U.S. Department of Justice
Office of Legal Policy
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INFORMATION PACKAGE

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STATE TRENDS IN ALTERNATIVE DISPUTE RESOLUTION

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Introduction

"The growing backlog of cases in our Nation's civil court system too often translates into sharply higher litigation costs and lengthy delays before a case is heard. In some jurisdictions, waiting periods for civil cases are as long as 5 years and trial costs can typically exceed the disputed amount."[1] This assertion also holds true for the relatively minor, quasi-criminal cases whose delays can be detrimental to both the victim and defendant.

It was within this climate that Public Law 96-190, the Dispute Resolution Act, was passed by Congress on February 12, 1980. The Act encourages the development of dispute resolution services within each State, which will provide "to all persons convenient access to dispute resolution mechanisms that are effective, fair, inexpensive, and expeditious."[2] Although no funds were ever appropriated for the purpose, and the law expired in September 1984, it effectively gave impetus to many States' development of programs to relieve court backlog and at the same time give individuals a forum in which to voice complaints.

Summarized here are the steps taken by five States to implement their dispute resolution services. Although many other States are actively involved in similar efforts, these five have documented their efforts in greatest detail.

Each has taken its own route toward development, planning, and implementation. Each has either passed State legislation or has created provisions for dispute resolution services through its judiciary. A summary of each State's efforts is discussed in relation to its program development. Appendixes provide Federal legislation, State legislation, and court rules.

1. Reforming the Civil Litigation Process: How Court Arbitration May Help. Deborah Hensler. Rand Corporation. August 1984.

2. Dispute Resolution Act. Public Law 96-190, 96th Congress. Weekly Compilation of Presidential Documents: Vol. 16, No. 7, February 12, 1980, Presidential Statement.

New York

New York was the first State to pass a comprehensive dispute resolution law that not only covered important legal issues but also provided substantial funding to new and existing programs.

The Dispute Resolution Act was signed into law by then-Governor Hugh Carey on July 27, 1981. This created the Community Dispute Resolution Centers Program. The program was to be administered by the Chief Administrative Judge of the Unified Court System of the State of New York. The provisions of this Act made $1.1 million of State money available to dispute resolution centers each year over a 3-year period. It also placed an emphasis on local resources and the use of volunteers in the programs. The law is aimed at criminal cases but also includes civil and family matters. Provisions of the law include:

- Authority for courts to grant "adjournments in contemplation of dismissal" for certain criminal proceedings on condition that the parties involved participate in dispute resolution and comply with the agreement. In effect, this means the criminal charges will be dropped if the dispute resolution effort is successful, but can be pursued if the parties drag their feet.

- The requirement that administrative costs of implementation are held to certain levels.

- The implementation of limits that restrict the State Unified Court System's involvement toward project funding to 50 percent.

Other provisions of the Dispute Resolution Act include:

- The requirement that mediators have at least 25 hours of training in conflict resolution techniques.

- Specification for a written agreement at the conclusion of the dispute resolution process, setting forth the settlement of the issues as well as future responsibilities of the parties involved. This agreement is available to any court making referrals as defined by the Act.

- Limits of monetary awards by dispute settlement centers--originally $1,000, since increased the amount to equal that in justice courts, currently $1,500.

- Confidentiality of dispute resolution proceedings, protecting both written and oral statements from subsequent disclosure. This is viewed as one of the biggest advantages to the law, in addition to State funding.

Although the law takes significant steps to encourage the growth of dispute resolution, it places careful limits on the extent of these services. This cautiousness is seen in limitations on the types of cases, the restrictions on monetary awards, and the reservation of powers of review to referring courts.

"The 'give and take' limitations in the law can perhaps be interpreted as reflecting the concerns of legislators drafting a 'new and innovative' program," a commentator has noted.3 "From the political perspective, this point might be important for those drafting such a bill in other States; i.e., that a cautious bill could pass the legislature and become law. This interpretation might also explain an October 1, 1984, expiration date: that after a trial period, the results would be carefully reviewed."

This in fact happened. A few months before the expiration date, the State's Chief Administrative Judge noted the program's overall success in case resolution, citizen satisfaction, the number of cases diverted from the courts, and cost-effectiveness, and requested that the law be given permanent status. The legislature agreed.

Today New York State has a wide network of community dispute resolution programs encompassing over 46 projects across the State with continuing plans for expansion.

3. State Legislation on Dispute Resolution. Special Committee on Alternative Means of Dispute Resolution. American Bar Association, Monograph Series--Number 1, June 1982.

New Jersey

New Jersey's involvement in a centralized dispute resolution model developed out of court initiative rather than State legislation. The New Jersey Supreme Court took an active role toward State alternative dispute resolution services by appointing an Advisory Committee on Complementary Dispute Resolution Programs. The Court charged the Committee with the task of developing a master plan for a long term, comprehensive approach to alternative dispute resolution.

On an informal basis, New Jersey has encouraged alternative dispute resolution since 1972. The 1983 Advisory Committee designation was the State's initial attempt to formalize court-related alternative dispute resolution services.

The Advisory Committee determined a need for research in the areas of alternative dispute resolution services that were already operative within the State. It divided into subcommittees to research and recommend guidelines and procedures for each judicial division, including municipal, family, and civil courts.

The Committee requested and received approval from the Supreme Court to establish experimental programs designed to test some of the popular hypotheses in dispute resolution in order to assess their application and effectiveness within the design of a long-term approach. The following programs have been implemented and are under evaluation and revision.

Municipal Courts

Programs were specifically designed to handle disputes involving people in a continuing relationship, such as spouses or business partners. The subcommittee in this area has been most recently been involved in the reconsideration of proposed guidelines for pilot citizen dispute panels. Subcommittee members are also considering whether domestic violence cases should be mediated, and are working to establish training requirements and confidentiality provisions for municipal court dispute mediation programs.

Pilot testing of a citizen's dispute mediation model was established in two New Jersey counties, Camden and Gloucester. The citizen panel model was to be used in 40 alternative dispute resolution programs within the two counties instead of the more conventional mediation models used elsewhere in the State. Distinguishing the panel model from other models were such features as a mandatory appearance before the citizen mediation panel, a panel of mediators to hear cases rather than a single mediator, and the authority of some panels to adjudicate the dispute.

These projects used volunteers as mediators. Each panel consisted of two or more mediators hearing cases on a rotating basis. A court clerk automatically referred all appropriate cases to the panels. A chairman was appointed for each panel and was responsible for scheduling cases in coordination with the court clerk.

While these programs were seen as viable alternatives to litigation, the Advisory Committee was concerned that endorsement of a single model would hinder development of other models. To allay that possibility, the Committee, in July 1985, recommended that the pilot projects go forward but that other programs might use other models. The Committee decreed, however, that all dispute resolution programs affiliated with municipal courts must adhere to a basic set of guidelines developed by the subcommittee.

Family Courts

Within the family courts, programs focus on custody mediation and divorce disputes. Within the context of custody mediation the subcommittee consulted with representatives of Hahnemann University in Philadelphia, Pennsylvania. Recommendations for divorce mediation have been deferred pending an indepth study of existing private mediation services and discussion with members of the Family Law Section of the New Jersey Bar and other interested members.

The Custody Research Project, under the Law-Psychology Graduate Program at Hahnemann, was designed to study the impact of mediated custody agreements on children. The study involves 17 programs, the results of which will be incorporated into a statewide evaluation of custody mediation. Qualitative measurement components include client satisfaction, the differences in court-mandated and voluntary mediation, and the assessment of standards for mediators in addition to the methods they use.

Comparisons are to be made among three different models of resolution for custody and visitation. The models are the traditional adversary model, the mediation procedure currently in use in New Jersey, and the model mediation methods developed for the project.

