

**JOINT ADR COMMITTEE**  
**Minutes**  
**December 9, 2010**  
**By telephone conference call**

Committee members present: Chair Joanne Ottmar; Judge Steve Marquart; Robert Udland; Scott Porsborg; Kristine Paronica; Sarah Bernhardt

Also present: Cathy Ferderer, Director of the Supreme Court's Family Law Mediation Pilot Projects; Sally Holewa, State Court Administrator; SBAND staff Bill Neumann

Chair Joanne Ottmar called the meeting to order at 9:03 am.

S. Porsborg/R. Udland—Motion to approve the minutes of the September 14, 2010, meeting. Carried.

Mr. Neumann reported the Bar Association Board of Governors had appointed Kristine Paronica to the Joint ADR Committee to replace Joanne Ottmar. Mr. Udland reported the Chief Justice had contacted him to appoint him as committee chair, effective January 1.

There was no report from the sub-committee on court-ordered mediation.

C. Ferderer reported regarding appellate mediation. She has looked at a number of programs in other states, and has found the Minnesota program for appellate family law mediation may offer a starting point for designing a program for North Dakota. She reported the Supreme Court is including money in its proposed 2011-2013 budget for appellate mediation for family law and probate cases, and would like the Joint ADR Committee to appoint a subcommittee to work on designing a program. The Court has suggested at least one subcommittee member should be someone from the appellate level, and has suggested Supreme Court Clerk Penny Miller as an appointee.

Ms. Ferderer reported appellate mediation is mandatory in Minnesota for family law cases. Minnesota uses a simple form for the parties to complete, giving basic information about the case being appealed. Ms. Ferderer has asked Minnesota to share with her the criteria used in determining which

family law cases should be excepted from the mandatory mediation requirement. Minnesota's mediator selection process and orientation process were discussed. It was noted a case being mediated retains its place on the Court's calendar; if there is no settlement, the case continues on for briefing and decision with no delay as a result of the mediation. Ms. Ferderer reported that in most systems, including Minnesota's, the parties pay the costs of the mediation. She reports a settlement rate of approximately 50%. Minnesota reports parties are motivated by the potential saving if mediation results in settlement. In Minnesota, all appellate mediators are law-trained, with appellate experience.

R. Udland/K. Paronica—Motion that the committee should appoint a subcommittee to work on an appellate mediation program for the North Dakota Supreme Court for family law and probate cases. Carried.

It was suggested at least one of the subcommittee appointees should be a probate lawyer. Possible subcommittee appointees for the chair's consideration included Penny Miller, Cathy Ferderer, Darcie Einarson and Judith Howard. It was suggested Penny Miller might be asked to suggest a probate lawyer with appellate experience.

Ms. Ferderer reported the Court hoped to have its appellate mediation program in place by July 1, 2011, and asked that the subcommittee be appointed and begin meeting as soon as possible.

Ms. Ferderer discussed the interim report for the Court's Family Law Mediation Pilot Project. This interim report covers only the first five judicial districts in which the pilot projects were started. Since the interim report was drafted earlier this year, the Court has rolled the pilot project out in the rest of the state. The report states that project goals are being met so far. The participants' rate of satisfaction is in the 80% range. 72% of the mediations have resulted in full or partial agreements, 55% in full agreements. Among those not settled at mediation, Ms. Ferderer believes a fair number are resulting in settlement within a few weeks following mediation, and hopes to be able to measure that outcome. It also appears the time from filing to entry of judgment is shorter for cases that have undergone mediation.

Getting all the paperwork completed following mediation has still been a challenge for some participants, and the program continues to work on

finding ways to facilitate the transition from mediated agreement to judgment. Initially they had hoped to follow up with parties in non-mediated cases as well as mediated cases, in order to compare results, outcomes and levels of satisfaction, but the soon learned it simply was not possible to follow up with most parties who had not participated in mediation. They are also working to follow up on mediated cases to learn how parties handle conflict post-mediation. One of the project goals is for parties to learn at least some conflict-resolution skills from the mediation experience. They are also finding the 100-day time limit for resolution is sometimes not possible when the parties are waiting for property appraisals.

Ms. Paranica said a few reports have come in regarding both parties' lawyers and at least one mediator who prefer to treat this as a settlement conference program, rather than a mediation program. Apparently in at least a few cases the parties have been discouraged from face-to-face communication, and have been subjected to a "shuttle diplomacy" approach. Such an approach frustrates the project goal of parties learning some conflict-resolution skills from the mediation experience. Ms. Paranica agreed to follow up with Ms. Ferderer regarding this problem.

The committee noted this would be Chair Joanne Ottmar's last meeting, and thanked Ms. Ottmar for her exceptional and exemplary service to the cause of family law mediation in North Dakota.

The meeting adjourned at 9:50 am.

Respectfully submitted,

William A. Neumann, SBAND staff