C-505

CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Frank E. Moss United States Courthouse
350 South Main Street
Salt Lake City, Utah 84101-2180

September 10, 1991

ADR SUBCOMMITTEE

MINUTES OF THE SEPTEMBER 9, 1991 MEETING

Subcommittee Chairman Williams called the meeting to order at 2:15 pm on September 9, 1991. Subcommittee members D. Frank Wilkins, Burton F. Cassity were present along with Committee Reporter Markus Zimmer and newly appointed staff research assistant Paul E. Cooper.

Chairman Williams reviewed a prepared discussion outline (see attachment) and asked the committee for their input. The outline laid-out the overview of where the ADR subcommittee was heading as well, as describing the congressional mandate of CJRA with regard to any proposed plan. It was proposed that Mr. Cooper draw on the best available resources for the committee and gather information to assist the committee in determining what type of plan to propose and how to implement it. One initial question that was raised was how far the committee could go under CJRA if it so decided. (i.e. mandatory binding arbitration?) This question was more an attempt to define the subcommittee's parameters rather than suggest that this is where the subcommittee would want to go.

Chairman Williams asked the committee whether they thought that the subcommittee's ADR plan should include a "rich" menu of many possible ADR choices to select from or whether there should be only a few quality programs with the possibility of expansion in the future. Mr. Zimmer pointed-out that the plan need not be absolutely final by December of this year, but could and should experience changes and expansion through 1993. The subcommittee decided that it would recommend two to three programs that could be fully "fleshed-out" and then present these developed programs to the entire committee for their consideration.

Before specific ADR programs are selected, it was suggested that rather than randomly selecting ADR plans that "seemed attractive", that some analysis be done regarding the District

of Utah's docket make-up. This was to be done to ensure that whatever ADR programs are selected, are selected to address specific areas of the docket that may need help. Notwithstanding, it was the committee's feeling that arbitration, mediation and perhaps one of the hybrid ADR techniques, such as summary jury trial, might be good starting points for research. It was pointed-out that the District of Utah already has an additional congressional mandate to implement non-mandatory court annexed arbitration. Some discussion occurred concerning whether the CJRA mandate as a pilot court and the earlier non-mandatory arbitration mandate were in conflict. It was thought that the CJRA, the broader of the two act, would allow for either mandatory or non-mandatory arbitration, but that the District would have to at least include non-mandatory arbitration within its menu.

There was then a discussion concerning binding and non-binding decisions resulting from ADR awards. Also discussed were the pros and cons of mandatory versus non-mandatory authority of the judges using the ADR programs. Non-voluntary binding arbitration was thought to be too extreme and quite possibly unconstitutional. Binding arbitration should be allowed only when both parties consent to such an agreement. However, mandatory ADR (allowing the judges to compel some type of participation by the parties) was though to be more salable without any "binding" language and perhaps even necessary in the early stages of implementation in order help expose lawyers and clients who might otherwise be reluctant to participate. It was Mr. Burton's feeling that the ADR committee be as "aggressive as possible" in proposing and implementing whatever ADR program was proposed. His feeling was that if there wasn't a need for such a program, Congress would not have created the Advisory Committee and provided significant funding for implementation. He didn't suggest a long "menu" of ADR choice initially, but whatever the committee decided to implement he suggested be done aggressively.

It was decided that Mr. Cooper and Mr. Zimmer would look into the statistic of the District and do some analysis on the docket make-up. After this was accomplished, then the subcommittee could better decide which ADR techniques to propose and implement. The finding of the ADR committee thus far will be reported at the full advisory committee meeting on September 12, 1991. The meeting was adjourned at about 3:50 pm.