To accomplish this, one county that did not have a mediation program was asked to continue litigation as usual. A second county that did have a mediation program was asked to implement procedures developed by a subcommittee of the State Advisory Committee. A third county was asked to initiate procedures similar to those of the second county with the exception that the mediators undergo mediation training developed specifically for the project.

Civil Courts

The Comprehensive Justice Center is sponsored by the New Jersey Administrative Office of the Courts and is patterned to some extent after the American Bar Association's Multi-Door model, in which an intake and screening office recommends to the complainant which avenue of dispute resolution might best serve in the case in question. It is designed to provide a range of dispute resolution options within a central location--the Burlington County, New Jersey, Superior Court. Its objectives are twofold: to reduce court backlog and to increase disputants' access to justice.

To accomplish this, the Justice Center will assess every complaint entering the system in order to direct it to community-based alternative dispute resolution services. The Justice Center responsibilities include:

- arbitration of automobile negligence and personal injury claims;
- case assessment and referral;
- custody mediation;
- small claims court mediation; and
- municipal court dispute resolution.

This pilot project is designed to test the capacity of the New Jersey court system to enhance services to the public by providing a mix of modern management techniques and alternative dispute resolution techniques. However, its more integral component is evaluation.

Hawaii

Hawaii is in an exploratory period of testing and assessment of dispute resolution techniques and has taken steps toward enhancing dispute resolution procedures within the State. In February 1985, the Judiciary Program on Alternative Dispute Resolution was established, administered directly by the Chief Justice and the Administrative Director of the Courts. The program is seen as a catalyst for research, planning, and development of alternative dispute resolution techniques inside and outside the State's courts.

Specifically, the program's purposes are, first, to gather and disseminate current information on alternative dispute resolution; second, to explore, test, and evaluate new resolution methods; and third, to assist in the institutionalization, where appropriate, of alternative dispute resolution methods.

To accomplish this, in its first year the Judiciary Program undertook the following projects and activities:

- It organized and implemented a pilot court-annexed arbitration program in Hawaii's civil courts.
- It developed a judicial training program in the areas of negotiation, mediation, and settlement evaluation, and tested the use of attorney-mediators to assist with pretrial settlement conferences.
- It continued to explore the use of negotiated and mediated approaches to settling public policy land use disputes.
- It produced and distributed "Alternative Dispute Resolution Trends and Abstracts," a bimonthly digest of research, theory, and practice findings.

Projects for the second year include:

- Testing the use of court-appointed special masters for public interest disputes.
- Drafting concept papers on Hawaii's alternative dispute resolution program and international dispute resolution.
- Developing a strategic alternative dispute resolution program for the State's long-term plan.

Michigan

Michigan has initiated a two-step process aimed at identifying alternative dispute resolution services within the State, both private and court-administered, in addition to promulgating rules for mediation services administered through the State Court Administrative Office. An amendment to the Michigan Court Rules issued in January 1985, MCR 2.403, provides for mediation of any civil action where relief consists of monetary damages or division of property. A revision of this rule in March 1985 broadens its applicability for mediation of any case except domestic disputes.

Any circuit or district court desiring to employ mediation within its jurisdiction must first promulgate regulations for its design and use as required by the rule and, further, request approval of the Michigan Supreme Court.

Provisions of MCR 2.403 include:

- Mediation panels are to be composed of three persons.
- Procedure for panel selection must be provided by local administrative order and may set minimum qualifications for mediators.
- A judge may serve as a mediator, but may not preside at the trial of any action on which he or she served as a mediator.
- A fee of $75 from each party is required within 14 days of the notice of a mediation hearing, except that when a judge is a member of the panel, the charge is $50.

In looking toward long-term planning in the overall improvement of the Michigan Court System, projections for the next 5 years for trial-court funding would eventually incorporate funding of local mediation program efforts. (See Appendix IV, Michigan Court Rule 2.403 Mediation.)

Oklahoma

Section 1803.1, Title 12, of the Oklahoma Statutes created in the State Treasury effective November 1, 1985, a fund for the State Supreme Court to be designated the "Dispute Resolution Revolving Fund." (See Appendix V.)

Oklahoma is the first State to create a funding mechanism for dispute resolution that is not tied to fiscal year appropriations. This is considered advantageous since alternative dispute resolution programs funded through the Revolving Fund will not be affected by fiscal limitations.

Moneys for the Revolving Fund will be secured through court-assessed costs and user fees; an additional $2 will be assessed for filing civil claims. In addition, a user fee of $5 is requested prior to mediation from both the complainant and respondent.

Eligible fund recipients include proposed or established county or municipal programs that submit an application for funding. State agencies may also apply for grants. Periodic evaluations of funded programs and yearly audits to be conducted by the State Auditor and Inspector are required.

With the Administrative Director of the Courts responsible for the collection and distribution of funds, alternative dispute resolution becomes a permanent element of the judicial branch and an institutionalized system for Oklahoma. Smaller communities will have the same opportunity as larger ones to apply for funds, thereby giving all jurisdictions the option of alternative dispute resolution services.

Public Law 96-190. Ninety-Sixth U.S. Congress. February 12, 1980

APPENDIX I

Public Law 96-190
96th Congress

An Act

To provide financial assistance for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution for minor disputes.

Feb. 12, 1980
[S. 423]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Dispute Resolution Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Dispute Resolution Act". 28 USC app.

SEC. 2. (a) The Congress finds and declares that— 28 USC app.

(1) for the majority of Americans, mechanisms for the resolution of minor disputes are largely unavailable, inaccessible, ineffective, expensive, or unfair;

(2) the inadequacies of dispute resolution mechanisms in the United States have resulted in dissatisfaction and many types of inadequately resolved grievances and disputes;

(3) each individual dispute, such as that between neighbors, a consumer and seller, and a landlord and tenant, for which adequate resolution mechanisms do not exist may be of relatively small social or economic magnitude, but taken collectively such disputes are of enormous social and economic consequence;

(4) there is a lack of necessary resources or expertise in many areas of the Nation to develop new or improved consumer dispute resolution mechanisms, neighborhood dispute resolution mechanisms, and other necessary dispute resolution mechanisms;

(5) the inadequacy of dispute resolution mechanisms throughout the United States is contrary to the general welfare of the people;

(6) neighborhood, local, or community based dispute resolution mechanisms can provide and promote expeditious, inexpensive, equitable, and voluntary resolution of disputes, as well as serve as models for other dispute resolution mechanisms; and

(7) the utilization of neighborhood, local, or community resources, including volunteers (and particularly senior citizens) and available building space such as space in public facilities, can provide for accessible, cost-effective resolution of minor disputes.

(b) It is the purpose of this Act to assist the States and other interested parties in providing to all persons convenient access to dispute resolution mechanisms which are effective, fair, inexpensive, and expeditious.

DEFINITIONS

SEC. 3. For purposes of this Act— 28 USC app.

