

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

Hon. John O. Steele, Chair

Hon. Harris H. Agnew, Ret.
Hon. Patricia Banks
Hon. John P. Coady
Hon. Claudia Conlon
Hon. Robert E. Gordon
Hon. David E. Haracz

Hon. Michael D. Kramer
Hon. John G. Laurie, Ret.
Hon. Ralph J. Mendelsohn
Hon. Stephen R. Pacey
Hon. Lance R. Peterson
Hon. Bruce D. Stewart

Mr. Kent Lawrence, Esq.

October 2008

I. STATEMENT OF COMMITTEE CONTINUATION

Since the 2007 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 undertook many activities, including the consideration of proposed amendments to Supreme Court Rules and formulating a plan to accomplish the projects and priorities set forth by the Court for Conference Year 2008.

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, commenced its operation of an arbitration program on July 1, 2007, and became the sixteenth county in Illinois operating 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-sponsored major civil case mediation programs operating in ten judicial circuits. During the 2009 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 Conference Year 2009.

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-one 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.¹ A complete statistical analysis for each circuit is contained in the annual report. 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 2007 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 2008, as well as meet the dictates of the Committee's general charge and continue its consideration of projects delineated in Conference Year 2007. The Committee reviewed the list of projects/priorities from 2007 and 2008, 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 2008.

Continued Conference Year 2007 Projects and Priorities

Training of Arbitrators

The 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. 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 completed the manual in Conference Year 2008 and sent it to Administrative Director Cynthia Y. Cobbs for due consideration and possible presentation to the Court. A summary of the manual is attached.

¹The AOIC's Court-Annexed Mandatory Arbitration Fiscal Year 2008 Annual Report will be available on the Supreme Court website (www.state.il.us/court) in January 2009.

Child Custody Mediation

The 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 and continuing into Conference Year 2008, the Committee dialogued 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 also worked with the Administrative Office of the Illinois Courts and the Circuit Court of Cook County to determine what type of statistics are currently being kept and which statistics are most desirable in ascertaining the effectiveness of child custody mediation. Since collection of data on child custody mediation began on January 1, 2007, the Committee is waiting for an adequate set of statistical information before providing the Court with a report.

Arbitrator Pro Bono Service Credit

The 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 was in favor of the concept and recognized that Supreme Court Rules 87 and 756 would have to be amended. As proposed, the amendments would allow arbitrators to waive the set compensation rate of \$100 per arbitration hearing in exchange for *pro bono* legal service credit.

In the Committee's consideration of this matter, it was decided that Supreme Court Rule 87 (e) would have to be amended and a new subsection (f)(1)(e) would have to be created under Supreme Court Rule 756. The Committee supports this amendment as it believes that service to the legal system as an arbitrator is a community service. Further, if an arbitrator is willing to provide service *pro bono* and waive his or her fee, service as an arbitrator should be equivalent to other service to the system wherein *pro bono* credit is recognized. 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. Pursuant to Supreme Court Rule 3, the Committee plans to present this proposal to the Supreme Court Rules Committee for consideration.

Conference Year 2008 Projects and Priorities***Supreme Court Rule 91***

The Court requested that the Committee "reconsider proposed Supreme Court Rule 91 (Absence of a Party at Hearing)." The Committee originally made this proposal in Conference Year 2006. The original proposal would have required parties to an accident to be at the arbitration hearing in subrogation cases. It is the opinion of the Committee that the concept of good faith participation requires the major participants in cases to be present at arbitration. Their appearance and participation allows the arbitrators to properly evaluate all aspects of a dispute including witness credibility thereby insuring the integrity of the arbitration process.

In a traditional subrogation case, the plaintiff is the insurance company, not the driver of the plaintiff's car. Thus, Supreme Court Rule 237 does not apply, nor do discovery rules allow for a fair inquiry prior to the hearing. The proposed rule change to Supreme Court Rule 91 would have put the driver of the plaintiff's car or the insured into the category of a "party," making them subject to discovery and requiring their appearance at arbitration with or without a 237 notice. This rule change was intended to require of a plaintiff at arbitration, that which would be required at trial.

