

**JOINT ADR COMMITTEE**  
**Minutes**  
**March 6, 2008**  
**SBAND Office**

Present: Rebecca Thiem, Chair; Daniel Dunn; Rep. Kim Koppelman; Robert Schultz; Janelle Moos; Joanne Ottmar; Kristine Paranica (by phone); Dr. James Antes (by phone); Judge Lee Christofferson (by phone); Judge Bruce Bohlman (by phone); Sen. Constance Triplett (by phone)

Also present: SBAND staff Bill Neumann

The Chair called the meeting to order at 10:15 am.

Chair Rebecca Thiem welcomed new Committee members and thanked outgoing members, thanked Subcommittee Chair Kristine Paranica and the Family Law ADR Subcommittee for all their work on the proposed rule changes and protocol for the Supreme Court's Family Law Mediation Pilot Projects, and welcomed Sally Holewa, State Court Administrator, and Cathy Ferderer, Director of the Family Law Mediation Pilot Projects.

K. Koppelman/J. Ottmar—Motion to approve the minutes of the Committee's last meeting. Motion carried.

**FAMILY LAW MEDIATION PILOT PROJECTS**

The Chair asked Sally Holewa and Cathy Ferderer to address the group regarding the Family Law Mediation Pilot Projects. Ms. Ferderer reported she had advertised for mediator applicants, and is preparing a Request for Proposals for an evaluation of the projects. The protocol submitted by the Committee has been adopted by the Court with few changes, and is now on the Supreme Court website. She is planning to use six mediators in each of the two pilot projects. The mediators will be trained on the protocol next month, and will begin accepting referrals from the courts immediately after that. Ms. Ferderer reported that the projects have been received very positively by the judiciary in both districts, and plan to begin referring cases

to the mediators immediately. She also reported a plan to prepare an introductory video for the participants who are referred.

Committee members recalled the preparation of a video prepared some years ago, intended for us by attorneys in teaching their clients about the possibility of mediation. A copy was supplied to Ms. Ferderer for possible use as the new video is prepared.

Dr. Antes suggested the importance of making the request for proposal available as soon as possible. He explained the necessity of the researchers being involved for the outset in determining what data are to be gathered and how they are to be gathered, if they are to be useful in preparing an effective evaluation.

Ms. Ferderer also mentioned the need for a code of ethics and a complaint and discipline system to be in place as soon as possible as these projects begin to take referrals.

Ms. Holewa reported she is currently working on the request for proposals, and will get it out as soon as possible. She also reported she hopes to ask the Legislature to extend these projects for another biennium, with the possibility of extending them into the other judicial districts in the affected administrative units if the data are favorable. Ms. Holewa also explained the long-range plan is to extend court-annexed family law mediation into the rest of the state, and perhaps making it available in the early stages of proceedings to help with the formulation of parenting plans. She also hopes to begin to offer the services of visitation expeditors, or parenting coordinators, as they are called in many other states.

Robert Schultz referred to Minnesota's programs in these areas, and pointed out that North Dakota's needs are somewhat different from those of Minnesota, because of our smaller population and better access to courts.

The Committee discussed the likely availability of properly trained and qualified mediators for the pilot projects. Judge Christofferson pointed out that if an inadequate number of qualified mediators apply, the Conflict Resolution Center at UND is presenting two family law mediation seminars, scheduled in May and July that should be considered.

## **RULE 8.9 ROSTER OF NEUTRALS**

The Committee discussed the form used to register for the Rule 8.9 roster of neutrals, and the fact it asks the neutral to list areas of specialization. Some members noted North Dakota lawyers are not permitted to claim areas of specialization, and expressed discomfort with a form that asks neutrals to do so. Dr. Antes explained there are different schools of thought in the ADR community regarding the matter. Some hold that a neutral cannot be effective without prior experience and knowledge in a particular field or area, while others believe that a properly trained and prepared neutral should be able to deal with any sort of case. Dr. Antes speculated the question is on the form for the benefit of the first group.

Dr. Antes and Kristine Paronica discussed several other changes that should be made to Rule 8.9. They volunteered to bring specific recommendations to the next meeting of the Committee.

The group discussed the problem of monitoring continuing education requirements for neutrals. Rule 8.9(d) presently makes the State Court Administrator's office responsible for that, while 8.9(e) makes the Joint ADR Committee responsible for approval and certification of initial and continuing training programs. The Committee suggested those responsibilities might best be consolidated with the Joint ADR Committee, in a manner comparable to the state's Continuing Legal Education Commission. Staff was asked to pursue this possibility with the office of the State Court Administrator, and to inquire about the possibility of asking the SBAND employee who staffs the CLE Commission about staffing this responsibility as well.

## **DISTRICT COURT UTILIZATION OF 8.8b & RULE 16**

There was general consensus that these rules are very little utilized to encourage ADR throughout most of the state. After discussion, State Court Administrator Sally Holewa offered to write a memo to Chief Justice VandeWalle, suggesting the Court's Caseflow Management Committee look into developing a statewide protocol for utilization of these rules.

Robert Schultz suggested the language of the rule itself may contribute to the problem—the rule merely makes it suggestion, it does not require

anything. The Committee discussed the history of the development of the rule, and the reluctance of several groups to accept a rule with a requirement. The Committee discussed the likelihood that attitudes may have evolved since then. Ms. Holewa suggested the Joint ADR Committee might sponsor a panel of lawyers at some judicial education program who could discuss with the judges what lawyers and their clients want and need in the way of ADR today.

### **ETHICS & DISCIPLINE**

After some discussion the Committee decided to look to Minnesota's rules for a starting point in addressing these matters. It was suggested we compare Minnesota's Ethics Code for neutrals to the ethical principals contained in the Uniform Mediation Act. It was also suggested each rule should be drafted as a plain English statement, and any legalistic details should be saved for the comments and explanations.

The Chair invited comments and suggestions for a process to address complaints of ethical violations. The Committee suggested a three-person panel appointed by the Chief Justice or Supreme Court, consisting of an attorney neutral, a non-lawyer neutral, and the Chair of the Joint ADR Committee. The Committee also suggested disciplinary rules should provide a mechanism for investigation of complaints and for summary dismissal.

The Chair, Kristine Paranica and Joanne Ottmar volunteered to work on a proposed draft of a code of ethics and disciplinary rules for the Committee's next meeting.

### **NEW PROJECTS**

The group discussed small claims mediation, appellate mediation and dispute resolution centers. Representative Koppelman expressed a strong interest in the possibility of offering small claims mediation. The Alaska

model, in which all small claims cases are given an opportunity for mediation on the day set for trial, was discussed.

The Supreme Court's possible interest in appellate mediation was discussed. Ms. Holewa offered to look into appellate mediation programs in other jurisdictions, and report to the Committee.

Ms. Paronica suggested victim/offender mediation as a possibility. This is already used in North Dakota's juvenile courts with considerable success, and could be adapted to other parts of the court system as well. Ms. Holewa said it can be an excellent program, but suggested that in adult court settings it has to involve the executive branch at least as much as the judicial branch. Representative Koppelman suggested it would be an appropriate topic for a joint meeting of all three branches.

The Committee will meet again when a proposed draft code of ethics and disciplinary rules are ready.

Adjourned, 2:00 pm.

Respectfully submitted,

William A. Neumann, SBAND staff