



Staff Agency for the Judicial Conference of Indiana

Alternative Dispute Resolution Committee
Meeting Agenda

February 15, 2013
10:30 a.m.

- I. Judge Loyd called the meeting to order at 10:30 a.m.

Meeting participants: Mark Loyd, Chair; Larry Ambler; James Joven; Nanette Raduenz; Victoria Ransberger; Kim Van Valer (telephone); and Randy Williams (telephone).

Staff present: Anne Davidson, CLE and Diane Mains, IJC.

- II. The October 19, 2012, meeting minutes were approved.

- III. Discussion Items

- A. Rules for Alternative Dispute Resolution – Task Force

Judge Loyd distributed a memo from Chief Justice Dickson dated December 12, 2012, approving the formation of a Task Force comprised of a small group of stakeholders charged with reviewing the ADR Rules for needed revisions.

Judge Loyd reported that Judge David Avery, Allen Superior Court, has agreed to serve as the Task Force chair. Task Force members: (1) Amy Applegate, Professor, Indiana University Maurer School of Law (voting member); (2) ADR Committee members, Judge Elaine Brown and Magistrate Nanette Raduenz (third position available) (voting members); (3) Indiana Bar Association representatives, Pat Brown, Steve Cohen and Steve Spence (voting members); (4) an Indiana Association of Mediators representative (either Judge Van Valer or a member selected by her) (voting member); (5) Julia Orzeske, Executive Director, Indiana Commission for Continuing Legal Education (liaison); (6) a member of the Committee on Rules of Practice and Procedure (liaison); and (7) an Association of Family and Conciliation Courts representative (liaison). The Task Force is authorized to solicit information and perspective from other sources.

- B. Parenting Coordination Rules

The Committee discussed whether to refer the proposed parenting coordination rules to the Task Force as part of the ADR Rules review or to continue working on these rules. The Committee members agreed to work on the parenting coordination rules and offer a finished product to the Task Force to be included in the Task Force's rule revisions. If the Task Force declines to include the proposed parenting coordination rules in the proposed

revisions to the ADR Rules, the ADR Committee will pursue adopting these rules independently.

C. IU Research Project

An email update on the ADR research project from Professor Quintanilla, Associate Professor, Indiana University Maurer School of Law, was distributed to members. Professor Quintanilla is currently in the process of executing Phase I of the project (a national survey of lay members using vignettes to determine selection of procedural choice). Phase 2 will build upon Phase 1 and will require ADR Committee members to triage the vignettes. A third phase may be added to the project, depending on funding, to survey Indiana judicial officers to determine their procedural selections to the vignettes. A fourth phase may also be added to survey Indiana attorneys to determine their procedural selections to the vignettes.

D. *Horner v. Carter*, 2013 Ind. Lexis 124 (Ind. Feb. 12, 2013) was distributed.

IV. Next Meeting: July 19, 2013, at 10:30 a.m.

V. Judge Loyd adjourned the meeting at 11:11 a.m.



Alternative Dispute Resolution Committee
Meeting Minutes

June 28, 2013

- I. Judge Loyd called the meeting to order at 10:30 a.m.

Members present: Chair Mark Loyd, Elaine Brown, Calvin Hawkins, Nanette Raduenz and Kim Van Valer.

Members participating via telephone: Larry Ambler, David Cox, Jeffrey Edens, John Roach and Randy Williams.

Guests: Amy Applegate, Taylor Ballinger, James Greiner, Annie Milkey and Victor Quintanilla.

Staff: Robbie Flippin, Diane Mains, Julia Orzeske and Jen Weber.

- II. The February 15, 2013 meeting minutes were approved.

- III. IU Research Project

Professor Quintanilla led the discussion on two issues: (1) framing the research question, and (2) determining the circumstances and factors influencing whether ADR is used in lieu of trial procedures in a particular case and which method of ADR is utilized.

