

KF  
9084  
C667  
C.2

CONFERENCE OF STATE COURT  
ADMINISTRATORS

COMMITTEE ON ALTERNATIVE DISPUTE  
RESOLUTION

REPORT TO THE MEMBERSHIP

*Rec'd 3/12/91*

December 1, 1990

Library  
National Center for State Courts  
300 Newport Ave.  
Williamsburg, VA 23187-8798

COSCA  
ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Chair: Carl F. Bianchi  
Administrative Director of the Courts, Idaho

Rene Arrillaga-Belendez  
Administrative Director of the Court, Puerto Rico

Robert L. Duncan  
Court Coordinator, Wyoming

Franklin E. Freeman, Jr.  
Administrative Director, North Carolina

Thomas J. Lehner  
Court Administrator, Vermont

Robert L. Lovato  
Administrative Director, New Mexico

J. Denis Moran  
Director of State Courts, Wisconsin

Ted J. Philyaw  
Administrative Director, West Virginia

Arthur H. Snowden II  
Administrative Director of the Courts, Alaska

Susan Keilitz, Senior Staff Attorney  
National Center for State Courts

COSCA  
Committee on Alternative Dispute Resolution  
Report to the Membership

Table of Contents

Executive Summary.....	1
Instituting an ADR Program: The Court's Responsibilities.....	2
ADR Raises Issues for the Courts.....	4
ABA Standards Relating to Court Organization on Alternative Dispute Resolution.....	10
Bibliography.....	16

## **COSCA**

### **COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION**

#### **REPORT TO THE MEMBERSHIP**

##### **Executive Summary**

Over the past four years, the COSCA Committee on Alternative Dispute Resolution has investigated the extent to which courts have instituted ADR processes, endorsed empirical evaluation of the effects of ADR processes, guided the research initiatives of the National Center for State Courts, tracked the latest developments and studies regarding ADR, and encouraged the American Bar Association committee on Standards Relating to Court Organization to incorporate the COSCA perspective on court use of ADR into the ABA standards on ADR. In the accomplishment of these tasks, the committee discussed the information it gathered and weighed its significance to the administration of justice. These deliberations have led the COSCA committee to recommend that courts explore the use of alternatives to traditional court processes and to endorse the ADR standards embodied in the ABA Standards Relating to Court Organization. This report complements the ABA ADR standards, and is meant to be an educational resource for COSCA members and others contemplating development of court-annexed or court-referred ADR programs.

This report reflects the committee's review of the development of ADR and its impact on the state courts. It urges courts to experiment with alternatives to formal litigation, while emphasizing the need for on-going evaluation of all ADR programs that are connected in some way to the court. The first section of the report states the committee's position on the court's responsibilities in regard to instituting ADR programs. The second section is a discussion of some of the issues that the ADR movement raises for the administration of justice. The third section reproduces the ADR standards embodied in the ABA Standards Relating to Court Organization, which were formally adopted by the ABA House of Delegates in February, 1990. The fourth section is a bibliography of further sources of information on ADR.

The COSCA committee gratefully acknowledges the contributions of Susan Keilitz, Senior Staff Attorney, National Center for State Courts, in the preparation of the committee report.

## **Instituting an ADR Program: The Court's Responsibilities**

The following statement summarizes the conclusions of the COSCA Committee on Alternative Dispute Resolution (ADR) concerning court use of alternative dispute resolution procedures:

Courts should explore the use of alternatives to traditional court processes that are organized to permit appropriate court supervision and evaluation, and designed and managed to promote faster, less expensive, and better ways to resolve society's disputes.

This statement is qualified, however, by the following three considerations:

1. Courts retain responsibility for fair and equitable dispute resolution.

Judges and court administrators are responsible for the fair and equitable administration of justice to those who bring their disputes to the court for resolution. If the court refers part of its caseload to alternative processes, the responsibility for the fair administration of justice in those cases remains with the court. Because some alternative dispute resolution processes may lack the procedural and evidentiary formality of the traditional court process, the court must establish methods to insure that procedures employed by the alternative process protect the rights of all disputants, preserve the accountability of the judicial process and do not dilute the court's authority.

2. Questions remain open about both the effects of alternative processes on the pace, cost and quality of dispute resolution and the appropriate ways to organize and manage ADR programs.

When applied appropriately, alternative dispute resolution processes may have beneficial effects for litigants and the judicial system, but these benefits are by no means guaranteed. Research findings to date indicate that for certain types of cases and in certain jurisdictions alternative processes such as mediation and arbitration can provide speedy disposition, greater levels of compliance with agreements, and participant satisfaction. No single alternative dispute resolution process or program model is, however, suitable for all cases and for all jurisdictions. A process or program that works well in one court, jurisdiction or state does not necessarily produce the same effects in another court, jurisdiction or state.

