

Minutes
Commission on Civil Court Alternative Dispute Resolution (ADR)
Delivery Subcommittee
June 13, 2011
2:00 PM
McCarter & English
185 Asylum Street, #36
Hartford, CT

A meeting of the Commission on Civil Court Alternative Dispute Resolution(ADR), Delivery Subcommittee was held at The Law Offices of McCarter & English, 185 Asylum Street, Hartford, CT at 2:00 p.m.

Members present: Attorney Sarah F. DePanfilis (co-chair), Attorney Robert Simpson (co-chair), Hon. James W. Abrams, and Attorney David A. Reif.

Invited Guest present: Prof. James H. Stark.

Staff present: Roberta Palmer

At 2:13 p.m. the meeting was called to order.

Agenda Items:

A. Welcome:

Attorney Simpson welcomed the subcommittee members to the meeting.

B. Review of Subcommittee Break-Out Session at ADR Commission Meeting on May 23, 2011 and Subcommittee Charge:

Attorney Simpson reviewed the subcommittee charge as revised and stated the objective of today's meeting was to fine-tune the definition of a fair ADR program specifically including standards such as procedural fairness, cost-effectiveness, timeliness and an ethical process.

C. Review of Criteria and Questions from the ADR Commission Chair:

Attorney DePanfilis reviewed the list of criteria and questions from the ADR Commission Chair. She also handed out a document that outlined various criteria/suggestions for effective ADR processes. The document was created from notes taken at the ABA, Section on Dispute Resolution, Annual Conference in Denver and was organized according to the subcommittee charge.

D. Outline of Subcommittee Goals:

Consensus was that the primary goals of the subcommittee are to: (1) agree on a definition of a fair ADR program specifically including standards for procedural fairness, cost-effectiveness, timeliness; ethical process; and any other relevant concepts; (2) identify programs that meet the agreed-upon standards and examine delivery processes on two levels: (a) broader case-assessment/triage programs; and (b) more narrow and specific menu of ADR programs; (3) recommend programs and delivery processes appropriate for Connecticut.

E. Discussion of General Concepts and Standards Relating to Four Aspects of Program Process (Procedural Fairness, Cost-Effectiveness, Timely Process, Ethical Process):

The discussion began by stating that the standard of “procedural fairness” must include the idea of “perceived fairness” which may depend on the time when the ADR process occurs, whether the parties have enough information to participate and the concern that some stakeholders may be unfamiliar with and/or uninformed about court proceedings. The belief is that well-trained staff mediators and Judges bring more credibility to the ADR process. In addition to procedural fairness, the subcommittee also generally discussed the concepts of cost-effectiveness, timeliness and an ethical process.

The discussion then turned to the apparent need for case assessment prior to the scheduling of an ADR event and how that assessment might be done. It was suggested that having an assessment form/questionnaire might assist in this process although questions arose as to who should complete the form, when and whether completion of the form should be mandatory for all cases, and whether participation in the recommended program should be mandatory or voluntary. Questions arose about whether the mandatory/voluntary decision should be on an individual or case-type basis, by consent and/or by court/case flow decision with consideration given to the increased administrative burden.

The subcommittee posed two questions: do we believe that every case should be exposed to ADR? If not, how do we identify the cases that should be? Discussion continued about the need to market available ADR programs in a meaningful way that ensures uniformity throughout the state. It was suggested that a goal of the subcommittee should be to identify those types of cases that are not benefiting from ADR and create a process for them outlining appropriate criteria. The subcommittee members reviewed various case types to see if docket management issues could or should play a role in the delivery of ADR.

It was agreed that mandatory ADR generally works in the housing and foreclosure cases and should be extended to collections actions as well. The point was raised that it may not be cost-efficient to mandate ADR in all collections actions because often times only one party appears. Consensus was that the filing of a case-assessment form should be triggered by the defendant's appearance to alleviate that concern.

The subcommittee continued to discuss the three concepts of (1) Intake; (2) Goals; and (3) Program Criteria. Goals included docket management and a quicker, cheaper, fairer and satisfying process. Important criteria included education of participants, informed consent, adequate time for ADR program at appropriate time when case is ripe for resolution, and training and credibility of neutral/decision-maker. The belief was that an experienced sitting judge gives a program "teeth". There was discussion about adding an ADR/mediation judicial assignment to the judicial rotation and/or a prejudicial officer with case management authority. The subcommittee also discussed the concept of co-mediation with staff and a supervising judge and the importance of informed consent for pro se parties (i.e. information, self-help area in courthouse libraries).

The idea of "mediation week" was also raised and it was agreed that such programs are effective tools and good times for such a program would be between Thanksgiving and New Year's, the last two weeks in March and first two weeks in April.

The meeting ended with a brief re-cap and preparations for the next meeting. Attorneys Simpson and DePanfilis agreed to circulate a more specific guideline for work to be completed in advance of the next meeting.

F. Future Meetings:

The subcommittee's next meeting will be held on July 25, 2011 at The Law Offices of Day Pitney, 1 Audubon Street, #600, New Haven, CT.

Adjourned at 4:40 p.m.