

**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 2009 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 consideration of possible Supreme Court rule amendments and formulating a plan to accomplish the projects and priorities set forth by the Court for Conference Year 2010.

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 2011 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 2011.

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-three 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.

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 with a court-sponsored mandatory arbitration program 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 2009 Annual Meeting of the Illinois Judicial Conference concerning court-annexed mandatory arbitration.

Projects and Priorities Prescribed by the Supreme Court

The Court prescribed several projects and priorities for the Committee to consider in Conference Year 2010, as well as meet the dictates of the Committee's general charge, and continue projects delineated in Conference Year 2009. The Committee reviewed the list of projects/priorities from 2009 and 2010, and formulated a plan to address those projects. The Committee elected to create workgroups to study each of the projects. As part of the plan, each workgroup 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 2010.

Continued Conference Year 2009 Projects and Priorities ***Training of Arbitrators***

In Conference Year 2008, 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 the Administrative Director for consideration.

During Conference Year 2009, the Committee developed a new arbitrator training outline and related training materials. The outline includes handouts, arbitration issues, arbitration case filings and scheduling for arbitration hearings, arbitration hearing procedures, and a proceedings checklist. The aforementioned training manual will be used in conjunction with the training outline

¹The AOIC's Court-Annexed Mandatory Arbitration Fiscal Year 2010 Annual Report will be available on the Supreme Court website (www.state.il.us/court) in January 2011.

for new arbitrators to provide uniform arbitrator training on a statewide basis. The Committee forwarded the arbitrator training outline and related training materials to the Administrative Director.

During Conference Year 2010, the Administrative Office of the Illinois Courts ("AOIC") returned the training manual back to the Committee for consideration on several suggested edits. The Committee considered the edits, subsequently made the changes to the manual, and re-submitted the document to the Administrative Director for final disposition. It is anticipated that, once approved, the training manual will be made available to all mandatory arbitration programs for use in training prospective arbitrators.

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 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 is in the process of narrowing the scope of said surveys to meet the objective of this project, and obtain information that is useful to the Committee in considering arbitration program improvements. Once complete, it is planned that the survey will be issued for statewide dissemination for a planned period of time to gather data for analysis. Upon data synthesis, the Committee will formulate a report for the Court.

Settlement Data Initiative

The Court requested that the Committee "review and discuss the Fourteenth Judicial Circuit's settlement data initiative and determine whether or not the data collected has merit for consideration of statewide implementation." The initiative is a collection of settlement data captured in a format that has a utility for arbitrators and attorneys wherein arbitration awards and jury verdicts are tracked and offered as a tool to assist in settling cases. A predetermined form is provided to all attorneys and information is provided on a voluntary basis. Once an attorney submits information to the arbitration administrator, it is entered in a database. The information in the database is then distributed monthly to arbitrators and attorneys within the circuit. In theory, cases are assigned a value using settlement data and serve as a tool for settling cases. The data is used to educate unrealistic expectations by clients, educate insurance adjusters, and educate arbitrators who may not necessarily have practice expertise in personal injury cases. Potential statewide use of settlement data include a global program which would be accessed by password, and data would be sorted by case type, injury, circuit, county, etc. to assist in case management. The Committee was charged with determining the utility of such a program for arbitration programs, and

consideration of whether to implement a statewide program or, alternatively, recommend the settlement data initiative as a viable tool for consideration of implementation at the local level.

The Committee workgroup that reviewed this program recommended that the settlement data initiative be offered to judicial circuits with arbitration programs as a viable tool in case management. The workgroup recognized the value of such a program; however, statewide implementation, without a Supreme Court mandate, is unlikely to produce consistent and significant results. Further, data collected in larger jurisdictions may not have relevance in smaller/rural jurisdictions. Therefore, a statewide database may not serve a global community. Rather, it would serve only the constituents of a particular area with information on settlement data that is germane to the local programs in settling cases.

The Committee concurred with the recommendation of the workgroup, and will inform the arbitration programs about the settlement data concept.

Arbitration Program Statistical Data

In Conference Year 2009, the Court asked the Committee to “review the current collection methods of arbitration statistics to determine if the data is accurately capturing the results of the program as intended when arbitration was implemented in 1987.” A workgroup was assigned with this task, and during Conference Year 2010, continued to review the court-annexed mandatory arbitration annual report and related statistics. The workgroup is also working with the AOIC, arbitration supervising judges and administrators, and others that are knowledgeable in the area of capturing data that is reliable in presenting information about the arbitration programs. Upon conclusion of its review, the workgroup plans to make recommendations to the Committee concerning its findings.

