

Indiana Judicial Conference
Alternative Dispute Resolution Committee
Meeting Minutes
August 24, 2018

I. **Call Meeting to Order**

Judge Avery called the meeting to order at 10:30A.M. (EDT).

Members participating: Chair David Avery and Alicia Gooden in person, and Elaine Brown, Paul Freed, David Northam, Nan Raduenz, and Stephen Scheele participated via conference call.

Staff: Mike Commons.

II. **Agenda Items**

Meeting Minutes Review & Approval: Approved without objection.

IU Research Project

The IU Research team is working on drafting the first article, which analyzes the data across judges and lawyers and mediators for Vignette A (which relates to the study that altered whether parties had representation or not). **Once the article/paper is done, Professor Quintanilla will share it with the committee perhaps in Spring 2019.**

Regarding utilization of a “facilitative” approach to mediation (as discussed in the study), Judge Gooden believes that the lawyers and mediators with whom she has worked, as well as the clients involved in those mediations, are generally interested in a mediation process that is focused on understanding what their likely outcomes would be were their case to proceed to trial rather than settle in mediation.

Low-income Litigant ADR Services

Magistrates Raduenz and Scheele discussed how their use of their county domestic relations ADR Fund Plan funding to refer unrepresented litigants to ADR services (whether mediation or facilitation) has been so very useful in settling a great majority of those disputes. Being able to make referrals in court, have ADR service provided in the courthouse that day, and sometimes allowing for unsettled issues to be heard in a court hearing that same day seems to be so useful.

Judge Freed mentioned interest in funding for low-income ADR Services and the difficulty in funding these services when a large majority of the filers are low-income. This is a real issue that is difficult to tackle. It should be looked into further.

Senior Judges are allowed to act as mediators on services provided through DR ADR Fund Plan services. Perhaps add some kind of indication of this availability within the initial documentation completed by newly minted Senior Judges. Senior Judges may be a useful way to get ADR service provided in smaller counties. (Mike Commons will reach out to the chair of the Senior Judge Committee, retired Justice Brent

Dickson, to coordinate further discussions. Are they providing ADR services/judicial settlement conferences, are they doing DR ADR services, are they open to do this, in more remote counties, and what is the best way to approach them or get the word out, and are there problematic issues with any of it?)

ISBA ADR Section discussion – AOPA Mediation Statute and ADR Rules

ISBA ADR Section member/incoming-chair Dan Goia called in to discuss the incompatibility between the AOPA Mediation statute (IC 4-21.5-3.5-18) and the ADR Rules (Rule 2.7(c)). ISBA ADR Section would like to have a coordinated effort with the ADR Judicial Committee to approach the legislature about correcting the inconsistency. Judge Avery suggests providing a written recommendation to amend/update the statute. Discuss internally (within IOCS/OJA) how such a written recommendation would need to be approved.

Dan Goia also mentioned the ISBA ADR Section's effort to push for volunteer pro bono mediation days in every county every year. **The Committee is in support of that effort.**

ADR Service Providers List (Mediators/Parenting Coordinators)

Mag. Raduenz and Judge Avery previously identified the issue of a lack of a central listing of parenting coordinators and/or guardians ad litem for judicial officers to refer to – like the mediator registry. There is interest in determining how to better promote parenting coordinators throughout the state and in high-conflict cases and other options for resolution or education for parties, like referral to high-conflict parenting classes. Judge Avery reached out to the Office of Admissions and Continuing Education (ACE) to determine if including a "Parenting Coordinator" box on the existing mediator registry is feasible to help address the coordinator provider list problem. **ACE responded it is likely this will be made available for next year's registrations.**

III. **New Business**

Continuing CME Availability

Judge Avery reported discussing with the CLE Commission the possibility to include a designation for mediators to be able to identify themselves as parenting coordinators. It is likely this will be made available for next year's registrations.

Judge Avery reported discussing with the CLE Commission about the unavailability of CME (Continuing Mediator Education) courses for less populated counties. Members agreed that once the 40-hour training has been completed, CME should be available through online CME training. **The CLE Commission has made that recommendation to the Supreme Court.**

ADR Committee Possible Topics and

What should the role of this committee be? Members should contemplate this and provide feedback at the August meeting on the following four items (as well as any additional thoughts):

1. Consider moving the Parenting Coordinator Guidelines from the IPTG into the ADR Rules?
2. Frequency of meetings? **At least 3.**
3. Add Commentary to the ADR Rules?

IV. **2018 Meeting Dates**

1. November 2, 2018
2. TBD

All meetings begin at 10:30 ET at the Indiana Office of Court Services.

V. **Adjourn**

The meeting was adjourned at 12:23 P.M. (EDT).

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I. **Call Meeting to Order**

Judge Avery called the meeting to order at 10:30 A.M. (EDT).

Members participating: Chair David Avery and Alicia Gooden in person, and Elaine Brown, Paul Freed, David Northam, Nan Raduenz, and Stephen Scheele participated via conference call.

Staff: Mike Commons.

II. **Agenda Items**

Meeting Minutes Review & Approval: Approved without objection.

