



Alternative Dispute Resolution Committee
Meeting Minutes

March 27, 2015

- I. Judge Avery called the meeting to order at 10:35 a.m.

Members present: Chair David Avery, Larry Ambler, Jeffrey Edens, David Northam, Nanette Raduenz, Vickie Ransberger, Kim VanValer.

Liaison: Julia Orzeske, Indiana Commission for Continuing Legal Education

Guest: Professor Victor Quintanilla, Indiana University Maurer School of Law
(via telephone)

Staff: Jen Weber, IJC.

- II. **Meeting Minutes**

The October 24, 2014, meeting minutes were reviewed and approved unanimously.

- III. **IU Research Project**

Judge Avery updated members on the IU research project collaboration with Professor Quintanilla and members reviewed a memo received from the Professor dated March 26, 2015 describing the study progress (attachment 1). Professor Quintanilla (via telephone) joined at this point in the discussion of the meeting. To encourage participation, members supported having Judge Avery draft a letter on behalf of the committee requesting the support of the Chief Justice encouraging judges to participate in the survey. It was also suggested that judicial CLE be obtained for the survey, and offered to encourage participation – which Professor Quintanilla believed the required parameters for those requirements could be built into the platform. Ms. Weber will speak with the IJC education department to discuss CLE approval for the survey. Professor Quintanilla will begin building the necessary controls into the survey so IJC could capture the required information to award credits. It would be anticipated that credits would be awarded for each phase of the survey separately. At this juncture, it is believed the survey takes 30 minutes to complete each time – a draft for the ADR members to review should be ready for distribution within the next week. Professor Quintanilla left the meeting after this discussion.

IV. **ADR Rules**

Members received a draft of proposed amendments to the ADR rules created by the ADR rules taskforce. In reviewing the final draft, Judge Avery proposed approving three revisions missed at the last meeting. The first revision, Rule 2.5 (c) concerning reasons to deny registrations to the mediator registry, was approved by unanimous consent. Julia Orzeske, however, did explain that the Commission is pursuing independent adoption of this specific rule revision to seek the amendment more quickly, as the issue has currently been problematic for several applications submitted to the Commission and it would be beneficial to have the rule effective immediately. Two other amendments, not previously approved at the last meeting due to drafting errors, were unanimously approved to Rule 2.6 and 2.7. Judge Avery then explained that all of the rule revisions did not go to the Judicial Conference Board of Directors in March, as anticipated, due to their meeting being cancelled. Consequently, at this point, it was proposed that the rules be submitted directly to the Supreme Court Rules committee to seek approval and adoption this year. In order to do that, Jen Weber spoke with State Court Administration staff on the Rules committee, and it was suggested the proposal be fast tracked with a support letter by Justice Dickson, the committee liaison; Judge Avery will write a letter requesting that support from Justice Dickson.

V. **Parenting Coordinator Guidelines**

Members discussed review of the final draft of the Parenting Coordinator Guidelines. It was proposed that the Guidelines be sent to all members on the committee for a final review, and approval. Upon that review, the final guidelines will be sent with a cover letter to the Domestic Relations committee to inform them of their completion, should they wish to comment. The members agreed that the intent is to present the guidelines at the June Judicial Conference Board of Directors meeting.

VI. **Adjourn:** 12:05pm

To: Members of the Indiana Judicial Conference's ADR Committee
From: Victor D. Quintanilla, Judge Mark K. Loyd, Judge David J. Avery, Jennifer Weber
Re: Indiana ADR Study
Date: March 26, 2015
Cc: Amy Applegate, Jim Sherman, James Greiner, Blue Ace Media

It is a privilege to provide you this memorandum describing our research collaboration between the Indiana Judicial Conference's ADR Committee, the Indiana Judicial Center, and the IU Maurer School of Law, along with the many expected benefits of this research collaboration.

In short, the Indiana ADR Study will reveal whether Indiana judicial officers prefer some dispute resolution procedures over others—for example, mediation over formal legal hearings—in particular family law case contexts and situations, and the reasons for these judicial preferences. Moreover, this project will reveal the ADR preferences of Indiana attorneys and Indiana residents, along with the reasons for their preferences.

We believe that this collaboration is a transformative step forward in evidence-based research of courts, lawyers, the public, and the civil justice system. Our success to date, and the design of the superb research materials, would not have been possible without an IU Office of the Vice Provost of Research grant, and the time and effort of members of the Indiana Judicial Conference's ADR Committee, the Indiana Judicial Center, the IU Center for Survey Research, and the Indiana Statistical Consulting Center. This project will set a national standard in evidence-based research. It is the first in the country conducted with judicial officers, attorneys, and the public using highly realistic films of courtroom hearings that experimentally investigate the case contexts and situations thought to be key in dispute resolution. The results of this project will offer substantial benefits to the Indiana Judicial Conference, the Indiana Judicial Center, ISBA, and Indiana residents. Those benefits are described in further detail below.

