

Minutes
Commission on Civil Court Alternative Dispute Resolution (ADR)
Delivery Subcommittee
July 25, 2011
2:00 PM

Law Offices of Day Pitney
1 Audubon Street, #600
New Haven, CT

A meeting of the Delivery Subcommittee of the Commission on Civil Court Alternative Dispute Resolution (ADR) was held at The Law Offices of Day Pitney, 1 Audubon Street, New Haven, CT at 2:00 p.m.

Members present: Attorney Sarah F. DePanfilis (co-chair), Attorney Robert Simpson (co-chair), Hon. James W. Abrams, Attorney Jeffrey Londregan and Attorney David A. Reif.

Members of the public present: Bill Logue and Peter Benner

Staff present: Roberta Palmer

At 2:15 p.m. the meeting was called to order.

Agenda Items:

A. Welcome:

Attorney DePanfilis welcomed the subcommittee members to the meeting.

B. Approval of Minutes:

The draft minutes of the June 13, 2011 meeting were unanimously approved.

C. Report on First Meeting of Utilization Subcommittee:

Attorney DePanfilis reported on the progress of the first Utilization subcommittee meeting in evaluating the existing court-sponsored ADR programs. That committee discussed the following ADR programs:

1. **Arbitration** - the subcommittee believes that this can be effective if the process was required to follow the statutory provisions more closely although they also felt that the \$50,000 limit is outdated and may need to be raised.

2. **Attorney Trial Referee** - the subcommittee believes this is utilized inconsistently throughout the judicial districts. The committee also questioned whether using these providers to perform pretrial conferences was an appropriate function.

3. **Special Masters** - considered by the subcommittee to be one of the most successful ADR programs but widely underused. Their success can be attributed to the subject matter expertise they bring to cases assigned to them.

The Utilization subcommittee will continue its work reviewing existing programs on July 28, 2011.

D. Review and Approve General Standards for Process:

Attorney Simpson began the discussion by suggesting that confidentiality should be included as a standard for any ADR process. The subcommittee agreed that it should be included under the categories of procedural fairness and ethical process.

With these and other minor changes, the consensus was that the General Standards, which include standards for procedural fairness, cost-effectiveness, timeliness and ethical process, should be adopted as a recommendation of this subcommittee and may be altered before submission once a final recommendation is developed and approved.

E. Discuss Docket Management Considerations:

The discussion then shifted to whether case management should be shifted to a neutral so as to relieve the Judges of that burden. Discussion continued about the advantages and disadvantages of having ADR case management handled centrally by an ADR coordinator with specialized knowledge. Some expressed the view that having Judges at the local level should continue since they have a better understanding of the logistics specific to their locality. The consensus was that some degree of central oversight is needed.

The subcommittee also agreed that an important consideration in developing an ADR program is docket management. The subcommittee agreed that programs used to address specific areas, such as foreclosure and housing dockets, make sense and seem to work well to address that need. This also led to a continued discussion of a similar need to address the growing number of collections cases.

The subcommittee reviewed the chart of pending cases by type in connection with this discussion.

F. Fine-tune Proposed Case-Assessment Process:

The subcommittee discussed the pros and cons of various different systems used nationwide. It also discussed the general concepts of “multi-door” or “multi-option” programs and individual court-annexed programs.

With docket management and other considerations in mind, the subcommittee agreed that a split approach would be most beneficial in Connecticut. The subcommittee agreed to the following preliminary delivery recommendation:

Individual Programs – mediation specialists

- Housing
- Foreclosure
- Collections

Multi-Option Programs – Judicial/Parajudicial, Special Masters and ATRs

- Torts
- Contracts
- Tax/Unemployment Administrative Appeals
- Miscellaneous

The subcommittee also agreed on the following:

- Four ways for ADR referral:

- (1) Referral by stipulation
- (2) Request by party
- (3) Automatic assignment by a trained, local “ADR Coordinator”
- (4) Order of Court

- Use of an intake form that would be completed by parties to be used as a diagnostic tool in making an ADR referral and sent electronically (if possible) to a “central” ADR management team. The form should include, at the very least, a description of the nature of the dispute, whether there is insurance coverage involved, the parties’ preference for an ADR program, an estimate of the length of discovery which will be undertaken, any good faith reason to opt out of ADR, if necessary.

- The intake form shall be completed by each party – ex parte – within 60 days from the appearance of the first defendant

- Multi-Option Program assignments should be handled by the local ADR Coordinator, who would conduct face-to-face or phone conferences (mandatory face-to-face with pro se parties).
- The ADR Coordinator shall schedule a face-to-face conference (mandatory for pro se parties) or phone conference if appropriate, within 60 days of receiving forms from all appearing parties, or form deadline, whichever is sooner.
- ADR Coordinator shall make the Multi-Option Program referral at the conference or within 7 days from conference.

The subcommittee also discussed the importance of case-assessment training for ADR Coordinators and will alert the Training Subcommittee to this need.

G. Discuss Delivery of Specific ADR Programs:

It was suggested that subcommittee members should outline variations of each ADR program when making their recommendation for the delivery of that program, one where cost is not a concern and another which takes into account the Judicial Branch's budgetary constraints.

H. Preparation for Next Meeting:

The next meeting will be held on August 29, 2011 at 2:00 pm at the Law Offices of Shipman & Goodwin, One Constitution Plaza, Hartford, CT

The meeting was adjourned at 6:05 pm.