

DISPUTE RESOLUTION SECTION COUNCIL MEETING

Friday, July 27, 2012, at 11:00 a.m.

Conference Call

MINUTES

The Council convened at the date, time and place indicated above.

Members Participating:

Saunders M. Bridges, Jr., Chair

James L. Bell

M. Dawes Cooke, Jr.

Jill E. HaLevi

Donnell G. Jennings

Thornwell F. Sowell, III

Other:

William L. Howard, Sr.

Cindy A. Coker, Bar Staff

Joan S. Brown, Bar Staff

Call to Order, Roll Call and Welcome: Mr. Bridges called the meeting to order, called the roll and welcomed those participating.

Approval of Prior Minutes: The Council received the Minutes of the May 4, 2012, meeting. Ms. HaLevi requested clarification concerning the successor to Sean Keefer when he was elected to serve as secretary of the executive council. It had been determined since the election that Mr. Sowinski, as an associate member of the Bar, was ineligible, *ab initio*, to serve on the Council, thus the Minutes were correct and would be clarified to reflect this information. The Minutes as clarified were approved and adopted by motion, second and unanimous vote.

Reports/Old Business:

ADR Commission Update: Judge Howard, Chair of the ADR Commission, reported on Commission activity as follows:

1. The proposed amendments to the S.C. Court-Annexed ADR Rules had been approved by the Court and had been placed in the Advance Sheets. Of significance was the new requirement that uncertified mediators must disclose their status as uncertified mediators in writing to the participants in a mediation prior to the beginning of the mediation. He reviewed the reasons for the change in the rule and informed the Council members that they would likely receive questions about the change.
2. As for the Summary Court Pilot Program, it was going well. Members of the Commission were compiling data from Lexington, Richland, Greenville and Kershaw Counties and would issue reports to the Court on the programs.
3. The Supreme Court's Docket Management Task Force, chaired by Justice Hearn, had issued its preliminary report, which included a recommendation to expand mediation throughout the state. The Chief Justice sought input from the Commission on fostering implementation.
 - a. A lengthy discussion of the summary court process ensued. It was stated that not all volunteer mediators were certified, but they were trained. Ms. HaLevi reported that the low country program moved away from sliding scale payment to either pro bono or a reduced rate of \$100 per hour split among the parties.

- b. The family courts were seeing more pro se litigants, and mediation was viewed as a possible way of assisting the courts, as well as the pro se litigants, many of whom were not qualified for pro bono, but who were also unable to afford to pay a lawyer.
- c. The Commission was happy with the task force's recommendations on mediation and would be seeking information from judges, clerks and the DR and Family Law Sections to complete the recommendations to the Court.
- d. Other issues to be addressed included:
 - i. A number of certified neutrals had selected all 46 counties for court appointment, which had created problems for pro se litigants who would have to pay extra travel expenses under the recently updated Rule 9. The Commission was to tweak the rule so that pro se litigants would not have to pay those extra travel expenses when the court-appointed mediator had travelled a significant distance.
 - ii. The Commission was trying to obtain more hard data on the results of the mediation process. Judge Howard was working with Court Administration to use the Case Management System and to develop an action report showing ADR data.
 - iii. The supplemental training video for applicants who take their 40-hour training out of state was out of date and needed to be re-taped. Judge Howard was to check to see if the more recent South Carolina 40-hour trainings had been taped and, if so, if the appropriate segments of those trainings could be used to update the video.
 - iv. The six-hour arbitration training video was also out of date. Assistance was needed to update that video.
 - v. Discussion ensued of the need to gather more consumer-oriented information. Mr. Sowell was developing questions to be sent to members of the Section and planned to compile that data. Ms. Coker suggested using Survey Monkey to gather the data as the program would compile the data and ensure that responses were anonymous. Judge Howard asked that Bar staff determine whether the program could be used to gather data from participants.

Convention Seminar Update: The report from Mr. Crowe was received as information.

Goals: Mr. Bridges presented the draft goals to the Council and offered the addition of "updating and revising the Web site information to include information for the public." Mr. Bell indicated that he had previously raised the issue of including mediation information in the public section of the Web site with the Bar's Media Services Director, Joey Heape. A check of the Web site confirmed that Mr. Heape had added the information to the Public section under "Mediation" to assist the public in finding a certified mediator. The Council determined that a review of the Web site, including updating information, should be included in the 2012-13 Goals. Goals were approved as amended.

Mortgage Intervention: Judge Howard reported that James W. Peterson was to follow up on this project and report back to the Commission. The goal was to get input from the financial institutions. The rule required the bank's lawyer to notify the borrower of mortgage intervention. There was concern that having that notice come from the lender was affecting participation in the program. The

solution may be to have the notice of intervention program come from the court since this may increase participation. They were currently gathering data with the anticipation of a report by the next Commission meeting.

New Business:

Ms. HaLevi made the Council aware of an advanced family law mediation training scheduled for August 24, 2012, in Charleston. Training was coordinated by the Mediation Center in Charleston. There was information on the Charleston County Bar Association Web site. She asked whether that would be appropriate to share with the Section. Ms. Coker suggested that she also contact Terry Burnett, Director of the Bar's CLE Division, to discuss a joint offering with the CLE Division for the advanced training.

Judge Howard asked the Council to consider developing a speakers bureau to help with the expansion of mandatory mediation.

Next Meeting: The next Council meeting was set for 11:00 a.m. on Friday, November 2, 2012, subsequent to the next Commission meeting to be held on October 26, 2012.

Adjournment: There being no further business, Mr. Bridges adjourned the meeting.