A. Description of the Indiana ADR Study

The Indiana ADR Study consists of four phases. In Phase I, we conducted pilot studies with a nationally representative sample of the public that revealed the public's preference for mediation in family law matters. Phase II draws on these insights and the methods refined in Phase I to investigate Indiana judicial officers' procedural preferences for ADR resolution procedures in family law cases. Phase III will be conducted with Indiana attorneys. Lastly, Phase IV will be conducted with Indiana residents.

By way of background, Phase II involves providing Indiana judicial officers with films of family law cases that have reached the point at which they must be assigned to one of several dispute-resolution pathways: trial, mediation, and non-binding arbitration. We have randomized aspects of each film to determine how that aspect affects judicial officers'

procedural preferences. For example, we have created five versions of an otherwise identical family law dispute (“Vignette A”): in one version, both parties are unrepresented by counsel; in another version, both parties are represented; in another version only the wife is represented; in the fourth version only the husband is represented; in the fifth version both parties are unrepresented but an ADR fund is available to offset ADR costs for those with the least ability to pay. After watching a brief 3-5 minute film of a preliminary hearing, Indiana judicial officers will be asked the extent to which they would prefer to assign the family dispute to various dispute-resolution pathways and the reasons for their procedural preferences. The films are highly realistic and were produced using sample case files, in-court observations of preliminary hearings, and after speaking with members of the Indiana Judicial Conference’s ADR Committee about their own decision-making processes. We anticipate that, after the study, these 18 films will be made widely available for CLE programs.

B. Benefits and Broader Impacts of the Indiana ADR Study

The Indiana ADR Study will yield the following benefits and broader impacts:

Evidence-Based Understanding of the ADR Preferences of Indiana Judicial Officers, Attorneys, and Residents. The ADR project will provide an evidence-based understanding of the degree to which Indiana judicial officers, lawyers, and residents prefer particular dispute resolution procedures over others—for example, mediation over formal legal hearings—in certain family law case contexts and the reasons for these preferences (Phase II-IV). When taken together, Phases II-IV will reveal the similarities and differences of ADR preferences of judicial officers, attorneys, and the public and the reasons for these similar or dissimilar preferences.

These findings will answer a number of important and unresolved questions, thereby allowing courts to harness evidence-based research to better serve Indiana residents with ADR procedures. For example, the ADR project will reveal: (1) whether domestic violence, unrepresented status, and ADR funds shape the ADR preferences of judicial officers and if so, why; (2) the degree to which Indiana judicial officers are familiar with different ADR alternatives, such as non-binding arbitration; (3) the extent to which uncounseled parties are unfamiliar with ADR procedures, evidence that will thereby allow courts to better serve unrepresented parties; and (4) the extent to which Indiana judicial officers, attorneys, and residents support ADR procedures when ADR funds are made available to those with the least ability to pay.

Indiana Judicial Continuing Education (CLE). The ADR project will benefit judicial education. For example, our findings and 18 films will assist in designing best practices for the use of ADR in family law cases. The project will communicate from bar to bench about attorney preferences for ADR procedures in family law cases. Information about the similarities and dissimilarities of ADR preferences and the reasons for these preferences across Indiana judicial officers, attorneys, and residents can be harnessed for judicial training and education on ADR.

Indiana Attorney Continuing Education (CLE). The project will benefit attorney CLE. For example, the project will communicate from bench to bar about judicial preferences and best practices for representing parties in family law matters. Here too, information about the similarities and dissimilarities of ADR preferences and the reasons for these preferences across Indiana judicial officers, attorneys, and residents can be harnessed for attorney CLE. The project will illuminate best practices for representing family law matters and the handling of ADR.

Encouraging Unrepresented Parties to Use ADR Procedures. The project will benefit the public. For example, the project will communicate from bench to the public about the use of ADR procedures in family law matters, along with the anticipated benefits of ADR. Our results will be reported (and made available online), thereby sharing with the public about ADR in family law cases. The project will encourage unrepresented parties to access ADR.

Promoting Fair and Effective ADR Procedures. Finally, the project will allow an evaluation of whether existing ADR rules can be improved to better incorporate judicial preferences. For example, our findings may assist in the developing of ADR procedures in cases involving domestic violence. Regarding ADR funds, if Indiana judicial officers, attorneys, and the residents similarly agree, this may promote the further development of ADR funds.

C. Project Status: Phase II Surveys Complete and Ready to Invite Judicial Officers to Participate

We are very pleased to report that, in the summer of 2014, an excellent film production company, Blue Ace Media, was contracted to assemble film production personnel. We carefully selected and hired the actors and actresses; and Blue Ace Media filmed the 18 courtroom scenarios using the scripts we previously developed. In fall 2015, we produced the final films for the ADR project. Working closely with the IU Center for Survey Research, our team has since finalized the Phase II surveys to be shared with Indiana judicial officers. At this time, we are ready to invite Indiana judicial officers to participate in the surveys associated with Phase II. After completing Phase II, we anticipate conducting the study with Indiana attorneys and residents.



