# JOINT ADR COMMITTEE
# &
# FAMILY LAW MEDIATION SUBCOMMITTEE
## Minutes
## June 29, 2009
## SBAND Office

Committee members present: Chair Joanne Ottmar; Kristine Paranica; Judge Steve Marquart (by phone); Judge James Bekken; Darcie Einarson; Robert J. Schulz (by phone); Janet Merrill; Sherry Mills Moore; Carey Goetz; Sarah Bernhardt; Janelle Moos

Also present: Cathy Ferderer; Rachel Wohl; SBAND staff Bill Neumann

Chair Joanne Ottmar called the joint meeting of the Committee and Subcommittee to order at 3:05 pm.

The Chair asked the committee to consider the minutes of the May 19, 2009, meeting.

S. Marquart/K Paranica—Motion to approve the minutes of the May 19, 2009, meeting. Motion carried.

The Chair asked for a report of the subcommittee appointed to look into implementation concerns for the mediation pilot projects. The first issue addressed was the problem of converting mediated agreements between unrepresented parties into court orders. The subcommittee's suggestions included developing forms, encouraging unbundled representation for this task, and encouraging lawyers who currently do not do family law pro bono or reduced fee cases to handle these as an unbundled matter. C. Ferderer agreed to check into the forms developed for the South Central District's "small claims" divorce and bring them to the subcommittee. The subcommittee will also draft an attorney-client agreement form for an unbundled preparation of a proposed court order.

Other points mentioned were parties' confusion as to what can be binding between the parties immediately following mediation, versus what requires an amended court order; and the parties' desire for some form of signed

agreement as a result of the mediation, versus the need for time for parties' lawyers to review a proposed agreement before it should be binding. A handwritten and signed memorandum of agreement to be taken back to the parties' lawyers was suggested. It was suggested the current five day review period should be extended to ten days. It was also suggested that even if the parties failed to get a review completed within ten days, they should not be stuck with a result that their lawyer will not approve. A drop-dead deadline makes lawyers uncomfortable, and we need to encourage lawyers to be comfortable with this process. The subcommittee agreed to revisit this issue, based on the group's conversation, and report back at the next meeting.

The Chair then asked Cathy Ferderer to introduce Rachel Wohl, the Executive Director of the Maryland ADR Commission. Ms. Wohl explained the Maryland Commission focuses not only on dispute resolution in the courts, but throughout the state, including community ADR projects, and conflict resolution training in the schools and other institutions. The Commission is a court-related and court-funded entity, responsible for executing the Commission's Practical Action Plan. Copies of the Plan were distributed to the group. As the Commission's budget has grown over the years, it has become a granting agency, supporting a number of education and community mediation programs throughout the state.

Ms. Wohl said there are both domestic and non-domestic court-annexed ADR programs. The only mandatory mediation program is in child custody and visitation cases. She said there is a big and active mediation community in the state of Maryland, and a big part of the Commission's role is to operate a quality assistance program for that community, doing evaluations and training to help mediators improve their skills. She emphasized this was not a quality assurance, or testing, program, but an "excellence in mediation" program to encourage and assist mediators to become better at what they do.

The group discussed rostering and certification programs. Ms. Wohl suggested that certification, if used, should be performance based, not based on tests, education or experience. However, she emphasized that performance-based certification should be objective and replicable if it is to be fair. Certification can become a nightmare because of different concepts, schools of thought and opinions regarding mediation. She suggested that a quality assistance program, rather than a quality assurance program, is much less difficult to design and implement.

Ms. Wohl discussed the Commission's programs in the juvenile justice system, including a program to mediate workable solutions between social service agencies and parents who have lost custody of their children, and a program for parties subject to petitions for termination of parental rights. She also discussed the Commission's efforts to encourage programs outside the justice system including a medical malpractice mediation program, and programs in the schools.

Ms. Wohl said she does presentations for groups interested in trying to start an ADR commission in their courts or states, and is very willing to return to North Dakota to give that presentation if invited.

The meeting adjourned at 4:45 pm, but several members remained and continued to discuss the presentation.

Respectfully submitted,

William A. Neumann, SBAND staff