Article IX Rules and Supreme Court Rule 99, judicial circuits must develop a mechanism for reporting to the Supreme Court on the mediation program. During Conference Year 2007, the Committee began to dialogue with the Conference of Chief Circuit Judges regarding development of an instrument to standardize the collection of statistics for child custody and visitation mediation. The Committee is awaiting statistical information regarding mediation programs in child custody cases to provide a report to the Court on the efficacy of such mediation programs.

**Summary Jury Trials**

The Supreme Court charged the Committee with "submitting research and analysis of summary jury trials for the Court's first review." The Committee began examination of the summary jury trial process during Conference Year 2003. The summary jury trial is a specialized process designed to address cases in which significant damages are sought and/or are complex in nature and will consume disproportionate amounts of court time and resources. A summary jury trial can be described as a process that is conducted in one day or less wherein counsel for each side presents an entire case, both evidentiary and argumentatively, and then the case is decided by a jury panel of six individuals. The jury verdict is advisory unless the parties agree otherwise; however, the jury is unaware of this fact while deliberating.

During Conference Year 2006, the Committee reviewed statutory authority and court rules in other jurisdictions with ongoing summary jury trial programs to determine which practices might best accommodate such a program in the State of Illinois. During Conference Year 2007, the Committee finalized a proposed rule governing summary jury trials and presented said rule to the Supreme Court for consideration. This matter is pending with the Court. The Committee believes it is important to offer multiple settlement techniques, such as the summary jury trial, to the trial bench to have at its disposal to use on a discretionary basis.

***Conference Year 2007 Projects and Priorities*****Supreme Court Rule 93**

The Supreme Court charged the Committee with conducting an "analysis of the need for an increase to the current award rejection fee, and the impact of such an increase on the mandatory arbitration program and litigants." The Committee considered the issue of increasing the rejection fee to determine its impact on raising revenues for arbitration programs as well as its

impact on litigants. Some of the deliberations included discussion on whether or not access to the courts would be obstructed as a result of increasing the rejection fee. Committee members referenced the pauper's petition process whereby litigants can petition the court to request a waiver of the rejection fee if the litigant demonstrates a lack of financial ability to pay. The Committee recommended to amend Supreme Court Rule 93 (a) by increasing the rejection fee for arbitration cases \$30,000 or less from \$200 to \$300. It is hoped that by increasing the rejection rate, litigants will be less likely to reject an arbitration award as a matter of course. The Committee is in the process of drafting correspondence to forward the amendment to the Administrative Office of the Illinois Courts for consideration and presentation to the Court.

### **Arbitrator Pro Bono Service Credit**

The Supreme Court requested that the Committee "review arbitrator services in the context of *pro bono* services, as defined by the Court." The Committee considered whether or not to make a recommendation to the Court to allow arbitrators the opportunity to waive the \$100 compensation associated with service as an arbitrator and accept *pro bono* credit in its stead. After deliberation, the Committee agreed to propose this recommendation as an amendment to Supreme Court Rule 87 (e) which sets forth the fees for service as an arbitrator. The Committee also realized that, for reporting purposes to the Supreme Court, a form would have to be created to prove that the attorney served as an arbitrator and opted for *pro bono* credit for the service. The Committee plans to present the recommendation to the Administrative Office of the Illinois Courts for review and presentation to the Court.

### **Other Initiatives**

The Supreme Court charged the Committee with "undertaking any such other projects or initiatives that are consistent with the Committee's charter." As part of this general charge, the Committee noted the petition by Madison County (Third Judicial Circuit) to the Supreme Court to implement a mandatory arbitration program. The Court approved the request during its November 2006 term and the arbitration program began collecting filing fees in January 2007 and commenced program operations on July 1, 2007.

At the request of the Supreme Court Rules Committee, the Committee reviewed a proposal to amend Supreme Court Rule 90 (c) which would require all pages of any 90 (c) package submitted to the arbitrators be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package. Upon its review, the Committee submitted a recommendation to the Rules Committee supporting the proposal.

At the request of the Study Committee on Complex Litigation, the Committee reviewed a draft chapter on alternative dispute resolution (ADR) for the Manual for Complex Litigation (Civil). Upon its review, the Committee made recommendations to revise the draft chapter on ADR and presented said revisions to the Study Committee on Complex Litigation for consideration.

*Mediation*

Presently, court-approved civil mediation programs operate in the First, Eleventh, Twelfth, Fourteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth Circuits and the Circuit Court of Cook County. Supreme Court Rule 99 governs the manner in which mediation programs are conducted. Actions eligible for mediation are prescribed by local circuit rule in accordance with Supreme Court Rule 99.

Court-approved mediation programs have been successful and well received, and have resulted in a quicker resolution of many cases. It is important to recognize that the benefits of major civil case mediation cannot be calculated solely by the number of cases settled. Because these cases are major civil cases by definition, early resolution of a case represents a significant savings of court time for motions and status hearings as well as trial time. Additionally, in many of these cases, resolving the complaint disposes of potential counterclaims, third-party complaints and, of course, eliminates the possibility of an appeal. Finally, court-approved mediation programs are considered by many parties as a necessary and integral part of the court system. They are responsive to a demonstrated need to provide alternatives to trial and have been well received by the participants.

The Committee continues to observe the implementation of new programs as well as monitor existing programs. The Committee also continues to study the area of child custody mediation in accord with the Supreme Court's Article IX Rules with respect to child custody proceedings.

**III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR**

During the 2008 Conference year, the Committee will continue to monitor and assess court-annexed mandatory arbitration programs, suggest broad-based policy recommendations, explore and examine innovative dispute resolution techniques and continue studying the impact of rule amendments. In addition, the Committee will continue to study, draft and propose rule amendments in light of suggestions and information received from program participants, supervising judges and arbitration administrators. The Committee will continue to study the projects/priorities and other assignments delineated by the Supreme Court for the upcoming Conference year.

The Committee plans to facilitate the improvement and expansion of major civil case mediation programs. The Committee also plans to actively study and evaluate other alternative dispute resolution options.

#### IV. RECOMMENDATIONS

The Committee respectfully recommends that the Supreme Court allow the Committee to continue its work toward completing the projects and priorities outlined for Conference Year 2007 as well as the projects which remained from Conference Year 2006. Those projects include consideration of arbitrator training, examining child custody mediation, analysis of award rejection fees, arbitrator *pro bono* service credit, and other initiatives as directed by the Supreme Court.