IU Research Project

The IU Research team is preparing the first draft of a summary of the analysis of the data gathered from the surveys completed by judges, lawyers and mediators viewing Vignette A. Vignette A consisted of courtroom scenes depicting different scenarios where one or both parties were proceeding pro se with a variety of issues in order to determine if different methods of ADR would be considered best to help the parties and the Court resolve the disputed issues. It is anticipated that Professor Quintanilla will share the summary with the committee perhaps in Spring 2019.

Regarding utilization of a “facilitative” approach to domestic relations mediation (as discussed in the study), Judge Gooden believes that the lawyers and mediators with whom she has worked, as well as the clients involved in those mediations, are generally interested in a mediation process that is not so much focused on educating parties as to how parties can learn to modify their negotiating skills and their approach as to how to deal with their disputes so as to be able to better address future issues that may arise between the parties in the future; rather, parties seem to prefer a process that helps the party to better understand the likely outcomes of their case if it were to proceed to trial rather than settle in mediation.

Low-income Litigant ADR Services

Magistrates Raduenz and Scheele discussed how their use of their county DR ADR Fund Plan funding to refer unrepresented litigants to ADR services (whether mediation or facilitation) has been so very useful in settling a great majority of disputes when the judicial officer is able to make referrals in open court, have the ADR service provided in the courthouse that day, and allowing time for unsettled issues to be heard that same day.

Judge Freed mentioned an interest in funding for low-income DR ADR Services and the difficulty in funding these services with a DR ADR fund in a county in which a large majority of the DR filers are low-income and get the filing fee waived. This is an issue that should be looked into further to determine if there are some feasible alternate funding sources, such as the Coalition for Court Access or Supreme Court grants for these counties.

Senior Judges are permitted to act as mediators and provide services paid for by DR ADR Fund Plan services. The ADR committee should explore publicizing to judicial officers, especially in smaller counties, the availability of Senior Judges to serve as a mediator or facilitator using DR ADR Fund Plans and also to promote to newly minted Senior Judges the existence of this service. Senior Judges may be a useful way to get ADR service provided in smaller counties that have small bars and not many mediators available. (Mike Commons will reach out to the chair of the Senior Judge Committee, retired Justice Brent Dickson, to coordinate further discussions. Are they providing ADR services/judicial settlement conferences, are they doing DR ADR services, are they open to do this, in more remote counties, and what is the best way to approach them or get the word out, and are there problematic issues with any of it?) Perhaps, Justice Dickson would be available to attend the Committee's next meeting to discuss the foregoing matters.

ISBA ADR Section discussion – AOPA Mediation Statute and ADR Rules

ISBA ADR Section member/incoming-chair Dan Goia called in to discuss the incompatibility between the AOPA Mediation statute (IC 4-21.5-3.5-18) and the ADR Rules (Rule 2.7(c)). ISBA ADR Section would like to have a coordinated effort with the ADR Judicial Committee to approach the legislature about correcting the inconsistency. Judge Avery suggests providing the ISBA ADR Committee a written recommendation for the legislature requesting the statute be amended. Michael Commons will make some inquiry in IOCS/OJA to determine if it is appropriate for the Committee to provide a joint recommendation to the legislature without approval of the recommendation of the Supreme Court or IOCS/OJA.

Dan Goia also mentioned the ISBA ADR Section's effort to push for volunteer pro bono mediation days in every county every year. The Committee is in support of that effort.

ADR Service Providers List (Mediators/Parenting Coordinators)

Mag. Raduenz and Judge Avery previously identified the issue of a lack of a central listing of parenting coordinators and/or guardians ad litem for judicial officers to refer to – like the mediator registry. There is interest in determining how to better promote parenting coordinators throughout the state and in high-conflict cases and other options for resolution or education for parties, like referral to high-conflict parenting classes. Judge Avery reached out to the Office of Admissions and Continuing Education (ACE) to determine if including a "Parenting Coordinator" box on the existing mediator registry is feasible to help address the coordinator provider list problem. ACE responded it is likely this will be made available for next year's registrations.

III. **New Business**

Continuing CME Availability

Judge Avery reported discussing with the CLE Commission about the unavailability of CME (Continuing Mediator Education) courses for less populated counties. Members agreed that once the 40-hour training has been completed, CME should be available through online CME training. The CLE Commission has made that recommendation to the Supreme Court and is waiting for the Court's response.

ADR Committee Possible Topics

1. Consider moving the Parenting Coordinator Guidelines from the IPTG into the ADR Rules?
2. Adding Commentary to the ADR Rules?

IV. **2018 Meeting Dates**

1. November 2, 2018
2. TBD

The committee discussed the frequency of meeting during the year. The consensus was to meet three (3) times per year.

All meetings begin at 10:30 ET at the Indiana Office of Court Services.

V. **Adjourn**

The meeting was adjourned at 12:23 P.M. (EDT).

Indiana Judicial Conference
Alternative Dispute Resolution Committee
Meeting Minutes
November 2, 2018

I. **Call Meeting to Order**

Judge Avery called the meeting to order at 10:45A.M. (EDT).

