

**JOINT ADR COMMITTEE**  
**Minutes**  
**June 10, 2011**  
**By telephone conference call**

Committee members present: Chair Robert Udland; Judge Steve Marquart; Judge James Hovey; Scott Porsborg; Kristine Paranica; Sarah Bernhardt; Steve Storslee; Robert Schultz

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

Chair Udland called the meeting to order at 10:33 am.

Judge Marquart/S. Porsborg—Motion to approve the minutes of the December 9, 2010, meeting. Carried.

The Chair asked Judge Marquart to report on the work of the Court-hosted Mediation Subcommittee. Judge Marquart reported the subcommittee had met, and unanimously recommended an addition to ND Rule of Court 8.8 subpart (b) stating "The court, in its discretion, may order the parties to utilize a form of ADR outlined in subpart (a)(1)." The group discussed the Minnesota rule and experience in that state. It was noted this proposed amendment would encompass all types of ADR.

S. Porsborg noted the Committee had recommended court-ordered mediation in 2006, the bar had opposed it, and the Court had rejected the proposal 4-1. He noted the increased use of ADR in the North Dakota practice of law in the past 5 years, and suggested it may be time to see if the bar's experience with ADR in the past 5 years has changed the bar's position.

Judge Marquart/S. Porsborg—Motion to send the proposed amendment to Rule 8.8 to the SBAND Board of Governors for review and comment under Administrative Rule 43 B. Carried unanimously.

The Chair and Judge Marquart will present the proposed amendment to the SBAND Board of Governors at its meeting on June 14.

The Chair asked Cathy Ferderer to present the work of the Appellate Mediation Subcommittee. Ms. Ferderer presented proposed amendments to Rule 8.9, a new proposed N.D. Rule of Appellate Procedure 5, and a proposed Appellate Mediation Protocol. The proposed amendment to Rule 8.9 addressed training and experience requirements for appellate mediators. The group suggested minor language changes.

R. Schultz/Judge Marquart—Motion to adopt for recommendation the proposed amendment to Rule 8.9, with the proposed language changes. Carried.

The group discussed proposed new Appellate Rule 5. There was particular concern whether the rule should apply only in cases in which both parties agreed to mediation, or should impose mandatory mediation at the request of only one party.

R. Schultz/Judge Marquart—Motion to set over to the Committee's next meeting further consideration of proposed Appellate Rule 5 and the proposed Appellate Mediation Protocol, and to ask Ms. Ferderer to pursue the question of mandatory versus voluntary appellate mediation with the Court and report back to the Committee. Carried.

The meeting was adjourned at 12:03 pm.

Respectfully submitted,

William A. Neumann, SBAND staff