(1) the term "Advisory Board" means the Dispute Resolution Advisory Board established under section 7(a);

(2) the term "Attorney General" means the Attorney General of the United States (or the designee of the Attorney General of the United States);

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(3) the term "Center" means the Dispute Resolution Resource Center established under section 6(a);

(4) the term "dispute resolution mechanism" means—

(A) a court with jurisdiction over minor disputes;

(B) a forum which provides for arbitration, mediation, conciliation, or a similar procedure, which is available to resolve a minor dispute; or

(C) a governmental agency or mechanism with the objective of resolving minor disputes;

(5) the term "grant recipient" means any State or local government, any State or local governmental agency, and any nonprofit organization which receives a grant under section 8;

(6) the term "local" means of or pertaining to any political subdivision of a State; and

(7) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

CRITERIA FOR DISPUTE RESOLUTION MECHANISMS

28 USC app.

SEC. 4. Any grant recipient which desires to use any financial assistance received under this Act in connection with establishing or maintaining a dispute resolution mechanism shall provide satisfactory assurances to the Attorney General that the dispute resolution mechanism will provide for—

(1) assistance to persons using the dispute resolution mechanism;

(2) the resolution of disputes at times and locations which are convenient to persons the dispute resolution mechanism is intended to serve;

(3) adequate arrangements for participation by persons who are limited by language barriers or other disabilities;

(4) reasonable, fair, and readily understandable forms, rules, and procedures, which shall include, where appropriate, those which would—

(A) ensure that all parties to a dispute are directly involved in the resolution of the dispute, and that the resolution is adequately implemented;

(B) promote, where feasible, the voluntary resolution of disputes (including the resolution of disputes by the parties before resorting to the dispute resolution mechanism established by the grant recipient);

(C) promote the resolution of disputes by persons not ordinarily involved in the judicial system;

(D) provide an easy way for any person to determine the proper name in which, and the proper procedure by which, any person may be made a party to a dispute resolution proceeding;

(E) permit the use of dispute resolution mechanisms by the business community if State law so permits; and

(F) ensure reasonable privacy protection for individuals involved in the dispute resolution process;

(5) the dissemination of information relating to the availability, location, and use of other redress mechanisms in the event that dispute resolution efforts fail or the dispute involved does not come within the jurisdiction of the dispute resolution mechanism;

(6) consultation and cooperation with the community and with governmental agencies; and

(7) the establishment of programs or procedures for effectively, economically, and appropriately communicating to disputants the availability and location of the dispute resolution mechanism.

DEVELOPMENT OF DISPUTE RESOLUTION MECHANISMS BY STATES

SEC. 5. Each State is hereby encouraged to develop— 28 USC app.

(1) sufficient numbers and types of readily available dispute resolution mechanisms which meet the criteria established in section 4; and

(2) a public information program which effectively communicates to potential users the availability and location of such dispute resolution mechanisms. Public information program.

ESTABLISHMENT OF PROGRAM; DISPUTE RESOLUTION RESOURCE CENTER

SEC. 6. (a) The Attorney General shall establish a Dispute Resolution Program in the Department of Justice. Such program shall include establishment of a Dispute Resolution Resource Center and a Dispute Resolution Advisory Board and the provision of financial assistance under section 8. 28 USC app.

(b) The Center— Functions.

(1) shall serve as a national clearinghouse for the exchange of information concerning the improvement of existing dispute resolution mechanisms and the establishment of new dispute resolution mechanisms;

(2) shall provide technical assistance to State and local governments and to grant recipients to improve existing dispute resolution mechanisms and to establish new dispute resolution mechanisms;

(3) shall conduct research relating to the improvement of existing dispute resolution mechanisms and to the establishment of new dispute resolution mechanisms, and shall encourage the development of new dispute resolution mechanisms;

(4) shall undertake comprehensive surveys of the various State and local governmental dispute resolution mechanisms and major privately operated dispute resolution mechanisms in the States, which shall determine— Surveys.

(A) the nature, number, and location of dispute resolution mechanisms in each State;

(B) the annual expenditure and operating authority for each such mechanism;

(C) the existence of any program for informing the potential users of the availability of each such mechanism;

(D) an assessment of the present use of, and projected demand for, the services offered by each such mechanism; and

(E) other relevant data relating to the types of disputes addressed by each such mechanism including the average cost and time expended in resolving various types of disputes;

(5) shall identify, after consultation with the Advisory Board those dispute resolution mechanisms or aspects thereof whic

(A) are most fair, expeditious, and inexpensive to parties in the resolution of disputes; and

(B) are suitable for general adoption;

(6) shall make recommendations, after consultation with the Advisory Board, regarding the need for new or improved dispute resolution mechanisms and similar mechanisms;

(7) shall identify, after consultation with the Advisory Board, the types of minor disputes which are most amenable to resolution through specific dispute resolution techniques, in order to assist the Attorney General in determining the types of projects which shall receive financial assistance under section 8;

(8) shall, as soon as practicable after the date of the enactment of this Act, undertake an information program to advise potential grant recipients, and the chief executive officer, attorney general, and chief judicial officer of each State, of the availability of funds, and eligibility requirements, under this Act;

Grants and contracts.

(9) may make grants to, or enter into contracts with, to the extent or in such amounts as are provided in appropriation Acts, public agencies, institutions of higher education, and qualified persons to conduct research, demonstrations, or special projects designed to carry out the provisions of paragraphs (1) through (7); and

(10) in awarding such grants and entering into such contracts, shall have as one of its major priorities dispute resolution mechanisms that resolve consumer disputes.

(c) Upon request of the Center, the Community Relations Service of the Department of Justice and the Federal Mediation and Conciliation Service are authorized to assist the Center in performing its functions under this section.

Detailed Federal employees.

(d) Upon the request of the Attorney General, not more than a total of ten Federal employees from the various executive agencies (as defined in section 105 of title 5, United States Code) may be detailed to the Center to assist the Center to perform its functions under this Act. The head of any such agency, with the consent of the employee concerned, may enter into an agreement with the Attorney General to provide for the detail of any employee of his agency for a period of not more than five years, notwithstanding the time limitation contained in section 3341 of title 5, United States Code. An employee detailed under this section is considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed. Such employee is entitled to pay, allowances, and other benefits from funds available to the agency from which such employee is detailed, except that the Department of Justice shall pay to such employee all travel expenses and allowances payable for services performed during the detail.

Travel expenses and allowances.

DISPUTE RESOLUTION ADVISORY BOARD

28 USC app.

SEC. 7. (a) The Attorney General shall establish a Dispute Resolution Advisory Board in the Department of Justice.

Functions.

(b) The Advisory Board shall—

(1) advise the Attorney General with respect to the administration of the Center under section 6 and the administration of the financial assistance program under section 8;

(2) consult with the Center in accordance with the provisions of section 6(b)(5), section 6(b)(6), and section 6(b)(7); and

(3) consult with the Attorney General in accordance with the provisions of sections 8(b)(4) and 9(d).

Membership

(c)(1) The Advisory Board shall consist of nine members appointed by the Attorney General, and shall be composed of persons from State governments, local governments, business organizations, the academic or research community, neighborhood organizations, community organizations, consumer organizations, the legal profession, and State courts.

Vacancies.

(2) A vacancy in the Advisory Board shall be filled in the same manner as the original appointment.

Terms.

(3)(A) Except as provided in subparagraph (B), members of the Advisory Board shall be appointed for terms which expire at the end of September 30, 1984.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of the term.

Travel expenses and per diem.

(d) While away from their homes or regular places of business in the performance of services for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Federal Government service are allowed expenses under section 5703 of title 5, United States Code. The members of the Advisory Board shall receive no compensation for their services except as provided in this subsection.

(e) The Chairman of the Federal Trade Commission may advise and consult with the Attorney General, and may consult with the Center, regarding matters within its jurisdiction.

FINANCIAL ASSISTANCE

28 USC app.

SEC. 8. (a) The Attorney General may provide financial assistance in the form of grants to applicants who have submitted, in accordance with subsection (c), applications for the purpose of improving existing dispute resolution mechanisms or establishing new dispute resolution mechanisms.

Grant applications.

(b) As soon as practicable after the date of the enactment of this Act, the Attorney General shall prescribe—

(1) the form and content of applications for financial assistance to be submitted in accordance with subsection (c);

(2) the time schedule for submission of such applications;

(3) the procedures for approval of such applications, and for notification to each State of financial assistance awarded to applicants in the State for any fiscal year;

Development of criteria.