Before deciding to implement an alternative dispute resolution program, judges and court administrators should carefully evaluate the particular problems and needs of their court. Some of the

factors judges and court administrators should assess are 1) the social, economic and political characteristics of the court's jurisdiction; 2) the resources available to the court, including funds, the potential pool of mediators and arbitrators, and the existing dispute resolution programs in the community; and 3) the attitudes and likely response of the bench and bar to the introduction of an alternative dispute resolution program or programs.

The assessment of the court's needs should lead to the development of goals for the proposed program, and judicial planners should tailor the program to meet those goals. For example, if the primary program goal is to speed the time of case disposition, the program should set early time limits for completion of discovery and the hearing on the merits of the case and provide sufficient resources and incentives for effective case management; if the court's goal is to clear inactive cases, it may institute settlement weeks; and if the goal is early disposition of a high number of new civil cases, the program should 1) be mandatory; 2) have program eligibility criteria that capture a significant number of cases; 3) be organized for early referral and 4) include substantial resources for close monitoring of the cases that are sent out for arbitration or mediation.

No alternative process should sacrifice quality for cost or speed. The quality of the process should be assessed on at least four criteria: 1) consistent access to procedures that neither bestow unfair advantages upon parties with superior resources nor prevent full presentation of arguments; 2) fairness of outcomes that treat similarly situated litigants similarly; 3) compliance with the terms of judgments made and agreements reached and 4) the satisfaction of the parties with the process.

An essential component of all dispute resolution programs should be an evaluation system based on program goals. Judicial planners should not become wedded to particular programs, structures or procedures, but rather should be willing to modify or to eliminate alternative programs if evaluation reveals the programs or procedures are not serving their defined purposes.

3. The more closely connected to the court an alternative dispute resolution program is, the higher the degree of control the court should exercise.

Alternative dispute resolution programs vary in their relationship to the court. Court-annexed programs are administered and funded by the court; court referred programs operate outside the direct control of the court but are institutionally linked by referrals or funding, and private programs are totally autonomous and have no formal relationship of the court. The closer the relationship of the court to the program, the more control the court must exercise over the program.

If judges and court administrators institute a court-annexed program, they have responsibility for establishing program goals, structure, procedures, and the qualifications of those who serve as mediators, arbitrators and other types of neutrals. The court should regularly and rigorously monitor and evaluate the program's performance. Judges and court administrators should be prepared to modify any and all aspects of a program that fail to meet the court's goals.

If judges and court administrators adopt a policy of referring a portion of the court's caseload to a dispute resolution program outside the court, they should establish mechanisms to review periodically the quality of the services provided by the program. The relationship of the court to the program should be maintained by an appointed liaison to ensure that communications with the program administrators are regular, clear and effective.

The court has no direct responsibility to monitor or to evaluate private programs, but judges and court administrators should be knowledgeable about private programs in the community as well as the community needs that these programs address. The court should maintain some communication with private programs so that in appropriate circumstances parties can be made aware of the services of private programs and the benefits they may offer.

## ADR Raises Issues

Alternative Dispute Resolution has been called "the most creative social experiment of our time".<sup>1</sup> It is a label applied to an increasingly broad range of alternatives to traditional litigation, including mediation, arbitration, negotiation, private judging, minitrials, advisory settlement conferences, and summary jury trials. ADR can be "complementary" when it is arrayed with the traditional processes in the public courthouse.

The movement to establish alternative methods for dispute resolution in both public and private institutions arises from a dissatisfaction with both the adversarial system of litigation and the unreasonably high cost and lengthy delays experienced in many court systems. The advocates of ADR seek more open access to formal dispute resolution services, a less costly process in terms of time and money, empowerment of people to resolve their own

---

<sup>1</sup> Derek Bok, "A Flawed System," Harvard Magazine, May-June, 1983.

disputes, and social peace without the psychic costs, inequalities and divisiveness of the adversarial process.

Whether the movement actually offers these benefits to our society without significant risks and unintended consequences is and ought to be a subject for empirical investigation as well as thoughtful philosophical reflection. The outcomes of carefully controlled experiments with alternative and complementary methods for dispute resolution should be measured against clear statements of goals and objectives and should be compared with the outcomes of, and reactions to, traditional processes. On a larger level, consideration of ADR offers an opportunity to articulate and clarify the values that underlie our current system for dispute resolution and to analyze how judicial systems can improve on their efforts to reach valued outcomes. The challenge is to find a balance between traditional court dispute resolution and the alternatives being suggested.