Current law and practice heavily favors mediation over other ADR methods. Members identified a number of issues that influence their decision making whether or not to refer a case to ADR:

- Children are present or part of case
 - County ADR Plan governance
 - Pro se parties
 - Indigent parties
 - Cost of ADR
 - Domestic violence factors
 - Parties have the ability to communicate with one another
 - The point during the litigation that a referral is made
 - Agreement among parties
 - Case type – if there are multiple cases involving the same parties; divorce without children, etc.
 - Court time that will be needed to resolve the issues in the case – if there are multiple or complex issues in a case, there is an increased likelihood
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that the case will be referred to ADR to reduce court time spent on the case

- Difficult attorneys
- Parties desire the judge to hear their case and want to finalize the issues
- Parties who view ADR as a delay tactic
- Large court dockets – increases the use ADR to settle as many cases as possible out of court
- The length of time until the case can docketed/heard by the court
- Judge's perception of fairness
- Parties' perception of fairness (e.g. hold ADR sessions in courtroom; heard by an elected judicial officer versus a private judge or mediator)
- Whether the judge takes the time to explain the ADR referral process and gets buy-in from the parties

This research project is focused on the use of alternative dispute resolution in domestic relations cases. Staff will ask the ADR Task Force to consider expanding the use of private judges during its review of the ADR Rules. Judge Loyd requested that the survey method involve either video or audio to enhance the attractiveness of the survey and set it apart from other surveys.

IV. Next Meeting: July 19, 2013 at 10:30 a.m.

V. Judge Loyd adjourned the meeting at 11:50 a.m.



Alternative Dispute Resolution Committee
Meeting Minutes

July 19, 2013

- I. Judge Loyd called the meeting to order at 10:30 a.m.

Members present: Chair Mark Loyd, Larry Ambler, Elaine Brown, Vickie Ransberger and Kim Van Valer.

Members participating via telephone: Richard Payne, Nanette Raduenz, John Roach, and Randy Williams.

Liaison: Julia Orzeske, Indiana Commission for Continuing Legal Education

Staff: Robbie Flippin, Diane Mains and Jen Weber, IJC.

- II. The June 28, 2013 meeting minutes were approved.

- III. IU Research Project

Judge Loyd provided an overview of the meeting with Indiana University Maurer School of Law research staff for those members unable to attend the June 28, 2013, meeting. Professor Quintanilla, Mr. Greiner and staff are currently working on Phase I of the project, an online survey of the lay public to determine how these individuals choose between traditional case processing and ADR methods. Phase II of the project will entail determining how judicial officers triage the family law disputes utilized in Phase I through an online survey in the fall of 2013.

- IV. ADR Task Force

Judge Loyd reported that the multi-disciplinary Task Force formed to review the ADR Rules for potential amendment is hard at work. The Task Force is subdivided into four work groups meeting independently and reporting progress periodically to the Task Force.

- V. Parenting Coordinator Rules

Judge Loyd recapped the current status of the proposed Parenting Coordinator Rules. The PC Rules were last formally presented as a part of the Parenting Time Guidelines. Concerns were raised by both the Indiana Bar Association and the Supreme Court Committee on Rules of Practice and Procedure; consequently, the PC Rules were tabled for further consideration. A work group comprised of Judge Loyd, Magistrate Ambler, Magistrate Raduenz, Magistrate Ransberger and Judge Van Valer will work on streamlining and simplifying the proposed rules to address the key issues of: (1) PC qualifications, (2) confidentiality, (3) delegation of judicial authority, and (4) costs. The work group will keep the Committee updated on its progress.

VI. Other Business

Judge Loyd reported that his term as the chair and member of the ADR Committee expires this year. He has submitted a request to Chief Justice Dickson to remain on the Committee to continue working on the research project, Parenting Coordinator Rules, and the ADR Task Force.

VII. Next Meeting: staff will send out proposed dates in November for the next Committee meeting and schedule it based on the availability of a majority of the members.