(4) after consultation with the Advisory Board, the specific criteria for awarding grants to applicants under this section, which shall—

(A) be consistent with the criteria established in section 4;

(B) take into account—

(i) the population and population density of the States in which applicants for financial assistance available under this section are located;

(ii) the financial need of States and localities in which such applicants are located;

(iii) the need in the State or locality involved for the type of dispute resolution mechanism proposed;

(iv) the national need for experience with the type of dispute resolution mechanism proposed; and

(v) the need for obtaining experience in each region of the Nation with dispute resolution mechanisms in a diversity of situations, including rural, suburban, urban situations; and

(C) provide that one of the major priorities of the Attorney General shall be the funding of dispute resolution mechanisms that resolve consumer disputes;

Reports.

(5)(A) the form and content of such reports to be filed under this section as may be reasonably necessary to monitor compliance with the requirements of this Act and to evaluate the effectiveness of projects funded under this Act; and

(B) the procedures to be followed by the Attorney General in reviewing such reports;

(6) the manner in which financial assistance received under this section may be used, consistent with the purposes specified in subsection (e); and

Publication in Federal Register.

(7) procedures for publishing in the Federal Register a notice and summary of approved applications.

(c) Any State or local government, State or local governmental agency, or nonprofit organization shall be eligible to receive a grant for financial assistance under this section. Any such entity which desires to receive a grant under this section may submit an application to the Attorney General in accordance with the specific criteria established by the Attorney General under subsection (b)(4). Such application shall—

Application contents.

(1) set forth a proposed plan demonstrating the manner in which the financial assistance will be used—

(A) to establish a new dispute resolution mechanism which satisfies the criteria specified in section 4; or

(B) to improve an existing dispute resolution mechanism in order to bring such mechanism into compliance with such criteria;

(2) set forth the types of disputes to be resolved by the dispute resolution mechanism;

(3) identify the person responsible for administering the project set forth in the application;

(4) include an estimate of the cost of the proposed project;

(5) provide for the establishment of fiscal controls and fund accounting of Federal financial assistance received under this Act;

(6) provide for the submission of reports in such form and containing such information as the Attorney General may require under subsection (b)(5)(A);

(7) set forth the nature and extent of participation of interested parties, including representatives of those individuals whose disputes are to be resolved by the mechanism, in the development of the application; and

(8) describe the qualifications, period of service, and duties of persons who will be charged with resolving or assisting in the resolution of disputes.

(d) The Attorney General, in determining whether to approve any application for financial assistance to carry out a project under this section, shall give special consideration to projects which are likely to continue in operation after expiration of the grant made by the Attorney General.

Use of assistance funds.

(e)(1) Financial assistance available under this section may be used only for the following purposes—

(A) compensation of personnel engaged in the administration, adjudication, conciliation, or settlement of minor disputes, including personnel whose function is to assist in the preparation and resolution of claims and the collection of judgments;

(B) recruiting, organizing, training, and educating personnel described in subparagraph (A);

(C) improvement or leasing of buildings, rooms, and other facilities and equipment and leasing or purchase of vehicles needed to improve the settlement of minor disputes;

(D) continuing monitoring and study of the mechanisms and settlement procedures employed in the resolution of minor disputes in a State;

(E) research and development of effective, fair, inexpensive, and expeditious mechanisms and procedures for the resolution of minor disputes;

(F) sponsoring programs of nonprofit organizations to carry out any of the provisions of this paragraph; and

(G) other necessary expenditures directly related to the operation of new or improved dispute resolution mechanisms.

Restriction on financial assistance.

(2) Financial assistance available under this section may not be used for the compensation of attorneys for the representation of disputants or claimants or for otherwise providing assistance in any adversary capacity.

Notice of application to State officers.

(f)(1) In the case of an application for financial assistance under this section submitted by a local government or governmental agency, the Attorney General shall furnish notice of such application to the chief executive officer, attorney general, and chief judicial officer of the State in which such applicant is located at least thirty days before the approval of such application. The chief executive officer, attorney general, and chief judicial officer of the State shall be given an opportunity to submit written comments to the Attorney General regarding such application and the Attorney General shall take such comments into consideration in determining whether to approve such application.

(2) In the case of an application for financial assistance under this section submitted by a nonprofit organization, the Attorney General shall furnish notice of such application to the chief executive officer, attorney general, and chief judicial officer of the State in which the applicant is located and to the chief executive officers of the units of general local government in which such applicant is located at least thirty days before the approval of such application. The chief executive officer, attorney general, and chief judicial officer of the State, and the chief executive officers of the units of general local government shall be given an opportunity to submit written comments to the Attorney General regarding such application and the Attorney General shall take such comments into consideration in determining whether to approve such application.

Estimated project cost, disbursement.

(g)(1) Upon the approval of an application by the Attorney General under this section, the Attorney General shall disburse to the grant recipient involved such portion of the estimated cost of the approved project as the Attorney General considers appropriate, except that the amount of such disbursement shall be subject to the provisions of paragraph (2).

Federal share

(2) The Federal share of the estimated cost of any project approved under this section shall not exceed—

(A) 100 per centum of the estimated cost of the project, for the first and second fiscal years for which funds are available for grants under this section;

(B) 75 per centum of the estimated cost of the project, for the third fiscal year for which funds are available for such grants; and

(C) 60 per centum of the estimated cost of the project, for the fourth fiscal year for which funds are available for such grants.

Payments

(3) Payments made under this subsection may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayment or overpayment. Such payments shall not be used to compensate for any administrative expense incurred in submitting an application for a grant under this section.

(4) In the case of any State or local government, or State or local governmental agency, which desires to receive financial assistance under this section, such government or agency may not receive any such financial assistance for any fiscal year if its expenditure of non-Federal funds for other than nonrecurrent expenditures for the establishment and administration of dispute resolution mechanisms will be less than its expenditure for such purposes in the preceding fiscal year, unless the Attorney General determines that a reduction in expenditures is reasonable.

Notice and hearing on project compliance.

(h) Whenever the Attorney General, after giving reasonable notice and opportunity for hearing to any grant recipient, finds that the project for which such grant was received no longer complies with the provisions of this Act, or with the relevant application as approved by the Attorney General, the Attorney General shall notify such grant recipient of such findings and no further payments may be made to such grant recipient by the Attorney General until the Attorney General is satisfied that such noncompliance has been, or promptly will be, corrected. The Attorney General may authorize the continuance of payments with respect to any program pursuant to this Act which is being carried out by such grant recipient and which is not involved in the noncompliance.

Independent study, contract.

(i) The Attorney General, to the extent or in such amounts as are provided in appropriation Acts shall enter into a contract for an independent study of the Dispute Resolution Program. The study shall evaluate the performance of such program and determine its effectiveness in carrying out the purpose of this Act. The study shall contain such recommendations for additional legislation as may be appropriate, and shall include recommendations concerning the continuation or termination of the Dispute Resolution Program. Not later than April 1, 1984, the Attorney General shall make public and submit to each House of the Congress a report of the results of the study.

Report to Congress.

(j) No funds for assistance available under this section shall be expended until one year after the date of the enactment of this Act.

RECORDS; AUDIT; ANNUAL REPORT

42 USC app.

SEC. 9. (a) Each grant recipient shall keep such records as the Attorney General shall require, including records which fully disclose the amount and disposition by such grant recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the project or undertaking supplied by other sources, and such other records as will assist in effective financial and performance audits.

Restriction on Attorney General's authority

(b) The Attorney General shall have access for purposes of audit and examination to any relevant books, documents, papers, and records of grant recipients. The authority of the Attorney General under this subsection is restricted to compiling information necessary to the filing of the annual report required under this section. No

information revealed to the Attorney General pursuant to such audit and examination about an individual or business which has utilized the dispute resolution mechanism of a grant recipient may be used in, or disclosed for, any administrative, civil, or criminal action or investigation against the individual or business except in an action or investigation arising out of and directly related to the program being audited and examined.