### Issues for Courts

The Anglo-American legal system has developed slowly and incrementally. Today's American judicial institutions have evolved to provide public forums for disputants to resolve conflicts peacefully. Public resolution of those conflicts allows for articulation of clear norms that, once announced and refined as necessary in the appellate process, allow individuals to order their affairs to avoid similar conflicts in the future. The genius of the legal system design is that it values individual choice while meeting society's need for norms and guidelines to define acceptable social behavior. Individuals may invoke the jurisdiction of the courts, thus subjecting their disputes to public scrutiny and resolution, or they may settle their differences without filing a law suit. While the majority of lawsuits are resolved without a trial, once a case has been adjudicated, a public interest develops in it because the law of the case offers prospective normative guidance to society at large.

Although the development of private dispute resolution promises benefits to society, it, creates value conflicts for the administration of justice. For example, if judges and court managers encourage the resolution of disputes outside the public system, a potential consequence is a judicial system that adjudicates only criminal cases and pro se civil cases in which the parties cannot afford the private alternatives. Some see that possibility, however remote as it may be, as a threat to the status of the third branch of government and a weakening of its law-making function. On the other hand, our government system values individual choice, and judicial dispute resolution has always relied on the individual bringing forward the case for resolution. By thwarting efforts to provide alternatives to the public system, courts may infringe a value they otherwise seek to promote.



Paradoxically, the possibility that private dispute resolution might restrict access and opportunity for traditional litigation within the common law might threaten the balance of power among disputants that courts have sought, albeit sometimes unsuccessfully, to achieve.

The current level of litigation across the United States represents a great challenge to the traditional juridical system for resolution of conflicts. How will courts accommodate growing caseloads while preserving reasonable access to a public forum for litigants pursuing resolution of conflicts? Will ADR processes help courts meet the needs of disputants seeking prompt, low cost or less adversarial resolution? How will courts continue to carry out their normative function while already limited resources are divided even further to fund diverse dispute resolution processes both within and outside the public system? Will the body of law as developed and refined in the publicly funded appellate process be changed significantly by the recourse of some disputants to private forums without appellate review?

#### Finding Faster and Less Costly Dispute Resolution Processes

One potential advantage of ADR programs may be that they are faster and less costly than traditional court processes. Evaluations of some programs, such as North Carolina's Court-Ordered Arbitration<sup>2</sup>, Pittsburgh's Court Arbitration<sup>3</sup>, and the District of Columbia Superior Court's mandatory arbitration report success in terms of reduced time to disposition, at about the same cost, with increased user satisfaction. On the other hand, a study of New Jersey's Automobile Arbitration Program concluded that the program did not reduce the trial rate, slowed the pace of case disposition, and was no less costly than the traditional litigation process.<sup>4</sup>

---

<sup>2</sup> Stevens H. Clarke, Laura F. Donnelly, Sara A. Grove (1989) North Carolina's Experiment with Court-Ordered Arbitration. Institute of Government. Chapel Hill.

<sup>3</sup> Jane W. Adler, Deborah R. Hensler, Charles E. Nelson (1983) Simple Justice: How Litigants Fare in the Pittsburgh Court Arbitration Program. Rand. Santa Monica.

<sup>4</sup> Robert J. MacCoun, E. Allan Lind, Deborah R. Hensler, David L. Bryant, and Patricia A. Ebener (1989) Alternative Adjudication: An Evaluation of the New Jersey Automobile

Some types of cases will benefit from alternative treatment in terms of time and cost savings and user satisfaction, but others will not. For example, mandatory use of arbitration or mediation for some cases will lengthen the resolution time and raise the cost to the parties if they contest the arbitrator's award or fail to reach agreement in mediation. While it may not be possible for the system to predict which alternative is most appropriate for an individual case, courts can make informed decisions regarding the design and implementation of alternative programs by gathering data on case characteristics in the course of conducting controlled experiments on alternative dispute resolution processes. The results of these reviews must be subjected, however, to close quantitative and qualitative analysis.

There are a growing number of models for establishing court-annexed and court-referred programs, but no consensus has developed in favor of any particular model. What may work well in one jurisdiction may not work well in another because of varying levels of funding, program capacities, commitment of the judges and cooperation of the local bar. The burgeoning growth and interest in ADR programs offers, however, an opportunity for determining which are the best approaches for courts. Each new program should be implemented and evaluated as an experiment that will provide an empirical measurement of whether the program achieves its goals or whether it has unintended consequences.

#### Developing Better Means to Accommodate the Needs of Litigants

The adversarial system has been criticized as being ineffective because it intensifies conflict and because the adversaries may be ill-matched. The effects are especially evident in divorce litigation. Families already under stress become more antagonistic because of the nature of the process and because the relative strength of the adversaries may appear more pronounced in an acrimonious personal dispute. Although the adversarial system has its drawbacks, it allows a tested means for expression of each party's position. The adversarial process, for whatever reasons, usually leads to settlement of the dispute before trial. All courts today encourage settlement, which recent research indicates parties resent because they do not understand the process and are generally excluded from it.<sup>5</sup> The litigants studied cared strongly

---

Arbitration Program. Rand. Santa Monica.