Conference Year 2010 Projects and Priorities

Arbitrator Training Video

For Conference Year 2010, the Court requested that the Committee “develop an arbitrator training video to accompany the Uniform Arbitrator Reference Manual.” The Committee elected to establish a workgroup to develop a plan for production of a training video. The workgroup reviewed a video of arbitrator training offered in Cook County, as well as reviewed a training video produced by the AOIC in 1993. The workgroup also plans to review other training videos from DuPage County, St. Clair County, and other arbitration programs. Upon review of all videos, the workgroup plans to narrow the scope of the training video to focus on a short video that would be offered to circuits with arbitration programs as a “bridge” video. The bridge video would be made available as a training tool offered to assist in training those attorneys that are interested in becoming arbitrators, when immediate training is not available. In theory, the prospective arbitrator would view the video, thereby qualifying them to be immediately eligible to arbitrate. The workgroup

began development of an outline for the training video during Conference Year 2010, and plans to continue with planning for production of the training video for arbitrators.

Rejection of Awards Survey

The Supreme Court requested that the Committee “survey arbitration program litigants to seek comments on reducing the occurrence of rejections.” The Committee assigned this task to a workgroup, which began preliminary research during Conference Year 2010. The workgroup dialogued with arbitration supervising judges and attorneys concerning the rejection rate issue and learned that firms, especially insurance companies, use the arbitration hearing as part of discovery. Those firms are using the hearing as a benchmark, and then paying the rejection fee to continue the settlement dialogue. Utilizing the information obtained from the informal discussion, the workgroup is in the process of drafting a survey for review by the Committee.

Mentor Program for Arbitrator Chairpersons

As part of the projects and priorities outlined for Conference Year 2010, the Court requested that the Committee “examine the possibility of developing a mentor program for arbitrator chairpersons.” The mandatory arbitration program in the Circuit Court of Cook County developed an arbitrator chairperson mentor program. During Conference Year 2010, Cook County began mentoring chairpersons. The purpose of the chairperson mentoring program is to enhance training and offer a prospective arbitrator chairperson the practical experience necessary to excel as a fair and impartial chairperson. The program is voluntary, but arbitration administration in Cook County strongly encourages individuals interested in attaining the status of chairperson to participate. The workgroup assigned to this project is in the process of developing a universal chairperson mentor training that would be offered to other counties with arbitration programs as a tool for enriching the qualifications of chairpersons.

Residency Requirements for Arbitrators

The Supreme Court charged the Committee with “examining local rules and requirements that restrict arbitrators from arbitrating in multiple counties.” The workgroup assigned to this project surveyed the arbitration programs regarding this issue, synthesized the data, and found that limiting factors with respect to arbitrating in multiple jurisdictions center on economic feasibility and familiarity with local nuances pertaining to rules of arbitration. The workgroup suggested to the Committee that it may be inherently unfair to restrict attorneys from arbitrating in any part of the state, and, moreover, an inequity may exist when attorneys are barred from arbitrating in certain counties due to residency requirements or local restrictions. The workgroup also noted the work of the Committee’s Uniform Arbitrator Reference Manual, which promotes universal training and offers an arbitrator the necessary credentials for eligibility to arbitrate in any county in the state of

Illinois. Further, those credentials should be transferrable. The workgroup plans to draft correspondence to the arbitration programs alerting them to this issue and suggesting review of local rules which may include jurisdictional restrictions for out-of-circuit attorneys.

Mediation

Presently, court-annexed civil mediation programs operate in the First, Third, 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-annexed mediation programs have been successful and well received, and 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-annexed 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.

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 2010, as well as the projects that remained from Conference Year 2009. Those projects include continuing to develop the arbitrator training video, completing the review of the settlement data initiative, developing a statewide arbitration program participant satisfaction survey, reviewing the current collection methods and reliability of arbitration statistics, surveying arbitration program litigants to seek comments on reducing the occurrence of rejections, developing a universal mentor program for arbitrator chairpersons, finalizing the recommendation on requirements that restrict arbitrators from arbitrating in multiple counties, and other initiatives as directed by the Court.

During the 2011 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 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 is making no recommendations to the Conference at this time.