Access to records by Comptroller General.

(c) The Comptroller General of the United States, or any duly authorized representatives of the Comptroller General, shall have access to any relevant books, documents, papers, and records of grant recipients until the expiration of three years after the final year of the recipient of any financial assistance under this Act, for the purpose of financial and performance audits and examination.

Report to President and Congress.

(d) The Attorney General, in consultation with the Advisory Board shall submit to the President and the Congress not later than one year after the date of the enactment of this Act, and on or before February 1 of each succeeding year, a report relating to the administration of this Act during the preceding fiscal year. Such report shall include—

(1) a list of all grants awarded;

(2) a summary of any actions undertaken in accordance with section 8(h);

(3) a listing of the projects undertaken during such fiscal year and the types of other dispute resolution mechanisms which are being created, and, to the extent feasible, a statement as to the success of all mechanisms in achieving the purpose of this Act;

(4) the results of financial and performance audits conducted under this section; and

(5) an evaluation of the effectiveness of the Center in implementing this Act, including a detailed analysis of the extent to which the purpose of this Act has been achieved, together with recommendations with respect to whether and when the program should be terminated and any recommendations for additional legislation or other action.

AUTHORIZATION OF APPROPRIATIONS

28 USC app.

SEC. 10. (a) To carry out the provisions of section 6 and section 7, there is authorized, to be appropriated to the Attorney General $1,000,000 for each of the fiscal years 1980, 1981, 1982, 1983, and 1984.

(b) To carry out the provisions of section 8, there is authorized to be appropriated to the Attorney General $10,000,000 for each of the fiscal years 1981, 1982, 1983, and 1984.

(c) Sums appropriated under this section are authorized to remain available until expended.

Approved February 12, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT: No. 96-492, Pt. 1 (Comm. on Interstate and Foreign Commerce) and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:
Vol. 125 (1979): Apr. 5, considered and passed Senate.
Dec. 10-12, considered and passed House, amended.
Vol. 126 (1980): Jan. 30, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 16, No. 7, Feb. 12, Presidential statement.

○

Dispute Resolution Act. New York.

APPENDIX II

STATE OF NEW YORK

1973—B

R. R. 602

1981-1982 Regular Sessions

IN ASSEMBLY

January 26, 1981

Introduced by M. of A. KREMER, EVE, M. H. MILLER, SEMINERIO, NEWBURGER—Multi-Sponsored by—M. of A. BIANCHI, BRAGMAN, BRANCA, BUSH, DANIELS, FOSSEL, GOLDSTEIN, GRANNIS, GREEN, HARENBERG, KOPPELL, LEWIS, LIPSCHUTZ, ORAZIO, PILLITTERE, ROBACH, SHAFFER, SMOLER, STAVISKY, WILSON, YEVOLI, CONNELLY, HINCHEY, JACOBS, VIGGIANO, WERTZ, PERONE, WEMPLE—read once and referred to the Committee on Judiciary—reported and referred to the Committee on Rules—Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules—passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT to amend the criminal procedure law and the judiciary law, in relation to the establishment of programs for community dispute resolution and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The resolution of certain criminal matters can be costly and complex in the context of a formal judicial proceeding. The involved procedures and the attendant constraints are not always conducive to affording the greatest assurance to the public and persons involved against the recurrence of such conduct. Each individual dispute, which is not adequately resolved may be of small social or economic magnitude, but taken collectively such disputes are of enormous social or economic consequence.

To assist in the resolution of disputes in a complex society, there is a compelling need for the creation of dispute resolution centers as alternatives to structured judicial settings. Community dispute resolution centers can meet the needs of their community by providing forums in

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD1-11-12-1190B

which persons can participate in the resolution of disputes in an informal atmosphere without restraint and intimidation. The utilization of local resources, including volunteers and available building space, such as space in public facilities, can provide for accessible, cost-effective resolutions of minor disputes. While there presently exists centers where dispute resolution is available, the lack of financial resources limits their operation. Community dispute resolution centers can serve the interests of the citizenry and promote quick and voluntary resolution of certain criminal matters.

§ 2. Section 170.55 of the criminal procedure law is amended by adding a new subdivision four to read as follows:

4. The court may grant an adjournment in contemplation of dismissal on condition that the defendant participate in dispute resolution and comply with any award or settlement resulting therefrom.

§ 3. The judiciary law is amended by adding a new article twenty-one-A to read as follows:

ARTICLE 21-A
COMMUNITY DISPUTE RESOLUTION
CENTERS PROGRAM

Section 849-a. Definitions.
849-b. Establishment and administration of centers.
849-c. Application procedures.
849-d. Payment procedures.
849-e. Funding.
849-f. Rules and regulations.
849-g. Reports.

§ 849-a. Definitions. For the purposes of this article:

1. "Center" means a community dispute center which provides conciliation, mediation, arbitration or other forms and techniques of dispute resolution.

2. "Mediator" means an impartial person who assists in the resolution of a dispute.

3. "Grant recipient" means any nonprofit organization that administers a community dispute resolution center pursuant to this article, and is organized for the resolution of disputes or for religious, charitable or educational purposes.

§ 849-b. Establishment and administration of centers. 1. There is hereby established the community dispute resolution center program, to be administered and supervised under the direction of the chief administrator of the courts, to provide funds pursuant to this article for the establishment and continuance of dispute resolution centers on the basis of need in neighborhoods.

2. Every center shall be operated by a grant recipient.

3. All centers shall be operated pursuant to contract with the chief administrator and shall comply with all provisions of this article. The chief administrator shall promulgate rules and regulations to effectuate the purposes of this article, including provisions for periodic monitoring and evaluation of the program.

4. A center shall not be eligible for funds under this article unless:

(a) it complies with the provisions of this article and the applicable rules and regulations of the chief administrator;

(b) it provides neutral mediators who have received at least twenty-five hours of training in conflict resolution techniques;

(c) it provides dispute resolution without cost to indigents and at nominal or no cost to other participants;

(d) it provides that during or at the conclusion of the dispute resolution process there shall be a written agreement or decision setting forth the settlement of the issues and future responsibilities of each party and that such agreement or decision shall be available to a court which has adjourned a pending action pursuant to section 170.55 of the criminal procedure law;

(e) it does not make monetary awards except upon consent of the parties and such awards do not exceed one thousand dollars; and

(f) it does not accept for dispute resolution any defendant who has a pending felony charge contained in an indictment or information arising out of the same transaction or involving the same parties, or who is named in a filed accusatory instrument (i) charging a violent felony offense as defined in section 70.02 of the penal law, or (ii) any drug offense as defined in article two hundred twenty of the penal law, or (iii) if convicted, would be a second felony offender as defined in section 70.06 of the penal law.

5. Parties must be provided in advance of the dispute resolution process with a written statement relating:

(a) their rights and obligations;

(b) the nature of the dispute;

(c) their right to call and examine witnesses;

(d) that a written decision with the reasons therefor will be rendered; and

(e) that the dispute resolution process will be final and binding upon the parties.

6. Except as otherwise expressly provided in this article, all memoranda, work products, or case files of a mediator are confidential and not subject to disclosure in any judicial or administrative proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person present at the dispute resolution shall be a confidential communication.

§ 849-c. Application procedures. 1. Funds appropriated or available for the purposes of this article may be allocated for programs proposed by eligible centers. Nothing in this article shall preclude existing resolution centers from applying for funds made available under this article provided that they are otherwise in compliance with this article.