<sup>5</sup> Lind, E. Allan, Robert J. MacCoun, Patricia A. Ebener, William L.F. Felstiner, Judith Resnick, and Tom R. Tyler (1989) The Perception of Justice: Tort Litigant's View of Trials, Court-

about whether their cases received dignified, careful and unbiased hearings, regardless of the outcome or the type of dispute resolution process. As might be expected, when the process leaves the litigants in the hallway while the lawyers conduct private negotiations with the case resolver, litigants' satisfaction is lower than when they participate throughout the process. The lesson from these findings is that to improve disputant satisfaction, those involved in the process should pay closer attention to the disputant's need for information and involvement, whether the forum is the traditional court setting or an alternative resolution process.

To meet the challenge of increasing litigation, courts will need to add substantially to their current resources, i.e., judges, staff and facilities. Because society may be unwilling to make the necessarily large investment of public funds, it appears that courts will have to look to alternative means to meet the demands placed on them. Relying cautiously and experimentally on court-annexed civil dispute resolution mechanisms, courts could meet the new demands while building support for the mission of the third branch. ADR alternatives are not, however, without their own expense. Difficult choices will have to be made regarding public resources such as whether to add a law clerk for the busy judge or to add a divorce mediator. Courts may be forced to divert some of their traditional workload to other public forums, or they may see some kinds of cases channelled to private agencies that might be more efficient in processing certain kinds of disputes. Access to the courts for review of these extra judicial resolutions must be preserved, however, if the courts are to guarantee justice regardless of the initial forum for resolution.

### Exploring Alternatives

Answers to the issues raised in this report are becoming clearer as judicial systems experiment with new alternatives and the variety and number of alternatives grows. Because these are issues of fundamental importance to our system of governance and to the well being of society, they should be addressed by state and federal court leadership. The presence of these issues, however, should not inhibit court efforts to experiment with alternative approaches to dispute resolution. The judiciary should seek the assistance of legislators, private industry, academics and researchers from the social sciences, law and philosophy, and advocates of alternative methods for resolving disputes.

---

Annexed Arbitration, and Judicial Settlement Conferences. Santa Monica: Institute for Civil Justice, the Rand Corporation.

To learn how better to assist disputants while safeguarding their rights and carrying out the mission of courts, courts should explore court-annexed and court-referred dispute resolution methods that are complementary to litigation. With the assurance that the adversarial system's procedural and substantive due process remain available to all who would choose it, courts should experiment with dispute resolution alternatives which will improve and expand court services to the public.

## **ABA Standards Relating to Court Organization on Alternative Dispute Resolution**

The COSCA ADR Committee endorses the following ADR standards, which are part of the American Bar Association Standards Relating to Court Organization, adopted by the ABA House of Delegates in February, 1990.

American Bar Association, *Defeating Delay: Developing and Implementing a Court Delay Reduction Program* (1986).

American Bar Association, *Standards Relating to Trial Courts, As Amended* (1987).

Brunet, "Measuring the Costs of Civil Justice," 83 Mich. L. Rev. 916 (1985).

T. Church, Jr., A. Carlson, J. Lee, and T. Tau, *Justice Delayed, The Pace of Litigation in Urban Trial Courts* (1978).

**Section 1.12.5 Alternative Dispute Resolution.** There are systems that are complementary to the usual adversary process, such as conciliation, mediation, and arbitration, which are used to solve disputes. Judicial system involvement in these programs, commonly known as alternative dispute resolution (ADR) programs, is through those which are court annexed and those not court annexed to which the court may make referral. If judges and court administrators institute a court-annexed program, they have responsibility for establishing program goals, structure, procedures, and the qualifications of those who serve as mediators, arbitrators, and other ADR professionals. The court should regularly and rigorously monitor and evaluate program performance and modify any and all aspects of a program that fails to meet the court's goals.

(a) Court-annexed programs. Court-annexed ADR programs are those operated under the authority of the judicial system and which provide complementary methods, such as mediation or arbitration, to the usual adversarial process of dispute resolution. These programs may be mandatory or voluntary, and there should be incentives for use. A dissatisfied party should have recourse to the court.

(i) Standards and process. Court-annexed ADR programs should have uniform structure and be governed by uniform rules, standards, and procedures, including confidentiality, intake, referral, and determination processes promulgated by the supreme court. Statutory procedure, if so provided, and the structure, rules, standards, and procedures should be sufficiently

flexible to permit creative approaches to dispute resolution not inconsistent with the requirements of uniformity. Rules, standards, and procedures should be designed to provide the same quality of dispute resolution expected from traditional court procedures.

