

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

Hon. Patricia Banks, Chair

Hon. Harris H. Agnew, Ret.  
Hon. LaGuina Clay-Clark  
Hon. Mark S. Goodwin  
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Hon. John O. Steele  
Hon. Carl Anthony Walker

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**I. STATEMENT ON COMMITTEE CONTINUATION**

Since the 2010 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 2011.

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 twelve 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 Conference Year 2012.

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-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.

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 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 2010 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 2011, as well as meeting the dictates of the Committee's general charge, and continuing projects delineated in Conference Year 2010. The Committee reviewed the list of projects/priorities from 2010 and 2011, 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 studied a specific project and made a recommendation(s) to the Committee to consider as a whole. Below are the projects/priorities the Committee addressed in Conference Year 2011.

### ***Continued Conference Year 2010 Projects and Priorities***

#### **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.

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<sup>1</sup> The AOIC's Court-Annexed Mandatory Arbitration Fiscal Year 2011 Annual Report will be available on the Supreme Court website ([www.state.il.us/court](http://www.state.il.us/court)) in January 2012.

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 said 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 during the month of April 2011. Arbitration programs were instructed to send the completed surveys to the Administrative Office for data tabulation and synthesis. Upon completion of the data recordation, the data will be presented to the Committee for assimilation, and subsequent preparation of a report for the Court.

### **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 Administrative Office in 1993. The workgroup also reviewed other training videos from DuPage County, St. Clair County, and other arbitration programs. Upon review of the videos, the workgroup narrowed 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 who are interested in becoming arbitrators, when immediate training is not available. In theory, the prospective arbitrators 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, which will serve as guidance for production of the training video for arbitrators.

During Conference Year 2011, the Committee completed the arbitrator training video outline and developed scripts, vignettes, and a PowerPoint presentation to accompany the video. It is planned that the video will be offered in a CD format, and the video presentation will be displayed on a split screen juxtaposed with the PowerPoint presentation. The Committee

completed filming the video in July 2011, and it is being edited. It is hoped that the video will be completed by the end of Conference Year 2011.

### **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.

In exploring the rejection issue, the Committee cultivated an understanding of the logic and strategy behind rejections. Discussions and review of the rejection issue indicated that rejections are part of the arbitration process, and in many instances, the hearing and subsequent rejection assists in eventually settling cases. The Committee emphasizes the fact that rejection numbers should not be the focus of the arbitration process. The focus should be on the fact that, of the 40,000 cases in arbitration, 98 percent are settled. Moreover, only two percent, or less, go to trial. No other jurisdiction, or program, in the state of Illinois can boast the claim that 98 percent of cases are removed from judicial caseloads in a one-year period. The net result of arbitration hearings demonstrates that, rejection numbers aside, a statewide average of less than two percent of cases in Illinois arbitration programs go to trial annually.

### **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 to mentor chairpersons. The purpose of the chairperson mentor 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, during Conference Year

2010, began 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.

During Conference Year 2011, the Committee continued to develop a global and more elaborate arbitration chairperson mentor program, which is designed to equip eligible chairpersons with the skills necessary to be successful in chairing arbitration hearings. A draft of the program is being circulated for review and comment from the arbitration supervising judges and administrators. It is hoped that the Committee will finalize development of its program by the end of Conference Year 2011, and offer the chairperson mentor program to arbitration programs for consideration of implementation.

### **Conference Year 2011 Projects and Priorities**

#### **Supreme Court Rule 94**

For Conference Year 2011, the Committee was charged with "examining the current award form prescribed by Supreme Court Rule 94 and contemplating a proposal to allow dissenting arbitrators the opportunity to explain their position." A workgroup was assigned the task of exploring this issue and making a recommendation to the Committee. The workgroup recommended that the arbitration award form allow a dissenting arbitrator an opportunity to provide the reason as to the dissent from the majority, and proposed an amendment to Supreme Court Rule 94. The proposed amendment offers two check boxes on the award form, one for liability and one for damages. In theory, the dissenting arbitrator would check one of the boxes as for the reason he/she dissents from the majority. The Committee unanimously adopted the workgroup's recommendation, and correspondence and the proposed amendment to Supreme Court Rule 94 have been submitted to the Director of the Administrative Office for management with the Supreme Court.

#### *Mediation*

Presently, court-annexed civil mediation programs operate in the First, Third, Eleventh, Twelfth, Fourteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-Second 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 2011, as well as those projects which remained from Conference Year 2010. Those projects include production of the arbitrator training video, synthesis and assimilation of data from the statewide arbitration program participant satisfaction survey, development of a universal mentor program for arbitrator chairpersons, and other initiatives as directed by the Court.

During the 2012 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.