

**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 2004 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 several proposed Supreme Court rule amendments.

As part of the Committee's charge, court-annexed mandatory arbitration programs operating in fifteen counties continued to be monitored throughout the Conference year.

In the area of mediation, the Committee continued to observe the activities of the court-sponsored major civil case mediation programs operating in ten circuits. During State Fiscal Year 2005, 705 court-ordered mediation cases were referred to mediation programs statewide.

During the 2006 Conference year, 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. Specifically, the Committee plans to explore the viability of summary jury trials as another form of dispute resolution.

Because the Committee continues to provide service to arbitration practitioners, recommendations on mediation and arbitration program improvements, 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

A. *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 for a little more than eighteen 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 fifteen 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 spend 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 judge the success of a program by the percentage of cases resolved before trial through the arbitration process, rather than

¹The AOIC's Court-Annexed Mandatory Arbitration Fiscal Year 2005 Annual Report can be found on the AOIC portion of the Supreme Court website (www.state.il.us/court) and on the website of the Center for Analysis of Alternative Dispute Resolution Systems (www.caads.org).

focusing on the rejection rate of arbitration awards.

The following is a statement of Committee activities since the 2004 Annual Meeting of the Illinois Judicial Conference concerning court-annexed mandatory arbitration.

1. Consideration of Proposed Amendments to Supreme Court Rules

a. The Committee drafted a proposed amendment to Supreme Court Rule 90 by adding a new subsection that would eliminate discussion or comments by arbitrators after an arbitration hearing and throughout the entire process. Specifically, the amended language would provide that an arbitrator may not be contacted, nor may an arbitrator publicly comment, nor respond to questions regarding a particular arbitration case heard by that arbitrator during the pendency of the case and until a final order is entered and the time for appeal has expired, except for discussion or comments between an arbitrator and judge regarding an infraction or impropriety during the arbitration process.

The Committee believes that litigants using feedback from arbitrators to make decisions as whether to reject or accept an award poses ethical and practical problems. The Committee drafted language to amend Supreme Court Rule 90, with comments, and submitted the proposal to the Rules Committee for consideration.

b. The Committee considered a proposal to amend Supreme Court Rule 91 (a) by adding language that would require parties in subrogation cases to be present in person at the arbitration hearing. The additional language would substantially be the following: "for purposes of arbitration hearings in causes of action concerning subrogation, the insured and/or the driver of the vehicle shall be considered parties under Supreme Court Rule 90 (g) even when this cause of action is filed in the name of the insurance company." Also, this amendment proposal would simultaneously remove the existing language allowing parties to be present at an arbitration hearing "either in person or by counsel" and add language requiring parties to be present except upon leave of court.

The Committee finalized the proposal to amend Supreme Court Rule 91 (a) with comments and forwarded same to the Rules Committee for consideration. The matter is scheduled for public hearing on September 16, 2005.

c. The Committee drafted language to amend Supreme Court Rule 222 to defer discovery time lines to local rule. In accordance with Supreme Court Rule 89, many circuits that have mandatory arbitration programs have adopted local rules shortening the time for compliance with Supreme Court Rule 222. According to program participants and the observations of program administrators and supervising judges, attorneys are confused as to whether the benchmark of 120 days for discovery applies or if local rule pre-empts with a shortened time frame.

Supreme Court Rule 89 provides that "discovery may be conducted in accordance with established rules and shall be completed prior to the arbitration hearing. However, such discovery shall be conducted in accordance with Rule 222, except that the time lines may be shortened by local rule."

The proposal would strike the existing language regarding 120 days and defer to local rule. It is hoped, that this proposal will eliminate confusion among counsel as to whether the benchmark of 120 days still applies, thereby requiring counsel to understand dictates of local rules and eliminate the ability of non-complying counsel to state that they agreed to extend the time for

disclosure without court approval.

The Committee finalized the proposal to amend Supreme Court Rule 222 with comments and submitted same to the Supreme Court Rules Committee for consideration. The matter is scheduled for public hearing on September 16, 2005.

d. The Committee drafted language to amend Supreme Court Rule 87 (e) Appointment, Qualification and Compensation of Arbitrators to increase compensation of arbitrators for those matters exceeding the allotted two-hour hearing limit. Once it has been determined that a hearing will exceed the allotted two-hour limit, a hearing extension is granted by court order. Compensation, however, remains at \$75 per hearing regardless of the hearing length. The Committee engaged in extensive discussion on the impact of this amendment. It was determined that this increase should not create a large financial impact since the number of cases exceeding a two-hour limit are minimal. In Cook County, for example, despite its substantial caseload, the total number of cases in which the court granted time extensions is estimated to be not more than two per month.