(ii) Administration. Pursuant to the rules and standards promulgated by the supreme court, the administrative office of the courts should have the responsibility for management and coordination of court-annexed ADR programs. Management and coordination at the trial court level should be carried out by the trial court administrator pursuant to the rules and standards, the administrative requirements established by the administrative office of the courts, and the direction of the chief judge.

(iii) ADR professionals. Education and experience requirements for ADR professionals should be established by statute or supreme court rule. In addition to initial education and experience qualifications, ADR professionals should be required to participate in continuing education and training through special programs, conferences, and other applicable learning experiences. ADR professionals may be engaged under contract as their services are requested or needed.

(iv) Referrals to ADR programs. Whether the ADR programs are mandatory or voluntary, the types of cases to be referred should be specified clearly and uniformly throughout the judicial system by statute or supreme court rule. The parties should have the opportunity to select the ADR professional or professionals to preside over the matter within established court procedures. If they cannot agree, the selection should be made by the judge.

(v) Fees. Nominal fees for ADR services may be imposed by statute or supreme court rule. Fees should be reasonable, so as not to preclude either party from using the ADR program, and fees should be waived for indigent parties.

(b) Court-referred ADR Programs. A court-referred ADR program is one not under the direct supervision of the judicial system. Certification of the dispute resolution center or program, the types of cases which may be referred, and the guidelines and criteria for intake and referral should be provided for by statute and supreme

court rule. Confidentiality, court recourse, and fee structure should also be provided by statute and supreme court rule and should be similar to those required in court-annexed programs.

#### *Commentary*

What are now known as alternative dispute resolution programs or mechanisms have been used for many years in almost all jurisdictions, although many of them have functioned independently of the judicial system. Conciliation, mediation, and arbitration have been used to resolve labor disputes for more than seventy-five years in some states. A number of states have also had informal resolution of consumer disputes with automobile manufacturers for some time. Panels to resolve or mediate medical malpractice claims prior to filing a court case are also found in a growing number of jurisdictions. The use of ADR outside of the court setting is more extensive, but the above examples should suffice.

Although there were a few court-annexed ADR programs in the 1950s and 1960s, ADR gained considerable judicial system support in the 1970s and 1980s for several reasons. Federal funds were made available for community dispute resolution programs through the Law Enforcement Assistance Administration in the 1970s and early 1980s. Growth in court backlogs and delay in case dispositions made alternatives to the traditional adversary process much more attractive.

National organizations, such as the American Bar Association and the National Center for State Courts, have studied ADR extensively. Several organizations were formed and conferences held to study, examine, and support the use of ADR mechanisms, either court annexed or court referred. An increasing number of states have adopted or are considering statutes for court-related ADR programs. Even so, many of these programs are still in experimental stages, and their utility has not yet been determined. Additional research efforts are underway, and should be encouraged, to measure the effects of alternative dispute resolution on the pace, cost, and quality of litigation and the appropriate ways to organize and manage ADR programs.

Many advocates of ADR express the view that the purpose for



---

Court Organization

developing these programs is first and foremost to ensure quality justice and to provide a variety of forums so that the most appropriate one may be selected for a particular case. For example, the New Jersey task force on dispute resolution set forth several goals for dispute resolution programs and mechanisms:

- To be as accessible as possible to all disputants and not favor one group or segment;
- To protect the legal rights of all disputants;
- To provide a fair and competent mechanism for resolving disputes;
- To encourage the confidence and respect of disputants and the general public in the fairness, integrity, and justness of the methods by which disputes are resolved;
- To be an effective forum for the enforcement of law, including formulating outcomes in terms that are conducive to subsequent enforcement when necessary; and
- In achieving these goals, to be as efficient as possible in terms of the cost and time required of both the system and the disputants.<sup>1</sup>

The literature indicates that several ingredients are required to assure these and comparable goals, and these ingredients are set forth in Standard 1.12.5.

Court-annexed and court-referred ADR programs should be based on statutes and supreme court rules. These programs should have uniform structure and be governed by uniform rules, standards, and procedures. Within uniformity requirements there should be sufficient flexibility to provide program variety, so that the widest range of alternatives can be provided consistent with protecting the rights of the parties involved and assuring them equal treatment.

Administration and coordination of court-annexed ADR programs should be carried out by the administrative office of the courts pursuant to statutes and supreme court rules. Under central

---

<sup>1</sup>Supreme Court of New Jersey, 1988 *Judicial Conference Task Force on Dispute Resolution, Discussion Paper Volume 1* (1988).

direction and coordination, chief trial judges and trial court administrators should be responsible for program management at the trial court level.

To assure high-quality service by ADR professionals, adequate education and experience standards should be set for their employment, either directly or under contract. Further, continuing educational requirements should be established and performance evaluated periodically in the same way as for judicial officers.