VIII. Judge Loyd adjourned the meeting at 11:15 a.m.



Alternative Dispute Resolution Committee
Meeting Minutes

November 8, 2013

- I. Judge Avery called the meeting to order at 10:40 a.m.

Members present: Chair David Avery, Larry Ambler, Elaine Brown, James Joven, Richard Payne, Victoria Ransberger, and Kim Van Valer.

Members and guests participating via telephone: Jeffrey Edens, Mark Loyd (guest), Nanette Raduenz, John Roach, and Randy Williams.

Liaison: Julia Orzeske, Indiana Commission for Continuing Legal Education

Staff: Jen Weber, IJC; Michael Commons State Court Administration.

- II. The July 19, 2013 meeting minutes were reviewed. Judge Williams noted that he attended the meeting via telephone, which was not reflected in the draft minutes. Ms. Weber updated the minutes accordingly, and the minutes were approved unanimously.

- III. IU Research Project

Mark Loyd provided an overview of the project being conducted by Indiana University Maurer School of Law research staff and Professor Victor Quintanilla. He reported that at this point, funding is the primary task, and a letter of support has been provided by Judge Avery and Judge Loyd, and letters are being prepared by the state bar association by Mr. Steve Cohen for submission to the University for grant writing purposes. A written summary of a recent conference call with Judge Avery, Judge Loyd, Amy Applegate, Steve Cohen, and researchers from IU (Annie Milkey and Professor Quintanilla) conducted on October 30, 2013 was distributed to members. (see attachment 1).

- IV. ADR Taskforce

Judge Avery reported that the multi-disciplinary Taskforce formed to review the ADR Rules met October 11, 2013. Judge Avery reported that at that meeting, the four sub-groups working on the individual sections of the ADR rules reported to the entire Taskforce their recommended revisions to the ADR Rules. Primarily, he said the changes involve screening for domestic violence, as well as training for domestic violence, and some changes related to confidentiality. Magistrate Raduenz additionally explained that the changes to the confidentiality provisions are intended to permit mediators to have the option to report that mediation may not be conducted because it isn't appropriate for the particular

family. Committee members raised questions for additional consideration, such as does reporting that parties don't attend mediation compromise neutrality, and whether raising allegations of bad faith inherently are breaches of confidentiality. Members on the Taskforce agreed to convey these concerns with other members on the relevant subcommittees looking at these issues.

Judge Avery will keep members informed of the progress of the Taskforce. When the revisions are completely drafted, members of the full committee will receive them for review and input.

V. Parenting Coordinator Rules

Judge Avery and Magistrate Ransberger recapped the current status of the proposed Parenting Coordinator Rules. The PC Rules were last formally presented as a part of the Parenting Time Guidelines. Concerns were raised by both the Indiana Bar Association and the Supreme Court Committee on Rules of Practice and Procedure; consequently, the PC Rules were tabled for further consideration when the Parenting Time Guidelines were last adopted. Members requested Ms. Weber send the Rules Committee memo outlining their concerns with the rules, for their additional review. Members also discussed whether the PC Rules should continue to be developed as stand-alone rules, amended into the ADR rules, or issued as guidelines. This issue was tabled for additional discussion at the next meeting.

A work group initially agreed to work on streamlining and simplifying the proposed rules to address the key issues of: (1) PC qualifications, (2) confidentiality, (3) delegation of judicial authority, and (4) costs. The workgroup was unable to meet, however, and the committee discussed whether to proceed with the PC rule project.

Members discussed the survey of PC usage conducted among judges earlier this year and the apparent need for training of PC's coming from calls to the CLE office Ms. Orzeske reported continuing to receive. Members requested that Ms. Weber email results of the survey to members for more detailed review of PC usage and requested that the workgroup meet for more in-depth review of the survey. They also wanted the workgroup to prioritize the four issues identified at the last meeting, by degree of importance, for additional review - qualifications; confidentiality; delegation of judicial authority; and costs. Judge Van Valer, Magistrate Ambler, Magistrate Raduenz, and Magistrate Ransberger agreed to participate in the workgroup. The workgroup will meet and report an update at the next meeting.

