

Minutes
Commission on Civil Court Alternative Dispute Resolution (ADR)
September 19, 2011
2:00 PM
225 Spring St.
Wethersfield, CT

A meeting of the Commission on Civil Court Alternative Dispute Resolution (ADR) was held at 225 Spring St., Wethersfield, CT, in Room 4B at 2:00 p.m.

Members present: Hon. Linda K. Lager (chair), Hon. Kari A. Dooley, Hon. Robert L. Holzberg, Hon. Elliot N. Solomon, Hon. Dawne G. Westbrook, Attorney Agnes Cahill, Attorney Sarah F. DePanfilis, Attorney Timothy S. Fisher, Attorney Irene Jacobs, Attorney Patricia Kaplan, Professor Carolyn Wilkes Kaas, Attorney Jeffrey T. Londregan, Attorney Duncan MacKay, Attorney David A. Reif, Attorney Robert Simpson, Professor James H. Stark.

At 2:08 p.m. Judge Lager called the meeting to order.

Agenda Items

I. Welcome by Judge Lager

Judge Lager welcomed the commission members to the meeting.

II. Approval of Minutes

The minutes of the May 23, 2011 meeting were unanimously approved.

III. Subcommittee Presentations re: Tentative Recommendations

A. Delivery Subcommittee:

Attorney Sarah DePanfilis, co-chair, reported that the Delivery Subcommittee read and analyzed a large volume of material and looked at programs in numerous other states as part of its work. Two types of state programs were identified: 1) case type specific and 2) a multi door/multi option approach. The Delivery Subcommittee decided on recommending a split approach, i.e., a case specific program for housing, foreclosures, and collections cases; and a multi-option program for the rest of the civil cases. The program for contract collections would mirror the existing programs used for housing and foreclosure. A PowerPoint presentation was used to aid in describing the model program and recommendations. The multi-option referral process could include request by party; referral by stipulation; automatic assignment or order of the court. Providers would be judges/JTRs; special masters; and staff mediators.

A discussion was held regarding the split approach recommendation of the Delivery Subcommittee. One issue discussed was the timing of the steps described in the multi-option approach including a concern about fixed time frames. The Delivery Subcommittee indicated that the idea is to have a method of looking at what needs to be done to get parties ready for ADR. An opinion was expressed that the presiding judge should vet the cases for appropriateness for ADR. An opinion was expressed that the burden should be on the parties, not the court to determine if a matter is amenable to ADR. The opposing viewpoint was expressed that the parties may not be the best ones to look at and weigh ADR options. It was clarified that Delivery is recommending a process, not substantive programs.

A discussion was held regarding allowing volunteer attorneys to serve as mediators, in addition to staff mediators. A viewpoint was expressed that if volunteer attorneys are allowed to serve in adjudicative functions such as fact-finders and attorney trial referees, they should also be allowed to serve as mediators.

A motion was made and approved that the Delivery Subcommittee's recommendation to adopt a split approach (case specific programs for housing foreclosure, collections; multi-option for all other civil cases) with the process to be defined at a later time be accepted.

B. Utilization Subcommittee:

Professor James Stark, chair, reported that the Utilization subcommittee looked at existing programs and analyzed each program in terms of factors such as need; triggers/at what point in the process it is conducted; what attorneys and parties think of the program; the time afforded; and success. The subcommittee concluded that 5 programs were underutilized and that 4 of the underutilized programs (Early Intervention; Early Neutral Evaluation; Expedited Track Process; and Summary Jury Trial) should be eliminated; the fifth program, Medical Malpractice Mediation, was created by statute and the subcommittee concluded that a recommendation should be made to the legislature to eliminate that program. An executive summary of the recommendations for all programs was distributed and reviewed with the Commission members.

A motion to accept all the recommendations of the Utilization Subcommittee was tabled due to opinions that it was premature; it was agreed that the Commission should wait in case any of Utilization's recommendations conflict with the recommendations of any other subcommittees.

C. Training Subcommittee:

Professor Carolyn Wilkes Kaas, member, reported that the Training Subcommittee divided training into two groups - adjudicative functions and

conciliation functions. The selection methods and qualifications for both groups were discussed. The proposal to require a minimum of ten years of legal practice was discussed, including the possibility of an equivalency. A discussion was held on the subject of whether volunteer attorneys should serve as mediators.

A motion was made and approved to adopt the recommendation that training be divided into the categories of adjudicative and conciliation.

Judge Lager, Chair, asked for details regarding the content of training for the adjudicative function, and that the proposed training curricula be phrased in the form of suggestions.

D. Evaluation Subcommittee:

Attorney Timothy Fisher, chair, reported on the work of the Evaluation Subcommittee. ADR program goals and features of well-run ADR programs, as detailed in their subcommittee report, were discussed.

There was consensus, after discussion, that the ADR Program Goals set forth on the first page of the subcommittee's report could serve, with modifications, as a preamble to the Commission's recommendations. It was agreed that program goals 1 – 3 on page 1 of their report could be combined into one goal captioned "Resolution." Additionally, goal 5, i.e., "fairness in the process" should include both procedural and substantive fairness. It also was agreed that the wording of goal number 7 should be revised to substitute the wording, "identify, address and seek to satisfy" in place of the word resolution.

As to the four features of a well-run program as listed on page 2 of the report, it was agreed that the word "procedural" should be deleted from fairness. There was consensus that with that modification, section II of the report was acceptable to the Commission.

There also was consensus on the remainder of the subcommittee's report regarding ADR Evaluation Goals/Purpose and Measurement Methods and Tools.

IV. Discussion re: Drafting Process for Final Report

The final report will be done after the vote on the final recommendations on 10/31/11. Staff will begin drafting the background information for the final report.

V. Other Business

Subcommittees are to submit updated reports by the close of business on 10/19/11. Voting on final recommendations will take place at the next meeting on

10/31/11. If a member cannot attend, the member can submit an absentee ballot.

VI. Future meetings

The next meeting will be on 10/31/11 at 1:00 p.m.

VII. Adjournment

The meeting was adjourned at 5:15 p.m.