Parties in a matter referred to an ADR program should have the opportunity to select, within established court procedures, the ADR professional or professionals who will preside. Any party dissatisfied with the result of an ADR proceeding should have recourse to the court.

#### *References*

- "Alternate Dispute Resolution and the Courts," 6 *Judicature* 69 (1986).
- American Bar Association, *Alternative Means of Family Dispute Resolution* (1982).
- American Bar Association Standing Committee on Dispute Resolution, *State Legislation on Dispute Resolution* (1988).
- American Bar Association Standing Committee on Dispute Resolution, *Federal Legislation on Dispute Resolution* (1988).
- Bianchi, "Is the Jury Still Out?," 61 *J. of St. Gov't* 174 (1988).
- S. Clarke, L. Donnelly, and S. Grove, *Court-Ordered Arbitration in North Carolina: An Evaluation of Its Effects* (1989).
- CPR Legal Program, *ADR and the Courts: A Manual for Judges and Lawyers* (E. Fine ed. 1987).
- P. Ebener and D. Betancourt, *Court-Annexed Arbitration: The National Picture* (1985).
- Guill and Slavin, "Rush to Unfairness: The Downside of ADR," *Judges' J.* (Summer 1989) p. 8.
- D. Hensler, *Reforming the Civil Litigation Process: How Court Arbitration May Help* (1984).

---

Court Organization

- McGillis, "What's Gone Right—And Wrong—For Justice Centers," 23 *Clearinghouse Rev.* 48 (1989).
- J. Marks, E. Johnson, Jr. and P. Szanton, *Dispute Resolution in America: Processes in Evolution* (1984).
- Myers, Galla~~S~~<sup>S</sup>, Han~~son~~<sup>son</sup>, Keilitz, "Court-Sponsored Mediation of Divorce, Custody, Visitation, and Support: Resolving Policy Issues," 13 *St. Ct. J.* 24 (1989).
- F. Sander, *Mediation: A Selected Annotated Bibliography* (American Bar Association Special Committee on Dispute Resolution) (1984).
- Starke, "Alternative Dispute Resolution (ADR): Mere Gimmickry?," 63 *Austl. L.J.* 69 (1979).
- Supreme Court of New Jersey, 1988 *Judicial Conference Task Force on Dispute Resolution, Discussion Paper* (1988).
- Thornton, "Court-Annexed Arbitration: Kentucky's Viable Alternative to Litigation," 77 *Ky. L.J.* 881 (1988-89).

## Bibliography

This bibliography contains citations to articles, books and videotapes. It is presented in four sections: General Information on ADR Processes, Court-annexed Arbitration, Divorce Mediation, and Videotapes. Where the citation is self-explanatory, no annotation is given. The majority of the citations in this bibliography appeared in Dispute Resolution and the Courts: An Annotated Bibliography, a publication of the National Institute for Dispute Resolution.

### I. General Information on ADR Processes

ADR and the Courts: A Manual for Judges and Lawyers, CPR Legal Program, Erika S. Fine, Editor, Center for Public Resources (1987). *Presents compilation of articles addressing various case management and dispute resolution techniques.*

Aikman, Alexander B., Mary E. Elsner, and Frederick G. Miller, Friends of the Court - Lawyers as Supplemental Judicial Resources, National Center for State Courts (1987). *Assesses the use of volunteer lawyers as judicial adjuncts and reports the results of an evaluation of six such programs.*

Alternative Dispute Resolution: A Handbook for Judges, Monograph Series, American Bar Association Standing Committee on Dispute Resolution (1987).

"Alternative Dispute Resolution: An ADR Primer," American Bar Association Standing Committee on Dispute Resolution (1987). *Poses questions and offers answers to questions generally asked about alternative dispute resolution.*

BNA's Alternative Dispute Resolution Report, Bureau of National Affairs, Washington, D.C., 20037, 202-452-4200. *Covers developments in private and public dispute resolution, including dispute resolution legislation and court decisions. Bi-weekly report.*

Brenneman, Hugh W., Jr., and Edward Wesoloski, "Blueprint for a Summary Jury Trial," Court Review 6-11 (Summer 1987). *Examines the standard steps of a summary jury trial and possible modifications.*

Dispute Resolution and the Courts: An Annotated Bibliography, National Institute for Dispute Resolution, 1901 L Street, N.W., Suite 600, Washington, D.C. 20036, 202-466-4764.