Members participating: Chair David Avery, Keith Doi, David Northam, Lucas Rudisill, Jeff Todd, and Stephen Scheele in person, and Elaine Brown, Alicia Gooden, Nan Raduenz, and John Roach participated via conference call.

Staff: Mike Commons.

II. **Agenda Items**

Introduce New and Returning Members: New members- Magistrate Lucas Rudisill from Greene County; Magistrate Keith Doi from St. Joseph County; and Judge Jeff Todd from Grant County.

Meeting Minutes Review & Approval: Approved without objection.

IU Research Project

The IU Research team is working on drafting the first article, which analyzes the data across judges and lawyers and mediators for Vignette A (which relates to the study that altered whether parties had representation or not). **Once the article/paper is done, Professor Quintanilla will share it with the committee perhaps in Spring 2019.**

Professor Quintanilla is also focusing on a legal needs study in coordination with the Coalition for Court Access. Magistrate Scheele has sought to have Professor Quintanilla (or his colleagues) to present on this study's data/results to his local bar.

ISBA ADR Section discussion – AOPA Mediation Statute and ADR Rules

ISBA ADR Section member/incoming-chair Dan Goia had spoken with Judge Avery about the current status of the incompatibility between the AOPA Mediation statute (IC 4-21.5-3.5-18) and the ADR Rules (Rule 2.7(c)) on the issue of confidentiality. ISBA ADR Section intends to approach the legislature about correcting the inconsistency this session. The ADR Committee will assist in whatever manner this Committee and the ISBA ADR Section believe will be helpful.

ADR Service Providers List (Mediators/Parenting Coordinators)

Mag. Raduenz and Judge Avery previously identified the issue of a lack of a central listing of parenting coordinators and/or guardians ad litem for judicial officers to refer to – like the mediator registry. There is interest in determining how to better promote parenting coordinators throughout the state and in high-conflict cases and other options for resolution or education for parties, like referral to high-conflict parenting classes. Judge Avery reached out to the Office of Admissions and Continuing Education (ACE) to determine if including a “Parenting Coordinator” box on the existing mediator registry is feasible to help address the coordinator provider list problem. **ACE responded it is likely this will be made available for next year’s registrations.**

Low-income Litigant ADR Services

Magistrates Raduenz and Scheele discussed how their use of their county domestic relations ADR Fund Plan funding to refer unrepresented litigants to ADR services (whether mediation or facilitation) has been helpful. Litigants can meet with the facilitator prior to heading to the courtroom to attempt to reach an agreement, get it written up using forms provided, and be able to present it to the judge when the litigants walk over to the courtroom. Facilitator is limited to being able to handle only the most common legal issues. (Nothing complex like QDROs!) Also, they are not there to do any great deal of resolving conflict. They draft an agreement on what can be agreed to, and reserve for the judge what cannot be agreed to.

There is still the difficulty in getting ADR services to low-income litigants in counties with very high percentages of filers being indigent.

Senior Judges are allowed to act as domestic relations mediators on cases generally as well as on cases referred through the DR ADR Fund Plan. Senior Judges may be a useful way to get ADR service provided in less-populated counties. (Mike Commons will again reach out to the chair of the Senior Judge Committee, retired Justice Brent Dickson, to coordinate further discussions.)

Discussion about using senior judges to act as facilitators or to handle settlement conferences rather than mediate in order to get per diem instead of using DR ADR Fund Plan dollars. Also mentioned that if a senior judge submits paperwork for service credit and doesn’t indicate they acted as a mediator they will be paid per diem, *but their service credit will count against the court’s allotted senior judge days*. Magistrate Scheele indicated that the Supreme Court seemed willing to allot additional senior judge days to courts if they were requested. Therefore, there shouldn’t be a problem with a court assigning a senior judge to handle facilitation/settlement conference negotiation for litigants such that the senior judge could receive service credit *and* be paid per diem for their work.

Discussion of moving Parenting Coordinator Guidelines from the Indiana Parenting Time Guidelines into the ADR Rules

There wasn’t consensus on moving the PC Guidelines out of IPTG into ADR Rules. Some support it, others question the necessity.

Magistrate Raduenz is contacted from time to time by PCs in her court regarding their thoughts on the PC Guidelines. Reach out to PCs, AFCC Indiana Chapter, ADR and Family Law sections regarding location of the PC Guidelines as well as whether changes/updates should be made.

Discussion of adding commentary to the ADR Rules

Should any commentary be added to the ADR Rules such that guidance/application of the rules can be further explained based on case law?

III. New Business

- Resolution Systems Institute - info@aboutrsi.org, Judge Avery suggested that members of the Committee may wish to look at the website for ideas about ADR in their courts.
- Perhaps putting something together that indicates what ADR programs are available, in which county, and contact info for the judicial officers.
- Reach out to Education Division to see if an ADR presentation might be useful.

IV. 2019 Meeting Dates

1. March 1, 2019
2. August 16, 2019
3. November 1, 2019

All meetings begin at 10:30 ET at the Indiana Office of Court Services.

V. Adjourn

The meeting was adjourned at 12:19 P.M. (EDT).