In order to avoid purposeful holdover of hearing lengths, the consensus was that the compensation increase would be issued on a discretionary basis, for hearings expected to exceed three hours and only for those matters wherein a court-ordered extension is granted. Additionally, despite hearing length, an arbitrator's compensation, wherein a court-ordered extension was granted, could not exceed the sum of \$150.

The Committee finalized the proposal to amend Supreme Court Rule 87 (e) with comments and submitted same to the Supreme Court Rules Committee for consideration. Given that an increase would impact the Mandatory Arbitration Fund, which is a component of the Supreme Court's annual budget, the proposal was, in turn, forwarded to the Administrative Director for consideration with the Court.

2. Certificate of Appreciation

The Court-Annexed Mandatory Arbitration Program has been operating in Illinois for more than 18 years. The Committee recognizes that the effectiveness of the program, in large part, stems from the commitment and dedication of its arbitrators. The continued success of the arbitration program is dependent upon retaining experienced, qualified arbitrators. In the interest of arbitrator morale, the Committee drafted a Certificate of Appreciation to be awarded to arbitrators and forwarded same to the Supreme Court for its consideration.

3. Summary Jury Trials

The concept of summary jury trials was introduced to the Committee in Conference Year 2003. Summary jury trials are 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.

As of this report date, the Committee is considering the possible recommendation of a recently submitted draft of a summary jury trial proposal for implementation by Supreme Court rule. The Committee is reviewing 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.

B. Mediation

Presently, court-sponsored 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.

During State Fiscal Year 2005, 705 cases were referred to mediation in the ten programs from July 1, 2004 through June 30, 2005. These programs are designed to provide quicker and less expensive resolution of major civil cases.

A total of 520 cases were mediated during Fiscal Year 2005. Of these cases, 314 resulted in a full settlement of the matter, 52 reached a partial settlement of the issues, and 154 of the cases that progressed through the mediation process did not reach an agreement at mediation. (See Appendix 1 for statistics on these programs.)

Court-sponsored 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 settlement of a single 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 takes care of potential counterclaims, third-party complaints and, of course, eliminates the possibility of an appeal. Finally, court-sponsored 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.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the 2006 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 plans to facilitate the improvement and expansion of the major civil case mediation programs. The Committee also plans to actively study and evaluate other alternative dispute resolution options, specifically summary jury trials.

IV. RECOMMENDATIONS

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

APPENDIX 1

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**Court - Sponsored Major Civil Case
Mediation Statistics
Fiscal Year 2005**

Judicial Circuit	Full Agreement		Partial Agreement		No Agreement		Total Cases Mediated
	#	%	#	%	#	%	
First⁽¹⁾	52	73%	16	23%	3	4%	71
Eleventh	0	0%	0	0%	2	100%	2
Twelfth⁽²⁾	0	0%	0	0%	0	0%	0
Fourteenth⁽³⁾	11	50%	2	9%	9	41%	22
Sixteenth⁽⁴⁾	11	92%	0	0%	1	8%	12
Seventeenth	40	58%	3	4%	26	38%	69
Eighteenth⁽⁵⁾	4	50%	2	25%	2	25%	8
Nineteenth⁽⁶⁾	74	71%	2	2%	28	27%	104
Twentieth⁽⁷⁾	6	75%	0	0%	2	25%	8
Circuit Court of Cook County⁽⁸⁾	116	52%	27	12%	81	36%	224
Total/Overall %	314	%	52	%	154	%	520

⁽¹⁾ A total of (73) cases were referred to mediation. In addition to the statistics above, (2) cases are pending mediation.

⁽²⁾ No civil case mediations were reported in Fiscal Year 2005.

⁽³⁾ A total of (26) cases were referred to mediation. In addition to the statistics above, (2) cases settled prior to mediation and (2) cases settled after a no agreement result.

⁽⁴⁾ A total of (13) cases were referred to mediation. In addition to the statistics above, (1) case settled prior to mediation.

⁽⁵⁾ The statistics provided only reflect the number of cases referred by court order and mediated at the arbitration center and may not reflect the total number of cases mediated in the Eighteenth Judicial Circuit.

⁽⁶⁾ A total of (153) cases were referred to mediation. In addition to the statistics above: (38) cases are pending mediation, (6) cases were removed from mediation and (5) cases were dismissed pre-mediation.

⁽⁷⁾ A total of (19) cases were referred to mediation. In addition to the statistics above, (11) cases are pending mediation.

⁽⁸⁾ A total of (342) cases were referred to mediation. In addition to the statistics above, (118) cases are currently pending mediation.