Alternative Dispute Resolution Committee
Meeting Minutes

October 23, 2015

- I. Judge Avery called the meeting to order at 10:37 a.m.

Members present: Chair David Avery, David Cox, Jeffrey Edens, David Northam, Vickie Ransberger, Kim VanValer and Joseph Weber. Elaine Brown, Nanette Raduenz, and John Roach participated via telephone.

Liaison: Julia Orzeske, Indiana Commission for Continuing Legal Education

Guest: K. Mark Loyd (via telephone).

Staff: Jen Weber, IJC.

- II. **Meeting Minutes**

The March 27, 2014, meeting minutes were reviewed and approved unanimously.

- III. **IU Research Project**

Judge Avery updated members on the IU research project collaboration with Professor Quintanilla from IU Maurer School of Law. Discussion focused on phase 2 of the project, which involves sending the ADR assessment survey to trial judges on November 9, 2015. Members reviewed a timeline provided by Prof. Quintanilla as well as approaches to encourage their colleagues to participate in the survey. Members agreed with the timeline and anticipated process. This discussion also included ensuring that adequate controls would be in place so that the video would be viewed in its entirety, for the appropriate award of CJE/Judicial College credit. Members also wanted to ensure that all questions on the survey, particularly the questions predicting party feelings about a specific ADR procedure, were necessary. Judge Avery agreed to address these concerns with Prof. Quintanilla and report to the committee prior to the survey finalization.

- IV. **Parenting Coordinator Guidelines**

Members reviewed correspondence received from Mr. Kevin Smith, Clerk/Court Administrator, on behalf of the Supreme Court concerning the proposed Parenting Coordination Guidelines. The Court request is for a memo detailing the background of the Guidelines and involvement of other stakeholders in the process. Judge Avery explained this was in response to the Guidelines being approved at the September 11, 2015, Judicial Conference Board of Directors meeting and subsequent request

from the Court for the Guidelines. Judge Avery and Judge Loyd reported that the presentation to the Board went well, and that feedback was generally minimal with only one amendment adopted during the meeting to clarify that in cases of domestic violence, parenting coordination may be contraindicated. Judge Loyd agreed to assist with drafting the memo to the Court and may reach out to Judge Bobay, who also worked on the Guidelines while a member of the Domestic Relations Committee.

To prepare the memo, Ms. Weber will also provide an outline of all of the prior public comments and history she can review from ADR committee files and consult with other IJC staff, as necessary for information. In preparing the memo, the Committee will include a recommendation for the Court if they would like an additional public comment period, how that may be best accomplished with the website interface. Judge Avery thanked Judge Loyd for his continued assistance to the ADR Committee on the Guideline and ADR research project.

Mag. Ransberger explained that she and Mag. Raduenz provided an update on the Guidelines at the recent 2015 AFCC Annual Conference. Mag. Raduenz reported at the conference she received feedback that attorneys like parenting coordination, but there is a problem with clients paying so several must withdraw. She also noted that mental health professionals who do parenting coordination also have this problem. Mag. Raduenz offered to send a copy of the original draft Parenting Coordination Rules that went to the Board, to assist with preparing the memo.

Discussion turned to the substantive provisions of the Guidelines concerning Guideline F(1) pertaining to confidentiality and privileged communications. Clarification was made in the first sentence, moving the language "except provided by law" to the end of the sentence. In Guideline F(2), language was amended to state that "Nothing in this guideline is intended to create a privileged or therapist-client privileged communication." Ms. Weber agreed to draft the language and circulate the amended Guidelines for review and approval.

- V. **ADR Rules:** Judge Avery briefly reported that the ADR Rules are still pending with the Supreme Court Rules Committee. Members reviewed follow-up communication from the meeting Judge Avery and Judge Loyd attended with the Rules committee on August 14, 2015. The message requested clarification pertaining to domestic violence provisions in Rule 2.7. Judge Avery reported that the August meeting went well and that the main discussion focused on the binding versus non-binding arbitration distinction.
 - VI. **Other Business:** Judge Avery offered members the opportunity to discuss new items or topics to begin working on. Several asked about other types of ADR being used and if this may be resulting in less jury trials. Members thought it might be useful to have an education session at the judicial conference or other judicial education event providing an update on private judging, or ADR Rules, Mortgage Foreclosure Trial Court Assistance Project, or the Family Court Project. Ms. Orzeske and Ms. Weber agreed to report these interests to Ms. Vicki Davis (Education Director, Indiana Judicial Center) and see if opportunities to assist in coordinating an educational session might be available.
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VII. **2016 Meeting Dates:** Meeting dates were scheduled for the following days: Friday, March 11, 2016; Friday, July 22, 2016; and, Friday, November 4, 2016. All held at the IJC office, beginning at 10:30 AM.

VIII. **Adjourn:** 12:37 p.m.