Dispute Resolution Forum, National Institute for Dispute Resolution (Washington, D.C. 1985). *Focuses on one subject in each issue; quarterly publication. Issues of special interest include: "Family and Divorce Mediation" (December 1984); "Court-*

*Ordered Arbitration" (August 1985); "SPIDR's Ethical Standards of Professional Conduct" (March 1987); "Statewide Offices of Mediation: Experiments in Public Policy" (December 1987); "Programming the Process: An Examination of the Use of Computers in Dispute Resolution" (April 1988); and "The Status of Community Justice" (December 1988).*

Keilitz, Susan, "A Court Manager's Guide to the Alternative Dispute Resolution Database," 14 State Court Journal 24-31 (Fall 1990). *Identifies what information about ADR programs is available from the National Center for State Courts' ADR program database and offers examples of questions regarding program design and implementation that the database can address. The ADR program database contains basic information on 1100 programs and detailed information on 600 of these. Contact NCSC Information Services for further information, 804-253-2000.*

Keilitz, Susan, Geoff Gallas, and Roger Hanson, "State Adoption of Alternative Dispute Resolution," 12 State Court Journal 4-11 (Spring 1988). *Reports results of state court administrative office survey of alternative dispute resolution programs in the fifty states and the District of Columbia.*

Lind, Allan E., Robert J. MacCoun, Patricia A. Ebener, William F. Felstiner, Deborah F. Hensler, Judith Resnik, and Tom R. Tyler (1989), One Perception of Justice: Litigants' Views of Trials, Court-Annexed Arbitration, and Judicial Settlements Conference. Santa Monica. Rand Corporation.

McEwen, Craig, and Richard Maiman, "The Relative Significance of Disputing Forum and Dispute Characteristics for Outcome and Compliance," 20 Law & Society Review 439-447 (1986). *Reviews data drawn from small claims courts and presents conclusions.*

McGillis, Daniel, "Community Dispute Resolution Programs and Public Policy," United States Department of Justice, National Institute of Justice (December 1986).

Missouri Journal of Dispute Resolution, publication of the Missouri Law Review in conjunction with the Study of Dispute Resolution, Tate Hall, University of Missouri-Columbia, Columbia, Missouri, 65211, 314-882-7055.

Multi-Door Courthouse Implementation Package, American Bar Association, Standing Committee on Alternative Dispute Resolution, 1800 M Street, N.W., Washington, D.C. 20036; 202-331-2258. *Contains information about the multi-door courthouses in Washington, D.C. and Houston, Texas; analyses of the major issues involved in developing and implementing a multi-door courthouse, sample legislation, court rules, and procedures; and a bibliography.*

Ohio State Journal on Dispute Resolution, publication of the Ohio State University College of Law, 1659 North High Street, Columbus, Ohio, 43210-1306, 614-292-7170.

Pearson, Jessica, "An Evaluation of Alternatives to Court Adjudication," 7 Justice System Journal 420-444 (1982). See also, Comments, pages 445-448. *Examines mandatory and voluntary mediation and arbitration programs and their success in achieving stated objectives.*

Ratliff, Leslie C., "Civil Mediation in Palm Beach: A "Retired" Massachusetts Judge Pioneers a Successful New Program," 73 Judicature 51-53, 57 (June-July 1989).

Shuart, Kathy L., Saundra Smith, and Michael D. Planet, "Settling Cases in Detroit: An Examination of Wayne County's 'Meditation' Program," 8 The Justice System Journal (1983).

## **II. Court-annexed Arbitration**

Adler, Jane W., Deborah R. Hensler, and Charles Nelson, Simple Justice: How Litigants Fare in the Pittsburgh Court Arbitration Program, Rand Institute for Civil Justice, R-3071-ICJ (1983). *Describes and analyzes mandatory arbitration program in the Allegheny County Court of Common Pleas.*

Alfini, James J., and Richard W. Moore, "Court-Annexed Arbitration: A Review of the Institute for Civil Justice Publications," 12 The Justice System Journal 260-268 (1987). *Reviews four ICJ publications: (1) Judicial Arbitration in California: The First Year (Hensler, et al., 1981); (2) Simple Justice: How Litigants Fare in the Pittsburgh Court Arbitration Program (Adler, et al., 1983); (3) Introducing Court-Annexed Arbitration: A Policymaker's Guide (Rolph, 1984); and (4) Court-Annexed Arbitration: The National Picture (Ebener and Betancourt, 1985).*

An Experiment in Court-Ordered Mandatory Arbitration: Final Report, National Institute for Dispute Resolution. See also, Supplemental Report on the Phase I Mandatory Arbitration Experiment at the Superior Court of the District of Columbia: Control Group and Trial DeNovo Requests, National Institute for Dispute Resolution.

Barkai, John, and Gene Kassebaum (1990), "Pushing the Limits on Court-Annexed Arbitration" 15 Justice System Journal. *Experimental evaluation of the effects of Hawaii's court annexed arbitration program on pace, cost and quality of dispute resolution.*

Bryant, David (1989), Judicial Arbitration in California, Rand Corporation. Santa Monica.

Burton, Lloyd, John P. McIver, and Laura Stinson (1990), "Mandatory Arbitration in Colorado: An Initial Look at a Privatized ADR Program: 15 Justice System Journal.