2. Centers shall be selected by the chief administrator from applications submitted.

3. The chief administrator shall require that applications submitted for funding include, but need not be limited to the following:

(a) The cost of each of the proposed centers components including the proposed compensation of employees.

(b) A description of the proposed area of service and number of participants who may be served.

(c) A description of available dispute resolution services and facilities within the proposed geographical area.

(d) A description of the applicant's proposed program, including support of civic groups, social services agencies and criminal justice agencies to accept and make referrals; the present availability of resources; and the applicant's administrative capacity.

(e) Such additional information as is determined to be needed pursuant to rules of the chief administrator.

§ 849-d. Payment procedures. 1. Upon the approval of the chief administrator, funds appropriated or available for the purposes of this arti-

cle shall be used for the costs of operation of approved programs. The methods of payment or reimbursement for dispute resolution costs shall be specified by the chief administrator and may vary among centers. All such arrangements shall conform to the eligibility criteria of this article and the rules and regulations of the chief administrator.

2. The state share of the cost of any center approved under this section may not exceed fifty per centum of the approved estimated cost of the program.

§ 849-e. Funding. 1. The chief administrator may accept and disburse from any public or private agency or person, any money for the purposes of this article.

2. The chief administrator may also receive and disburse federal funds for purposes of this article, and perform services and acts as may be necessary for the receipt and disbursement of such federal funds.

(a) A grant recipient may accept funds from any public or private agency or person for the purposes of this article.

(b) The state comptroller, the chief administrator and their authorized representatives, shall have the power to inspect, examine and audit the fiscal affairs of the program.

(c) Centers shall, whenever reasonably possible, make use of public facilities at free or nominal cost.

§ 849-f. Rules and regulations. The chief administrator shall promulgate rules and regulations to effectuate the purposes of this article.

§ 849-g. Reports. Each resolution center funded pursuant to this article shall annually provide the chief administrator with statistical data regarding the operating budget, the number of referrals, categories or types of cases referred, number of parties serviced, number of disputes resolved, nature of resolution, amount and type of awards, rate of compliance, returnees to the resolution process, duration and estimated costs of hearings and such other information the chief administrator may require and the cost of hearings as the chief administrator requires. The chief administrator shall thereafter report annually to the governor and the legislature regarding the operation and success of the centers funded pursuant to this article. Such annual report shall also evaluate and make recommendations regarding the operation and success of such center.

§ 4. The sum of one million ninety-nine thousand dollars ($1,099,000), or so much thereof as may be necessary, is hereby appropriated from any monies in the general fund to the credit of the state purposes fund and not otherwise appropriated and made immediately available to the office of court administration to carry out the provisions of this act. Provided, however, that no part of such monies in excess of one hundred thousand dollars may be used by the chief administrator to pay the cost of the personal services, maintenance, and operation incurred by the chief administrator in administering the provisions of this act. All monies appropriated pursuant to this act shall be apportioned and distributed for dispute resolution programs within the indicated municipalities in accordance with the following schedule and shall be in addition to any monies otherwise available for such purposes and shall be payable out of the state treasury after audit by and on the warrant of the comptroller on vouchers certified or approved by the chief administrator as prescribed by law.

SCHEDULE

Albany county	20,000
Broome county	24,000

Clinton county		24,000
Dutchess county		33,000
Erie county		63,000
Monroe county		80,000
New York city		383,000
Nassau county		70,000
Onondaga county		63,000
Orange county		33,000
Rensselaer county		20,000
Rockland county		33,000
Schenectady county		20,000
Suffolk county		70,000
Westchester county		63,000

§ 5. This act shall take effect immediately and shall remain in full force and effect until the first day of October, nineteen hundred eighty-four.

New Jersey Court Rule 7:3-2

APPENDIX III

7:3-2. Notice in Lieu of Complaint

If the offense charged may constitute a minor neighborhood or domestic dispute, a notice may issue to the person or persons charged, requesting their appearance before the court, or such person or program designated by the court and approved by the Assignment Judge, in order to determine whether or not a complaint should issue or other appropriate action be taken.

No statement or other disclosure by a disputant in a mediation session shall be disclosed at any time, nor shall any such statement or disclosure be admitted as evidence in any civil, criminal, disorderly or petty disorderly proceeding against the disputant. A mediator has a duty to disclose to the proper authority information obtained at a mediation session when the mediator reasonably believes disclosure will prevent the participants from committing a criminal or illegal act that is likely to result in death or substantial bodily harm. A lawyer representing a client at a mediation session shall be governed by the provisions of RPC 1.6.

No person designated by the court and approved by the Assignment Judge to serve under this rule shall participate in any subsequent hearing, trial or appear as witness or counsel for any person who has appeared before the designated person.

Note: Source—R.R. 8:3-1(b); amended July 29, 1977 to be effective September 6, 1977; amended November 1, 1985 to be effective January 2, 1986.

Michigan Court Rule 2.403 Mediation.

APPENDIX IV

Rule 2.403 Mediation

(A) **Scope and Applicability of Rule.** A court may submit to mediation any civil action in which the relief sought consists of money damages or division of property.

(B) **Selection of Cases.**

(1) The judge to whom an action is assigned or the chief judge may select it for mediation by written order no earlier than 91 days after the filing of the answer

(a) on written stipulation by the parties,

(b) on written motion by a party, or

(c) on the judge's own initiative.

(2) Selection of an action for mediation has no effect on the normal progress of the action toward trial.

(C) **Objections to Mediation.**

(1) To object to mediation, a party must file a written motion to remove from mediation and a notice of hearing of the motion and serve a copy on the attorneys of record and the mediation clerk within 14 days after notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the court orders otherwise.

(2) A timely motion must be heard before the case is submitted to mediation.

(D) **Mediation Panel.**

(1) Mediation panels shall be composed of 3 persons.

(2) The procedure for selecting mediation panels must be provided by local administrative order, and may set minimum qualifications for mediators.

(3) A judge may be selected as a member of a mediation panel, but may not preside at the trial of any action in which he or she served as a mediator.

(E) **Disqualification of Mediators.** The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge.

(F) **Mediation Clerk.** The court shall designate the clerk of the court, the court administrator, the assignment clerk, or some other person to serve as the mediation clerk.

(G) **Scheduling Mediation Hearing.**

(1) The mediation clerk shall set a time and place for the hearing and send notice to the mediators and the attorneys at least 28 days before the date set.

(2) Adjournments may be granted only for good cause, in accordance with MCR 2.503.

(H) Fees.

(1) Within 14 days after the mailing of the notice of the mediation hearing, each party must send to the mediation clerk a check for $75 made payable in the manner specified in the notice of the mediation hearing. However, if a judge is a member of the panel, the fee is $50. Only a single fee is required of each party, even where there are counterclaims, cross-claims, or third-party claims. The mediation clerk shall arrange payment to the mediators.

(2) If one claim is derivative of another (e.g. husband-wife, parent-child) they must be treated as a single claim, with one fee to be paid and a single award made by the mediators.

(3) In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the action as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid for each plaintiff, and the mediation panel will then make separate awards for each claim, which may be individually accepted or rejected.

(I) Submission of Documents.

(1) At least 7 days before the hearing date, each party shall submit to the mediation clerk 3 copies of documents pertaining to the issues to be mediated and 3 copies of a concise brief or summary setting forth that party's factual or legal position on issues presented by the action. In addition, one copy must be served on each attorney of record.

(2) Failure to submit these materials to the mediation clerk within the above-designated time subjects the offending party to a $60 penalty to be paid at the time of the mediation hearing and distributed equally among the attorney-mediators.

(J) Conduct of Hearing.

(1) A party has the right, but is not required, to attend a mediation hearing. If scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party.

(2) The rules of evidence do not apply before the mediation panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.

