

MINUTES

HOUSE COMMITTEE ON APPROPRIATIONS

September 30, 1993
Room 313-S -- Statehouse

Members Present

Representative Rochelle Chronister, Chairperson
Representative Jo Ann Pottorff, Vice-Chairperson
Representative George Teagarden, Ranking Minority Member
Representative Tom Bradley
Representative Tim Carmody
Representative Betty Jo Charlton
Representative George Dean
Representative Dick Edlund
Representative Denise Everhart
Representative Fred Gatlin
Representative Kent Glasscock
Representative Gil Gregory
Representative David Heinemann
Representative Phil Kline
Representative James Lowther
Representative Eloise Lynch
Representative Bob Mead
Representative Melvin Minor
Representative Richard Reinhardt
Representative Rand Rock

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Members Absent

Representative Wanda Fuller
Representative Robin Jennison

Staff Present

Scott Rothe, Kansas Legislative Research Department
Alan Conroy, Kansas Legislative Research Department
James Wilson III, Office of Revisor of Statutes
Lila McClaflin, Committee Secretary

Conferees

Patricia Henshall, Office of Judicial Administration, Kansas Judicial Branch
Nancy Hughes, Former Heartland Mediators President, University of Kansas Psychological Clinic
Gary Kretchmer, Court Services Officer III, 10th Judicial District, Olathe
Earlene Stover, Participant of a Mediation Process, Burrton, Kansas
Jerry Beneventi, Kansas Committee for Community Mediation, Lawrence
Bernard Dunn, Kansas Mediation Services, Topeka
Larry Rute, Kansas Legal Services, Inc., Legal Aid Society of Topeka, Inc.
Ron Smith, Kansas Bar Association, Topeka
Ken Stewart, Chair of the Kansas Bar Association, Wichita
Karen Taylor, President, Better Business Bureau of Topeka
Stan Ward, Director, Farmers Assistance, Counseling and Training Service,
State Board of Agriculture, Manhattan
Stephen Feinstein, Ph.D., Superintendent, Osawatomie State Hospital; Former Superintendent,
Eastern Oregon Psychiatric Center and Eastern Oregon Training Center

List of others attending is on file.

**September 30, 1993
Morning Session**

Briefing and Hearing on Alternative Dispute Resolution – Mediation Services

The meeting was called to order by the Chairperson Rochelle Chronister at 9:00 a.m., in Room 313-S at the statehouse. Staff was called on for a briefing on Alternative Dispute Resolution and Mediation Services.

Staff presented a background memo on the subject, and walked through some of the advantages and benefits of mediation. Attached to staff's memo were several documents relating to the subject of mediation: *Alternative Dispute Resolution*, Kansas Supreme Court Law Library; *National Standards for Court-Connected Mediation Programs*; *A Court Manager's Guide to the Alternative Dispute Resolution Database*; *Mediation Law Policy Practice*; *Mediation and the Juvenile Offender*; and *Office of Dispute Resolution, First Year Annual Report*, compiled by the Nebraska State Supreme Court Administrative Office of Courts/Probation. Copies of the memorandum and all of these documents are on file in the Kansas Legislative Research Department.

The Chairperson stated she and Mr. Rothe had visited Nebraska last week to review their program. She thought the mediation process has the potential to keep people out of the adversary role and provides a different kind of process to look at, and this would be looked at during the Committee meeting, and this she thought had the potential to reduce the number of cases in the courts, and it could mean quicker justice, and that could be less expensive for the individual taxpayers, which is very important. However, it did not necessarily mean it would be less expensive for the state.

Responding to a question regarding how Nebraska's system is set up, Staff stated politics and populations probably played the major roll in the location of programs. Chairperson Chronister said the Scottsbluffs, Nebraska's program was designed to help train teachers and staff how to better deal with racial problems.

The Chairperson called on the first conferee Patricia Henshall.

Ms. Henshall testified that the Alternative Dispute Resolution (ADR) is used extensively in the Kansas district courts and a survey taken by their office is attached to her testimony. Also, attached are the recommendations of a task force appointed by the Supreme Court of Kansas, and their recommendations are very similar to the legislation enacted by Nebraska and used to support its ADR program. The Supreme Court requested funding for the position of an ADR coordinator in its FY 1992 budget, but no monies were appropriated, and without funding it is impossible for the judicial branch to carry out the recommendations (Attachment 1).

Ms. Henshall responded to questions regarding the dollar amount that would be received if a \$3.00 increase in the docket fee was imposed, and using the 1992 figures to compute this information the additional revenue would be \$1,474,215.00, and if only the civil filings were increased the amount would be \$469,518.00, and she thought Nebraska had funded their program for \$250,000.00. Responding to another question she said there are several counties in the state that regularly mandate mediators in domestic and divorce proceedings.

Nancy Hughes stated the Heartland Mediators brings together individuals in Kansas who share a common interest in mediation as an alternate form of dispute resolution. In the last year, they have looked at the whole idea of mediation, and who should be allowed to be mediators, what type of educational background should be required, and at the present time they are putting together a proposal for an in-house accreditation program. It will have different requirements for: (1) those court ordered into mediation, theirs would be somewhat more stringent; and (2) a different type of criteria for those voluntarily coming into mediation. A copy of their brochure *Heartland Mediators Association* is Attachment 2.

