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New Developments in Mediation

The field of mediation is expanding. In this issue we will examine two new developments: new Court Rules and mediation in the workplace. As some of you may already know, there are new court rules going into effect in August. Judge Johnson, who was appointed by the Michigan Supreme Court to serve on the task force which recommended the changes, has been kind enough to submit a brief explanation of the new rules. What I would like to do here is to give some background information on Alternative Dispute Resolution (ADR), the new court rules, and goals for our center.

One of the types of ADR which our center provides is: facilitative mediation. Since 1990, the State Court Administrator's office has administered the Community Dispute Resolution Program (CDRP). Northern Community Mediation is one of 25 CDRP centers across the state which works with the courts by offering facilitative mediation. Facilitative mediation is one type of ADR. In facilitative mediation the parties craft the solution to their dispute with the aid of trained neutral parties: the mediators. This is different from arbitration where a third party determines the outcome which the parties must then uphold.

The guidelines for a judge or other court personnel to refer a case to ADR are set out in the court rules. The court rules control how a case moves through the legal system. Previously, cases were referred by the judge to ADR. The most significant change in the new rules is that judges can now order cases to ADR. It bears clarification that parties ordered to ADR do not give up their right to due process. In our two counties we work with the courts when scheduling

cases so that if an agreement is not reached at mediation, or if the parties feel they can make no further progress, they can proceed with the dates set on the court calendar.

The new rules also clarify ADR terminology and mediator qualifications. Currently, there is an ADR process known as "Michigan Mediation" – Michigan Court Rule 2.403. This is a process wherein the parties plead their case to a panel of three attorneys. The attorneys then deliberate and come up with an arbitrated solution. Because this process is arbitration and not mediation it is being renamed: Case Evaluation MCR 2.403.

The new court rules detail who can mediate cases referred by the courts and request that each court system develop a "Local ADR Plan" which will lay out referral and quality control guidelines.

I am pleased to say that the new rules have spurred an initiative on the part of Judges Pajtas, Mulhauser and Johnson. The Circuit and Probate Court judges are supporting the advanced training of four mediators in Domestic Relations Mediation. This type of mediation will be used with couples and families who are divorced or in the process of getting divorced. The issues which will be handled by our center include parenting, visitation, custody as well as the disposition of personal property. We will also help the parties to clarify issues and options before entering the courtroom. This type of mediation ties in well with our new teen program which involves mediation with adolescents and their parents.

We are often asked "how do at-

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Judge Mulhauser extends a special "Thank You" to all of the mediators who mediated cases referred from his court.

torneys fit in the picture?" Parties can have their attorneys present at mediation. The primary role of an attorney at a mediation is as a legal advisor to their client rather than as an active participant. We encourage the parties to speak directly with one another. It is important that the people who will have to uphold the agreement have the most say in what that agreement is. It also allows for the preservation of an on going relationship. In domestic relations cases where there are children it is especially important that a plan be developed for future communication.

Mediation is being used increasingly in the work place. We have contracts with the US Postal Service and the Michigan State Board of Education to provide mediation services. They recognize the benefits of using mediation to: (1) de-escalate,

(2) resolve conflicts, and (3) save money. We also have mediators experienced in facilitation and conflict resolution in business, non-profit agencies, higher education and health care organizations.

If a company is concerned about the costs of setting up an in-house ADR program—please call our center. We can help with establishing a program as well as providing mediators on a contract basis. It is our goal to increase the availability of our services.

I trust that you will find this issue interesting reading. If you would like more information on the Court Rules I suggest the May 2000 Vol. 79, No 5. Issue of the Michigan Bar Journal.

-Maartje Nolan

New Rules Promote Mediation

By Judge Charles Johnson

The Michigan Supreme Court has enacted new court rules that give judges the authority to require litigants to participate in mediation and other alternative dispute resolution processes prior to going to trial. The new rules take effect August 1, 2000.

The new rules apply to all civil lawsuits and domestic relations cases. In connection with scheduling trial dates and other case deadlines, judges will now be able to order that the litigants must attempt to settle their dispute with the assistance of a trained mediator.

Mediation has proven to be effective. According to the latest statistics from the community dispute resolution centers statewide, 73 percent of the cases mediated in 1999 ended in a settlement. The agreements reached were adhered to in 96 percent of the cases. Mediation is also prompt and cost effective. The average case was disposed of in just 18 days.

While many judges and lawyers recognize the value of mediation, until now, participation has been strictly voluntary. For a variety of reasons, many disputes which were highly appropriate for mediation were not mediated. Now that judges can order participation, more litigants will have the benefit of this option for resolving disputes fairly and efficiently.

Courts are required to adopt an ADR plan prior to implementing the new rules. Among other things, the ADR Plans must address how access to ADR processes will be provided to indigent litigants.