VI. Other Business

Mr. Michael Commons reported that some states have mediation in CHINS cases, and that might be something for the committee to consider creating guidelines for in Indiana.

Another suggestion offered by several members of the committee were more judicial education offerings at the September conference on ADR, such as the

use of non-binding arbitration. Ms. Weber will notify the judicial center education department of this request.

VII. 2014 Meeting Dates

All meeting times are 10:30AM (EST) at the Judicial center office and will conclude by 12:30 unless otherwise noted, due to agenda length.

Judge Avery also discussed his preference for members attending the meeting in person when possible, so that members can get to know one another and communicate more effectively, rather than via conference line. However, he noted he understands when attendance in person is not possible and will continue to make the conference call number available.

The 2014 meeting dates are: March 14, 2014; July 25, 2014; and October 24, 2014.

VIII. Judge Avery adjourned the meeting at 12:10pm.



Alternative Dispute Resolution Committee
IU ADR Research Project

Conference Call Summary
October 30, 2013

III. The meeting commenced at 1:45 p.m.

Participants: Amy Applegate (IU), Judge David Avery, Stephen Cohen (ISBA), Judge Mark Loyd, Annie Milkey (IU), and Victor Quintanilla (IU)

Staff: Diane Mains, IJC

II. Research Project - Overview

The ADR Committee partnered with the Indiana University Maurer School of Law, under the direction of Professor Victor Quintanilla, to conduct a multi-phase research project to determine the degree to which Indiana judges, attorneys and litigants prefer using ADR versus formal legal proceedings in family law disputes. The project is divided into four phases:

- Phase I: consists of an online survey of the lay public to determine how these individuals choose between traditional case processing and ADR methods. Written vignettes of initial hearings were administered on a nationally representative sample of the public using Qualtrics, a survey software platform, and Amazon Mechanical Turk. Four sequential studies were deployed to investigate how lay people select different procedures and make trade-offs between what they perceive to be fair and unfair procedures, and how they make tradeoffs between the expense and timeliness of different procedures. The final study in this phase requires participants to triage disputes into one of three procedural regimes: formal procedures, mediation, and arbitration.
 - Phase II: is intended to determine how Indiana judicial officers triage the family law disputes. Phase II will involve presenting judicial officers with vignettes (video) of family law disputes at preliminary hearings when the parties have reached a point at which they must be triaged to formal procedures, mediation, arbitration, or private judging. This phase investigates whether particular factors, situations, and circumstances affect judges' preferences for triaging family law disputes into different procedural regimes.
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- Phase III: is intended to determine how Indiana attorneys triage the family law disputes utilized in the Phase II.
- Phase IV: is intended to determine how the general public in Indiana triages the family law disputes utilized in Phase II.

IX. Research Project – Next Steps

- Professor Quintanilla and his team are pursuing grant funding to finance the production of a total of 18 variations of 4 video vignettes (approximately 6 minutes each in length) from IU and the National Science Foundation (NSF). Both grant applications are due the first week in December 2013.
 - Judge Avery and Judge Loyd agreed to author a letter of support on behalf of the Judicial Conference of Indiana for inclusion in the NSF grant application.
 - Mr. Cohen agreed to author a letter of support on behalf of the ISBA for inclusion in the NSF grant application.
 - If grant funding cannot be secured for film vignettes, then written summaries will be created with the anticipated funding from IU.
- Professor Quintanilla and his team are in the process of completing the summaries of the vignette scripts. These summaries will be distributed to Judge Avery, Judge Loyd and Mr. Cohen for review and feedback.
- Phase I will be concluded shortly.

X. The conference call concluded at 2:30 p.m.
