

2012 REPORT

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

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I. STATEMENT ON COMMITTEE CONTINUATION

Since the 2011 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 continues to be receptive to ADR processes. This Conference year, the Committee was busy with many activities, including the calibrating of responses to a participant satisfaction survey, and formulating a plan to accomplish the projects and priorities set forth by the Supreme Court for Conference Year 2012.

As part of the Committee's charge, court-annexed mandatory arbitration programs, operating in sixteen counties, continued to be monitored throughout the Conference year. Madison County, in the Third Judicial Circuit, which commenced an arbitration program in July 2007, is the last county to request authorization to operate such a program under the auspices of the Supreme Court.

In the area of mediation, the Committee continued to monitor the activities of the court-annexed major civil case mediation programs operating in eleven judicial circuits pursuant to Supreme Court Rule 99. During the 2012 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 also will continue to work on the projects and priorities delineated by the Court and stand ready to accept new projects for

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Conference Year 2013.

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 Illinois, the Committee respectfully requests that it be continued.

II. SUMMARY OF COMMITTEE ACTIVITIES

Project 1: 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-four 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 continues to be widely accepted in the legal culture.

On May 30 , 2012, the Illinois General Assembly passed SB 3726 repealing 735 ILCS 5/2-1008A, which required the Supreme Court to conduct an annual evaluation of the effectiveness of mandatory court-annexed arbitration and report the results annually to the General Assembly. However, a more complete statistical summary for each circuit with a court-sponsored mandatory arbitration program will be included in the annual Statistical Summary which is

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available on the Court's website. The Committee emphasizes that it is best to evaluate 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 2011 Annual Meeting of the Illinois Judicial Conference concerning court-annexed mandatory arbitration.

Continued Projects from 2011

Project 1: Participant Satisfaction Survey

The Committee was charged with "developing a statewide arbitration program participant satisfaction survey." During Conference Year 2009, the Committee collected survey instruments from arbitration jurisdictions that had conducted program participant satisfaction surveys in the past. The Committee reviewed the survey instruments and related data, and began to identify which information is most useful for improving arbitration programs.

During Conference Year 2010, the Committee workgroup assigned to this project developed survey instruments for arbitrators, attorneys, and litigants. The workgroup narrowed the scope of the surveys to meet the objective of this project, and obtain information that is useful to the Committee in considering arbitration program improvements.

During Conference Year 2011, the Committee finalized the survey instrument and disseminated the survey, along with explanatory correspondence, to all arbitration programs for circulation to the targeted arbitration program constituents. An individualized survey was developed to solicit information from arbitrators, attorneys, and the parties. The arbitration program administrators were instructed to distribute the surveys and send the completed surveys to

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the Administrative Office for data tabulation and synthesis.

During Conference Year 2012, the Committee tabulated the responses to the survey and created a report for submission to the Court. In summary, the survey revealed that the participants in alternative dispute resolution proceedings are generally satisfied with the current arbitration system. However, one criticism that should be noted by a minority of the responding attorneys indicated that the discovery allowed pursuant to Rule 89 was too limiting in scope. An executive summary highlighting the survey results is appended to this report.

The Committee will be submitting a comprehensive report about the survey to the Court at a later date.

Conference Year 2012 Projects/Priorities

Project 1: Consider the perceptions of judges and attorneys surrounding assignment of cases to civil mediation.

After initial discussion of this charge the Committee concluded there are two issues that need to be explored. The first issue identified that a perception existed that parties in civil cases were being forced into mediation even after the parties had determined mediation was not feasible. The second issue was if the parties agreed to mediation, but could not choose a mediator, the trial judges were either appointing or strongly recommending use of particular mediators. After talking with stakeholders, judges, and others, the Committee concluded that the perceptions contained in each issue were false.

Once it was determined the two perceptions were false, the Committee began discussion on how to implement a positive perception for use of mediation in Illinois. The discussion ranged from standardizing mediation processes to the feasibility of a mandatory mediation program

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similar to the current mandatory arbitration system. The Committee would like to continue to explore this topic in 2013.

Project 2: Consider development of a "train-the-trainer" curriculum in conjunction with the Uniform Arbitrator Reference Manual and Arbitrator Training Video.

The Committee meets annually with the Arbitration Administrators (Administrators) to discuss issues surrounding the day to day operations of the various arbitration centers. This year's meeting was held on May 4, 2012, at the Kane County Arbitration Center. After extensive discourse, it was determined that the current method of live training of arbitrators was still the best approach and that a specific curriculum to "train the trainer" was not needed. Furthermore, the Administrators advised the Committee that the Uniform Arbitration Manual and Arbitrator Training video are beneficial until such time as a live training is conducted.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

The Committee requests to continue its work toward completing the projects and priorities outlined for Conference Year 2012 and other initiatives as directed by the Court.

During the 2013 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 Court for the upcoming Conference

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year.

The Committee plans to facilitate the improvement and expansion of major civil case mediation programs. The Committee would like to continue discussion on the resistance to mediation in Illinois and to formulate ideas and suggestions on how to reduce that resistance.

IV. RECOMMENDATIONS

The Committee is making no recommendations to the Conference at this time.