

**JOINT ADR COMMITTEE
&
FAMILY LAW MEDIATION SUBCOMMITTEE
Minutes
May 19, 2009
SBAND Office**

Committee members present: Chair Joanne Ottmar (by phone); Kristine Paranica (by phone); Judge Steve Marquart (by phone); Judge James Bekken (by phone); Judge Lee Christofferson (by phone); Darcie Einarson (by phone); Robert J. Schulz (by phone); Robert Udland (by phone); Janet Merrill; Sherry Mills Moore

Also present: Cathy Ferderer; SBAND staff Bill Neumann

Chair Joanne Ottmar called the joint meeting of the Committee and Subcommittee to order at 9:32 am.

The Chair asked the committee to consider the minutes of the February 27, 2009 meeting.

R. Schulz/J. Merrill—Motion to approve the minutes of the Committee's last meeting. Motion carried.

The Chair asked Cathy Ferderer to lead the group through the proposed changes to Administrative Order 17 and the Family Law Mediation Protocol and forms. The group suggested some additional changes, which were noted by Ms. Ferderer.

J. Bekken/S. Marquart—Motion to approve the changes to AO 17 as suggested by C. Ferderer and supplemented by the group. Motion carried.

S. Mills Moore/K/ Paranica—Motion to approve the changed to the Family Law Protocol suggested by C. Ferderer and supplemented by the group. Motion carried.

The Chair directed the committee's attention to Patrick Morley's comments regarding the proposed Code of Mediation Ethics, which comments were

forwarded to the Joint ADR Committee by the Supreme Court for Committee response. Mr. Morley's first concern addressed Comment 4 to Rule I, Self Determination. The group discussed Mr. Morley's concern at length.

S. Mills Moore/S. Marquart—Motion that the group should respond to this concern by telling the Court Comment 4 only addresses a mediator's "reasonable belief," and is therefore based only on those things apparent to the mediator. The comment does not require a mediator to make an independent inquiry into a party's safety or capacity, or into the presence of undue influence. Motion carried.

The group addressed Mr. Morley's second concern, asking that Rule IV, Confidentiality, be modified regarding confidentiality between parties.

S. Mills Moore/J. Merrill—Motion to add Mr. Morley's suggested language, "Any statement made by a party or counsel during mediation is considered confidential and will not be disclosed to the any other person unless explicit permission for disclosure has been given," as a second sentence in Rule IV. Motion carried.

The group addressed Mr. Morley's third concern, a proposal to permit mediators to be called as witnesses in the event a party attempts to renege on a mediated agreement.

S. Marquart/S. Mills Moore—Motion to state that the Committee rejects the proposal to permit mediators to be called as witnesses. The Committee believes such a provision would undermine the integrity of the mediation process. Motion carried.

C. Ferderer raised several implementation issues to be addressed, based on experience to date with the family law mediation pilot projects. The Chair asked Ms. Ferderer to email a list of these issues to the group, and referred them to the Family Law Mediation Subcommittee for consideration and a report to the Joint ADR Committee. By agreement a group of Kristine Paranica, Cathy Ferderer, Sherry Mills Moore and Joanne Ottmar will make an initial consideration of the issues, and report their suggestions to the Family Law Mediation Subcommittee.

The Joint ADR Committee will meet again June 29, tentatively at 3:00 pm. Agenda items for this meeting should include a conversation with Rachel Wohl, who will be presenting at the Family Law Mediation Symposium on June 30, as well as a report from the Family Law Mediation Subcommittee regarding the implementation issues raised by Cathy Ferderer.

The meeting adjourned at 10:40 am.

Respectfully submitted,

William A. Neumann, SBAND staff