Under the new rules, civil mediators must complete a training program approved by the State Court Administrator. Mediators must observe two mediations conducted by an approved mediator and conduct one mediation supervised by an approved mediator. Also, mediators who are not lawyers or holders of a graduate degree in conflict resolution

must have 40 hours of mediation experience over two years.

Domestic Relations mediators are required to have specific training and experience in domestic relations and must be a licensed attorney, family counselor, psychologist, or therapist or have a graduate degree in a behavioral science or five years experience in family counseling.

Northern Community Mediation will certainly have an important role to play in assisting the citizens and courts in Emmet and Charlevoix Counties as these new court rules are implemented.



Alternative Dispute Resolution in the Workplace

by Kirsten Joy-Cochran

Today's low unemployment rates have employers scrambling to attract and retain quality employees. Job postings abound. While employees know that the market weighs in their favor, employers are looking for new and inventive ways to keep their staff whistling a happy tune. Many employers are turning to Alternative Dispute Resolution (ADR) to help resolve their employment issues.

Conflicts will inevitably arise in the workplace just as they do in any other place where people interact. What does an employee who has a workplace conflict do when he or she has no success resolving the issue with his or her supervisor? The answer depends on whether or not the company has an ADR program.

The employee at a company without an ADR program has four basic options: follow the chain of command, give up/in, quit, or sue.

Forcing an employee to follow the chain of command can provide negative results for the company. First, it is costly for the company to have upper management's time taken up with employee complaints. Second, management is put in an awkward position of having to support the supervisor while appeasing the worker. Third, regardless of the end result, a strained employee-supervisor relationship is likely to follow.

When an employee chooses to give up or give in, they may have decided the issue was not worth fighting over. However, if the employee feels strongly enough about the issue they may become disgruntled. Disgruntled

workers lower morale which, in turn, lowers productivity and can increase turnover.

According to Klaas (1994), employees respond to perceived inequities in the processing of a complaint by engaging in alternative response behaviors including absenteeism, lower productivity, transfers, turnover, union activity, disruptive behaviors and cognitive adjustments.

"ADR programs can help organizations decrease costs associated with absenteeism, turnover, and litigation while increasing morale, productivity, and profitability..."

A worker may choose to quit his or her job because of a workplace conflict. If the worker's issues are valid, other employees may choose to leave as well.

Turnover is a great expense to an organization. Turnover costs an organization in hiring, training, productivity, and morale. According to a 1990 study by D.T. Phillips entitled "The Price Tag of Turnover," the turnover cost for an employee is anywhere between 75% and 150% of the annual salary.

The employee may choose to sue the company over his or her complaint. Litigation is very costly to an organization. According to a 1996 publication by McDermott & Berkeley entitled *Alternative Dispute Resolution in the workplace: Concepts and Techniques for Human Resource Executives and Their Counsel*, "Even when the employer prevails on summary judgment, he has usually spent \$50,000 or more in

attorney's fees, in addition to the organization's time and resources."

ADR programs can help organizations decrease costs associated with absenteeism, turnover, and litigation while increasing morale, productivity, and profitability by providing employees alternative ways to resolve workplace conflicts. These programs can also help an organization address real concerns about employee safety.

The ADR processes most commonly used in organizations include mediation, arbitration, conciliation, and review boards. Of these options, mediation has the highest degree of satisfaction as reported by the participants; conciliation ranks second. Arbitration, however, is most commonly used. Many organizations are phasing out review boards due to lower success rates.

Many large corporations and Federal agencies such as Polaroid, Brown & Root, Rockwell, TRW, and the United States Postal Service have implemented successful ADR programs. These ADR programs have significantly decreased litigation, turnover, and complaint processing costs while providing employees a venue in which their complaints can be heard. The net effect is improved employee relations, lower costs, increased productivity, and a healthier bottom line.

In today's employment market all employers are competing for the best employees. Offering an ADR program in the workplace may be a good way for employers to retain their current workforce while creating a corporate climate which will attract more quality employees.

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“Where the solution is up to you.”

Calendar of Events

Upcoming Events

NCM Board of Directors Meeting
Friday, July 14 at 12:00 p.m.
Petoskey Big Boy

Special Education Mediation Training
October 6-7
Location, TBA

Mediator Trainer Update
October 11
Okemos, MI

Training For Trainers
October 12-14
Okemos, MI

Michigan Mediation Conference
November 9-10
Ypsilanti, MI

40 Hour Mediation Trainings

Macomb County College-Center Campus
September 16, 23, 30, October 7, 14

Ann Arbor, MI
October 14, 15, 16, 20, 21, 22

Oakland, MI
October 19, 21, 22, 26, 28, 29

Charlevoix, MI
October 26, 27, 28 & November 2, 3, 4