(3) Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. The mediation panel may request information on applicable insurance policy limits and may inquire about settlement negotiations, unless a party objects.

(4) Statements by the attorneys and the briefs or summaries are not admissible in any court or evidentiary proceeding.

(K) Decision.

(1) Within 14 days after the hearing, the panel will make an evaluation and notify the attorney for each party of its evaluation in writing. If an award is not unanimous, the evaluation must so indicate.

(2) The evaluation must include a separate award as to each cross-claim, counterclaim, or third-party claim that has been filed in the action. For the purpose of this subrule all such claims filed by any one party against any other party shall be treated as a single claim.

(L) Acceptance or Rejection of Evaluation.

(1) Each party must file a written acceptance or rejection of the panel's evaluation with the mediation clerk within 28 days after service of the panel's evaluation. The failure to file a written acceptance or rejection within 28 days constitutes acceptance.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the mediation clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In mediations involving multiple parties the following rules apply:

(a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party must either accept or reject the evaluation in its entirety.

(b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if all opposing parties accept. If this limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

(c) If a party makes a limited acceptance under subrule (L)(3)(b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of subrule (O) the party who made the limited acceptance is deemed to have rejected as to those opposing parties who accept.

(M) Effect of Acceptance of Evaluation.

(1) If all the parties accept the panel's evaluation, judgment will be entered in that amount, which includes all fees, costs, and interest to the date of judgment.

(2) In a case involving multiple parties, judgment shall be entered as to those opposing parties who have accepted the portions of the evaluation that apply to them.

(N) **Proceedings After Rejection.**

(1) If all or part of the evaluation of the mediation panel is rejected, the action proceeds to trial in the normal fashion.

(2) The mediation clerk shall place a copy of the mediation evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.

(3) If the mediation evaluation of an action pending in the circuit court does not exceed the jurisdictional limitation of the district court, the mediation clerk shall so inform the trial judge.

(O) **Rejecting Party's Liability for Costs.**

(1) If a party has rejected an evaluation and the action proceeds to trial, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the mediation evaluation.

(2) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the mediation evaluation. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation.

(3) For the purpose of this rule, actual costs include those costs taxable in any civil action and a reasonable attorney fee as determined by the trial judge for services necessitated by the rejection of the mediation evaluation.

(4) Costs shall not be awarded if the mediation award was not unanimous.

Note

MCR 2.403 corresponds to GCR 1963, 316. There are a number of revisions.

Subrule (A) deletes the authorization for a separate procedure for the Third Judicial Circuit. However, one of the key features of the third circuit rule is adopted for statewide use. Under subrule (L)(1), failure to file an acceptance or rejection of a mediation award within the time provided constitutes acceptance of the award, unlike the practice under GCR 1963, 316.6(H)(1), which made failure to file an acceptance the equivalent of rejection. The time for accepting or rejecting the award is set at 28 days.

Subrule (C)(2) is changed from the corresponding language of GCR 1963, 316.3(B). Under the latter provision, a motion to remove a case from mediation stayed mediation proceedings. Subrule (C)(2) does not include the stay provision, but says instead that such a motion must be heard before the case is submitted to mediation.

Subrules (F)-(O) are reorganized and rewritten, although only a few substantive changes are included.

First, subrule (H)(1) does not direct that the checks by which the parties pay the mediation fee are to be payable to the attorney mediators, as had GCR 1963, 316.6(C)(1). Rather, the checks are to be made payable in the manner specified in the mediation notice. In some courts the mediation program might be arranged so that it is more convenient to have the checks payable to the mediation clerk or the court clerk.

Subrule (I) not only requires that the parties submit documents relating to the issues to be mediated, but also that they supply briefs or summaries setting forth their legal or factual positions on the issues. Failure to submit either document to the mediation clerk at least 7 days before the hearing date subjects the party to the cost penalty imposed by subrule (I)(2). Under the corresponding provision, GCR 1963, 316.6(E), the penalty provisions applied only to the documents. Submission of the brief or summary was optional.

Under GCR 1963, 316.6(F)(3), the mediators were not permitted to inquire into settlement negotiations. Subrule (J)(3) modifies the prohibition. The mediators may inquire unless a party objects. This is similar to the provision of the former third circuit local rule 403.12.

Several provisions of the rule are modified to deal with the situation in which there is more than one party on a side. Subrule (H)(1) makes clear that only a single fee is required of each party even where there are counterclaims, cross-claims, or third-party claims. Second, subrule (K)(2) specifies that the evaluation must include a separate award as to each cross-claim, counterclaim, or third-party claim, although all claims between any two parties are treated as a single claim. Finally, under subrule (L)(3), parties are permitted to accept some, but less than all, of the individual awards. Judgment will be entered as to those pairs of parties who have accepted. See subrule (M)(2). However, a party has the option of making a "conditional" acceptance of the entire award, specifying that if fewer than all of the opposing parties accept, the party making the conditional acceptance should be taken as rejecting as to all of them. A party may be willing to accept the award in its entirety if that has the effect of eliminating the need for a trial. However, if the case is going to be tried anyway, the party may prefer to have a trial as to all opposing parties. For the purpose of applying the cost provisions, a party making a conditional acceptance is treated as having rejected the award as to those opposing parties who accepted it. See subrule (L)(3)(c).

The January 25, 1985 amendment of MCR 2.403(N)(2) deletes the requirement that the mediation clerk return copies of mediation documents to the attorney who submitted them.

Subrule (N)(2) provides that in a nonjury case not only must the evaluation itself be sealed until the judge has entered judgment, but the parties are forbidden to tell the judge about the mediation award. Compare GCR 1963, 316.6(H)(2).

The January 25, 1985 amendment of MCR 2.403(O)(1) revises the language regarding the liability for costs of a party who rejects a mediation evaluation, correcting an unintended change from GCR 316.7(b). The rejecting party is liable for costs unless that party improves its position by at least 10 percent (unless the other party has rejected, in which case a party is liable for costs only if the opponent improves its position by at least 10 percent).

Finally, subrule (O)(4) adopts the principle, found in the third circuit local rule 403.15, that where the mediation panel's award is not unanimous, costs are not to be awarded against a rejecting party. Subrule (K)(1) requires that if the award is not unanimous, it must so indicate.

History
2.403 Am. eff. Jan. 25, 1985

Section 1803.1, Title 12, Oklahoma Statutes--Dispute Resolution Revolving Fund

APPENDIX V

STATE OF OKLAHOMA

1st Session of the 40th Legislature (1985)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1552 BY: RIGGS of the HOUSE

and

McCUNE of the SENATE

CONFERENCE COMMITTEE SUBSTITUTE

AN ACT RELATING TO CIVIL PROCEDURE; AMENDING SECTION 3, CHAPTER 78, O.S.L. 1983 (12 O.S. SUPP. 1984, SECTION 1803), WHICH RELATES TO RULES AND REGULATIONS FOR MEDIATION SERVICES; AUTHORIZING STATE AGENCIES TO ESTABLISH DISPUTE RESOLUTION PROGRAMS; ESTABLISHING THE DISPUTE RESOLUTION ADVISORY BOARD; PROVIDING FOR THE APPOINTMENT AND TERM OF BOARD MEMBERS; PROHIBITING COMPENSATION OF BOARD MEMBERS; AUTHORIZING REIMBURSEMENTS; DEFINING TERMS; PROVIDING FOR DISPUTE RESOLUTION CENTERS AND THE ADMINISTRATION OF DISPUTE RESOLUTION PROGRAMS; PROVIDING FOR CERTAIN CONTRACTS; REQUIRING STATUTORY COMPLIANCE; PROVIDING FOR THE ASSESSMENT, COLLECTION, AND DISBURSEMENT OF CERTAIN COSTS AND FEES; CREATING THE DISPUTE RESOLUTION SYSTEM REVOLVING FUND; PROVIDING FOR THE ADMINISTRATION OF SAID FUND; STATING PURPOSES FOR WHICH SAID FUND IS UTILIZED; REQUIRING CERTAIN APPLICATION FOR FUNDING; DESIGNATING CONTENTS OF CERTAIN APPLICATION; PROVIDING FOR CERTAIN STATUTORY CONSTRUCTION; PROVIDING CRITERIA FOR DISPUTE RESOLUTION FUNDING; REQUIRING CERTAIN REPORT AND DESIGNATING CONTENTS; GRANTING CERTAIN POWERS; REQUIRING THE PROMULGATION OF CERTAIN RULES AND REGULATIONS; AUTHORIZING ADDITIONAL PERSONNEL; REQUIRING CERTAIN ANNUAL AUDITS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 78, O.S.L. 1983 (12 O.S. Supp. 1984, Section 1803), is amended to read as follows:

