

Minutes of the Alternative Dispute Resolution Committee

A Research Committee of the NH Citizens Commission on State Courts

January 17, 2006

The second meeting of the Alternative Dispute Resolution Committee was held on January 17, 2006 in the auditorium of the Department of Motor Vehicles, Hazen Drive, Concord, New Hampshire.

Committee members in attendance were:

- Ms. Sally Davis
- Attorney Michael Kenison
- Dr. James Squires – (Chair of the committee)

I. Phase III Schedule (Working backwards)

- March 13th – Research Committee recommendations will be separated into four categories at an all-day meeting of the Commission. These categories are:
 - Inexpedient
 - Possible
 - Essential 1 Move to the final report
 - Essential 2 Needs more discussion

Members of the Research Committee will be expected to explain, defend or apologize for their recommendations.

- March 1st – Phase III Research Committee recommendations must be submitted. Each recommendation will be accompanied by **two (2)** paragraphs. Paragraph 1 describes the recommendation and paragraph 2 describes the rationale. Each paragraph should be concise and the recommendation and the accompanying paragraphs should fit on a one side of a single page. Further, the recommendations must be prioritized.

II. ADR Research Committee Resource Materials

Dr. Squires reported on the efforts of a committee appointed by the Chief Justice and chaired by Associate Justice Dalianis to examine issues surrounding Alternative Dispute Resolution. This group appears to be working in tandem with our own group. The membership is composed of primarily of lawyers and judges. Discussion points at the meeting included:

- The Chief Justice laid out his vision of a “Statewide office of ADR.” This concept makes available qualified arbitrators/mediators who pay a fee to register. Clients who are interested in alternative dispute resolution then pay a fee to access the list of qualified arbitrators/mediators. These charges provide a financial base for the statewide office of ADR.
- The Chief Justice then went on to discuss the current system under “Rule 170” citing some of the benefits, drawbacks and complexities of this approach to the problem. There seemed to be a general consensus that the “volunteer system” established under Rule 170 is not working.
- It was stated by many different attendees that the rapid increase in *pro se* litigants makes imperative new ways of approaching dispute resolution. It was further pointed out that the costs that accompany legal actions are driving the increased numbers of individuals who represent themselves.
- The Chief Justice stated clearly that he does not wish to see the justice system “privatized.”
- On February 1, this committee is scheduled to listen to a presentation describing what has taken place in Maine. Dr. Squires is planning on attending.
- It was widely recognized that Peter Wolfe (a member of our committee) is the state’s leading authority on alternative dispute resolution. Attorney Wolfe was at the meeting and will also attend the February 1st meeting.

Thanks to Ms. Laura Kiernan and Attorney Wolf, we now have in our possession a number of documents that bear directly on our issues. These will be mailed to all members of our working group prior to the next meeting. Included will be the “Pro Se Report” based on a recent examination of this problem.

III. Rule 170. Attorney Kenison then offered an extremely instructive review of Rule 170. In summary:

- The court requires the party to begin the process of alternative dispute resolution using, in most instances, a mediator. Various levels of mediation may then ensue:
 - Neutral evaluation. Nothing binding, rare in New Hampshire.
 - Mediation. Begins with a structured conference at which time a mediator is selected. This often occurs at the District Court. Mediation then takes and parties may or may not reach agreement.

- Arbitration. This process may be either binding or non-binding. It is not used as frequently as mediation. Non-binding is seldom used because it offers little more than the process of neutral evaluation.
- The exercise and administration of Rule 170 is, because of the administrative structure of the courts system, based in the counties. It is not used in some New Hampshire counties because of cost constraints.

Attorney Kenison agreed to provide a more extended summary to the committee at the next meeting along with a copy of Rule 170.

IV. Next Meeting.

The next meeting is scheduled for WEDNESDAY, FEBRUARY 8 FROM 10:00 AM TO 12:00. Attorney Kennison agreed to host the meeting at the law offices of the McLane law firm. You will be notified as soon as the availability of the room is confirmed.

- II. It is essential that committee members attend this meeting. During the last week in January, resource materials will be sent to you. At the meeting our recommendations will be developed. Each member will be then asked to write a description of one recommendation along with the rationale. Please see the schedule outlined in Section I of these minutes.

Respectfully submitted,

James W. Squires M.D.
Committee Chair