The Committee has begun its deliberation with respect to reconsidering and presenting this amendment to the Court for further consideration. The Committee is looking at the possibility of gathering mandatory arbitration rules from other states to ascertain whether or not this requirement exists in other jurisdictions and what impact it has on arbitration hearings.

Jurisdictional Dollar Limits for Arbitration Programs

As part of its projects and priorities for Conference Year 2008, the Court asked the Committee to "examine the current jurisdictional dollar limits for arbitration programs and determine if an increase is viable." The Committee has begun its initial discussions on this matter and plans to further research the impact of an increase to the arbitration jurisdictional dollar limits and its impact on the court system.

Participant Satisfaction Survey

The Committee was charged with "surveying program practitioners and identifying reliable measures of participant satisfaction with ADR processes." The Committee has begun preliminary discovery on this project and has begun to collect survey instruments from arbitration jurisdictions that currently conduct program participant satisfaction surveys. The Committee plans to review all survey instruments and develop a proposed instrument for statewide dissemination. Once data is returned and tabulated, the Committee will formulate a report for the Court's consideration.

Other Initiatives

The Supreme Court charged the Committee, generally, with "undertaking any such other projects or initiatives that are consistent with the Committee's charge." During Conference Year 2008, the Committee began consideration of other initiatives such as arbitrator chair qualifications pursuant to Supreme Court Rule 87, attorney costs as part of the arbitration award, examining additional rejection statistics and time frames, and working with the Fourteenth Judicial Circuit on a settlement data initiative.

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

The Committee requests to continue its work toward completing the projects and priorities outlined for Conference Year 2008 as well as the projects which remained from Conference Year 2007. Those projects include consideration of arbitrator training, examining child custody mediation, reconsideration of Supreme Court Rule 91, consideration of the impact of an increase to the jurisdictional dollar limits for arbitration programs, developing a statewide arbitration program participant satisfaction survey, and other initiatives as directed by the Court.

During the 2009 Conference year, the Committee also 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 further plans to facilitate the improvement and expansion of major civil case mediation programs, along with actively studying and evaluating other alternative dispute resolution options. As a final matter, the Committee will continue to study the projects/priorities and other assignments delineated by the Court for the upcoming Conference year.

IV. RECOMMENDATIONS

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

2008 REPORT

2008 REPORT

ATTACHMENT

Summary and Intended Purpose of the Uniform Arbitrator Reference Manual

This statewide, uniform manual is a compilation of rules and statutes, applicable case law, questions and answers, checklists, scenarios and explanations, all pertaining to the proper practices to be followed when a case proceeds through the mandatory arbitration system. The various sections of this uniform manual contain information relative to administrative regulations, qualifications necessary to become an arbitrator, types of cases that are eligible for mandatory arbitration, and the actual steps of an arbitration proceeding including the entry of an award at the conclusion of the hearing. Also included are sections setting out the Illinois Supreme Court Rules and Statutes applicable to these proceedings as well as examples of local rules, which will differ slightly in each circuit, and how these local rules should be applied in a manner that is consistent with the overall goal of the program. Selected case law setting out various scenarios that have occurred in arbitration proceedings, and ultimate rulings on how these scenarios should be handled based on these precedents, is covered in a comprehensive outline format. Information on compliance with Supreme Court Rules and factors to be considered in determining *good faith participation*, the key to the whole arbitration proceeding, is present throughout the uniform manual.

This uniform manual was created for the purpose of responding to a prevailing need to achieve consistency in arbitration proceedings throughout the state and uniformity among the various counties/circuits in which mandatory arbitration is successfully utilized to resolve appropriate cases in an informal, but serious, alternative process. The ultimate goal is to give arbitrators, and all of the other advocates of the mandatory arbitration system statewide, a compilation of information to ensure that they share the same understanding of the purpose of the program and implement their responsibilities and decisions in a manner consistent with achieving uniformity through ongoing developments in legislation and case law.