Section 1803. A. Any county or, municipality, or agency of this state is hereby authorized to establish programs for the purpose of providing mediation services pursuant to the provisions of the Dispute Resolution Act, to be administered and supervised under the direction of the Administrative Director of the Courts. The

Administrative Director shall promulgate rules and regulations, subject to the approval of the Supreme Court of the State of Oklahoma, to effectuate the purposes of the Dispute Resolution Act.

B. Mediation pursuant to the provisions of the Dispute Resolution Act shall be available to any party eligible according to the jurisdictional guidelines established by the Administrative Director. The company or governmental agency shall be represented in mediation by a person authorized in writing to act in behalf of such entity to the extent necessary to arrive at a resolution pursuant to the provisions of the Dispute Resolution Act.

C. Mediators participating in a program sponsored by a state agency are deemed an employee of that agency solely for the limited purpose of Section 20f of Title 74 of the Oklahoma Statutes.

~~C.~~ D. Such rules and regulations shall include:

1. Qualifications to certify mediators to assure their competence and impartiality; and

2. Jurisdictional guidelines including types of disputes which may be subject to the Dispute Resolution Act; and

3. Standard procedures for mediation which shall be complied with in all mediation proceedings; and

4. A method by which a court may grant a continuance in contemplation of dismissal on the condition that the defendant in a criminal action or the plaintiff and defendant in a civil action participate in mediation and a resolution is reached by the parties; and

5. A form for a written agreement for participation in mediation; and

6. A form for a written record of the termination of mediation.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1803.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

There is hereby created a Dispute Resolution Advisory Board which shall consist of no more than fifteen (15) members appointed by the Supreme Court of the State of Oklahoma. The Advisory Board shall be composed of persons from state and local governments, business

organizations, the academic community, the law enforcement field, the legal profession, the judiciary, the field of corrections which shall be represented by the Director of the Oklahoma Department of Corrections or his designee, retired citizen organizations, the district attorney profession, consumer organizations, social service agencies, and three (3) members at large. The term of office of each member shall be for one (1) year and end on June 30 of each year, but all members shall hold office until their successors are appointed and qualified. The Administrative Director of the Courts or his designee shall serve as a nonvoting, ex officio member of the Advisory Board.

The members of the Advisory Board shall receive no compensation for their services, but shall be entitled to any reimbursements to which they may otherwise be entitled from sources other than the Office of the Administrative Director of the Courts.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1807 of Title 12, unless there is created a duplication in numbering, reads as follows:

As used in Sections 3 through 9 of this act:

1. "Administrator" means any county, municipality, or agency of this state that administers a community dispute resolution center pursuant to the provisions of this act.

2. "Center" means a community-based facility which provides dispute resolution services consisting of conciliation, mediation, arbitration, facilitation, or other forms and techniques of dispute resolution.

3. "Director" means the Administrative Director of the Courts.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1808 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Programs established pursuant to the provisions of Section 1803 of Title 12 of the Oklahoma Statutes shall be administered and supervised by the Director to ensure the stability and continuance of dispute resolution centers.

B. Every center shall be operated by an administrator and shall be established on the basis of community need as determined by the Director.

C. All centers shall be operated pursuant to a contract with the Director and shall comply with the provisions of the Dispute Resolution Act and the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1809 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the State Supreme Court to be designated the "Dispute Resolution System Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of the court costs and fees provided for in subsection B of this section. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the State Supreme Court by and through the Administrative Director of the Courts for the establishment and maintenance of an alternative dispute resolution system as provided for by law, and personal services and operational expenses incurred in the administration of said dispute resolution system. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. 1. To establish and maintain an alternative dispute resolution system, court costs in the amount of Two Dollars ($2.00) shall be taxed, collected, and paid as other court costs in all civil cases. When dispute resolution services are sought, a fee in the amount of Five Dollars ($5.00) shall be assessed by the center and collected from the initiating party. If the responding party agrees to participate in mediation of the dispute, a fee of Five Dollars ($5.00) shall be assessed by the center and collected from the responding party.

The fee of an initiating or responding party shall be waived by the center upon receipt of an affidavit in forma pauperis executed under oath by such party.

2. Except for the court costs and fees provided for in this subsection, dispute resolution services shall be provided without cost to participants.

C. 1. The court costs provided for in subsection B of this section, once collected, shall be transferred by the court clerk to the Director who shall deposit them in the Dispute Resolution System Revolving Fund.

2. The fees provided for in subsection B of this section, once collected, shall be transferred by the center to the Director for deposit in the Dispute Resolution System Revolving Fund.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1810 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Monies in the Dispute Resolution System Revolving Fund shall be allocated by the Director to eligible centers for dispute resolution programs authorized pursuant to the provisions of this act.

B. 1. The Director shall determine the eligibility of a center for funding on the basis of an application submitted by the center.

2. The application for funding shall state:

a. a description of the proposed community area of service;

b. the cost of the principal components of operation;

c. a description of available dispute resolution services and facilities within the defined geographic area;

d. a description of the applicant's proposed program, by category and purpose, including evidence of community support, the present availability of resources, and the applicant's administrative capacity;

e. a description of the efforts of cooperation between the applicant and the local human service and criminal

justice agencies in dealing with program operations; and

f. such additional information as may be required by the Director.

C. The provisions of this section shall not be construed to prohibit dispute resolution centers in existence prior to the effective date of this act from submitting an application for funding as provided for in subsection B of this section.

D. A center shall not be eligible for funds for dispute resolution programs unless it complies with the provisions of the Dispute Resolution Act, the provisions of this act, and the rules and regulations promulgated by the Director.

E. Each center funded pursuant to the provisions of this section, annually, shall provide the Director with a written report containing statistical data regarding operational expenses, the number of referrals, the category or types of cases referred, the number of parties serviced, the number of disputes resolved, the nature of resolution, amount and types of awards, the rate of compliance, and such other data as may be required by the Director.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1811 of Title 12, unless there is created a duplication in numbering, reads as follows:

Upon the approval of an application by the Director and at his direction, monies in the Dispute Resolution System Revolving Fund shall be disbursed to a center for operational costs of approved center programs. The method of reimbursement for dispute resolution program costs shall be specified by the Director pursuant to rules and regulations.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1812 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. The Director shall have such power as is necessary to implement the provisions of this act.

B. The Director shall promulgate rules and regulations to effectuate the purposes of this act, which shall include provisions for periodic monitoring and evaluation of center programs.

C. The Director may have such additional personnel as is necessary to implement the provisions of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1813 of Title 12, unless there is created a duplication in numbering, reads as follows:

The State Auditor and Inspector, annually, shall inspect, examine, and audit the Dispute Resolution System Revolving Fund and the fiscal affairs of centers.

SECTION 10. This act shall become effective November 1, 1985.

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