Clark, Stevens H., Laura F. Donnelly, and Sara A. Grove (1990), "North Carolina's Experiment with Court-Ordered Arbitration" 15 Justice System Journal.

Hanson, Roger A. and Susan Keilitz (1990), "Arbitration and Case Processing Time: Lessons from Fulton County" 15 Justice System Journal.

Hanson, Roger, Geoff Gallas, and Susan Keilitz, "The Role of Management in Court-Annexed Arbitration," 12 State Court Journal 14-19 (Spring 1988). *Discusses strengths and weaknesses of existing research in area of court-annexed arbitration and relationship of strong management to success of program.*

Hensler, Deborah R. (1986), "What We Know and Don't Know About Court-Administered Arbitration" 69 Judicature 270.

Kritzer, Herbert M., and Jill K. Anderson, "The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, and Cost in the American Arbitration Association and the Courts," 8 Justice System Journal 6 (Spring 1983). *Compares state and federal court records from five federal judicial districts with AAA records from same five districts.*

Lind, E. Allan, and John E. Shapard, "Evaluation of Court-Annexed Arbitration in Three Federal District Courts," Federal Judicial Center, FJC-R-83-4 (revised edition 1983).

MacCoun, Robert (1990), "Unintended Consequences of Court Arbitration; A Cautionary Tale from New Jersey" 15 Justice System Journal. *Evaluates New Jersey's automobile arbitration program.*

MacCoun, R.J., et al., Alternative Adjudication: An Evaluation of the New Jersey Automobile Arbitration Program, Rand Institute for Civil Justice, R-3676-ICJ. (1988). *Reports results of evaluation of arbitration program in operation in New Jersey for the resolution of automobile claims.*

### **III. Divorce Mediation**

Clark, Lincoln, and Jane Orbeton, "Mandatory Mediation of Divorce: Maine's Experience," Maine Lawyer's Review 25 (September 1985). See also, 69 Judicature 310-312 (February-March 1986) *Reports successes and failures of Maine's mediation program for domestic relations cases.*

Emery, Robert E., and Melissa M. Wyer, "Divorce Mediation," 42 American Psychologist 472-480 (May 1987).

Mediation Quarterly, Journal of the Academy of Family Mediators. *Contains articles dealing with all aspects of mediation in the context of family disputes.*

Myers, Susan, Geoff Gallas, Roger Hanson and Susan Keilitz, "Court-sponsored Mediation of Divorce, Custody, Visitation, and Support: Resolving Policy Issues," 13 State Court Journal 24-31 (Winter 1989).

Myers, Susan, Geoff Gallas, Roger Hanson, and Susan Keilitz, "Divorce Mediation in the States: Institutionalization, Use, and Assessment," 12 State Court Journal 17-25 (Fall 1988).

Pearson, Jessica, and Nancy Thoennes, "Divorce Mediation: An Overview of Research Results," 19 Columbia Journal of Law and Social Problems 451-484 (1985). See also: Pearson and Thoennes, "Will This Divorced Woman Receive Child Support?" 24 The Judges' Journal 40-46 (Winter 1986) and "Divorce Mediation: Strengths and Weaknesses Over Time," Center for Policy Research and the Divorce Mediation Research Project (1982). *Reports findings from the Denver Custody Mediation Project and the Divorce Mediation Research Project.*

#### IV. Videotapes

Community Justice Mediation, Videotape, National Institute for Dispute Resolution (1988). *Presents mediation between homeowner and contractor over construction repair. Justice Center of Atlanta, Inc.*

Court-Ordered Arbitration - Minneapolis, Videotape, National Institute for Dispute Resolution (1988). *Simulates court-annexed arbitration in case involving automobile accident tort claim. Hennepin County, Minnesota.*

Court-Ordered Arbitration - Pittsburgh, Videotape, National Institute for Dispute Resolution (1988). *Presents court-annexed arbitration in case involving attempted eviction of tenant for nonpayment of rent by owner of shopping mall. Allegheny County, Pennsylvania.*

Dispute Resolution Education and Training: A Video Reference Guide, National Institute for Dispute Resolution, 1901 L Street, N.W., Suite 600, Washington, D.C. 20036, 202-466-4764.

Summary Jury Trial, Videotape, National Institute for Dispute Resolution (1988). *Re-enacts summary jury trial in groundwater contamination damage action filed by 29 plaintiffs against a major corporation. United States District Court for the Western District of Michigan, Judge Richard A. Enslen.*

Video Loan Collection of the National Center for State Courts Library: Miscellaneous Materials. *The NCSC video collection contains several videotapes on the subject of ADR. Contact Peggy Rogers, NCSC Library, for further information and annotated list of videotapes in the collection, 804-253-2000.*