Responding to questions, Ms. Hughes stated at this time their accreditation guidelines are a bit more stringent than the Nebraska Act, and she likes the flexibility in Nebraska, as some of the public would probably feel a little more comfortable with a nonprofessional as a mediator. Responding to another question, regarding the use of two mediators, she said that was a very comfortable way to work but it is expensive and not necessary. In closing, she stated they have some clients outside of Douglas County, and their clients are referred from attorneys and the courts, and their fees are based on a sliding scale and it is very affordable.

Gary Kretchmer testified that he and his staff provide mediation on contested child issues for divorcing families, and he believes their program has been very successful. He encouraged the Legislature to fund the State Alternative Dispute Resolution Office (Attachment 3).

Earlene Stover gave her account, as an individual that had participated in the mediation process. The process had been extremely beneficial to her and her ex-husband in resolving the conflicts regarding the custody and visitation of their children. She encouraged the funding of the program so that it would be available in the legal system in Kansas (Attachment 4).

Responding to a question, Ms. Stover gave an example of how the medical society is networking to provide treatment for residents in Reno County, and she thought the mediation services could be set up in a similar fashion.

Jerry Beneventi spoke on behalf of the Committee for Community Mediation, which is exploring the possibility of drafting and introducing legislation in Kansas, which would create and fund community mediation centers much like those described in the Nebraska Act. He welcomed the input of the Committee in drafting legislation that would be of benefit for the people of the state, and said he hoped to have copies of the bill draft available by late October (Attachment 5).

The Chairperson ask Mr. Beneventi to please provide her with a copy of their bill draft when it was available, as she intended to ask the Committee to introduce legislation on this issue. He said he would be glad to do so.

Bernard Dunn reviewed 16 steps involved in mediation. He cautioned that mediation is fragile and in order for it to be successful you need: privacy, freedom, voluntary entry into, remain in, choices within the context of mediation, and time for reflection (Attachment 6).

Larry Rute stated for years judges have searched for a way to improve court services to Kansas children and families. The use of mediation provides an important tool to resolve conflicts for the betterment of those involved and reduces court dockets. Included with his testimony is information regarding the services available through the Dispute Resolution Services of Kansas Legal Services, Inc., and a copy of their brochure is on file in Legislative Research Department (Attachment 7).

Ron Smith stated litigation has been the usual tool for solving conflict in the legal profession, but it is not the only form as this particular issue points out. The American Bar Association has indicated that litigation options are only available to about 15 percent of the population and 85 percent of the population cannot afford civil legal services let alone litigation services, so ADR has the potential to provide a real service to this segment of the population. He pointed out the Nebraska Mediation Act needed some fine tuning, as it did not address the ethics issue, and who would enforce disciplinary measures if they became necessary. He suggested Representative Everhart and Representative Phill Kline, the attorney, are ADR experts and have both acted as mediators and would be good resources in drafting legislation (Attachment 8). He introduced Ken Stewart who would present testimony for the Kansas Bar Association.

Mr. Stewart stated he hoped to provide information that could be used by members of the Committee to establish:

1. that there is sufficient experience with ADR in the state to demonstrate its effectiveness;
2. that there is a need for legislation to provided clarification, coordination, and funding; and
3. that the model of other states such as Nebraska are models well worth study and emulation as this Committee considers an appropriation to improve the justice system for the citizens of Kansas.

Also, attached to his testimony is a brochure *Ways to Settle Your Dispute*, and this brochure is on file in the Legislative Research Department (Attachment 9). His testimony includes a memorandum from Naomi Peterson Adam, Executive Director the Wichita Neighborhood Justice Center, Inc., and a letter from one of their clients expressing appreciation for the services and the successful resolution of a dispute she had with a roofing company.

Karen Taylor reviewed a program the Better Business Bureau of Topeka and the Washburn University Law Clinic implemented in January, 1993 (Attachment 10).

A member of the Committee stated there seemed to be some confusion regarding mediation and negotiations and she pointed out the differences.

Stan Ward told about the FACTS Program and their mediation services which were implemented in 1986 during the height of the farm crisis. Their program has mediators from throughout the state and from various professional backgrounds, and he explained the training they provide for their mediators (Attachment 11). A brochure *Kansas Agricultural Mediation Services* was distributed and is on file in the Legislative Research Department.

He responded to several questions regarding their services and stated he thought about 80 to 90 percent of their cases come to a successful conclusion.

Roxanne Emert Davis stated they sponsor two programs that deal with mediation services: The Parent-Adolescent Mediation Program and a curriculum/training, Building Conflict Solving Skills. She briefly reviewed these programs, and the training required by their mediators, and stated their fees are on a sliding scale and are affordable (Attachment 12). Copies of their brochure were distributed and are on file in the Legislative Research Department. In closing she stated Representative Denise Everhart is one of their mediators.

Responding to a question, she stated Topeka 501 School District has used their program and have a rather extensive mediation program.

William Henry testified they support a mediation program that is viable and that will save individuals dollars. He suggested five points for consideration:

1. First, that by introducing something like the Nebraska Act, that it not adversely affect what is already in place.
2. Look at what is going on across the state in the ADR and Mediation Services and take care not to deprive a potential litigant of his/her right to a jury trial. The fact that this right exists encourages people to look at these other alternatives.
3. To look at where our current resources are going. The judicial system in Kansas is already doing a lot of mediation in the federal and state system. If you want to set up a statewide system you need to consider a new source of revenue.
4. ADR cannot be set up so that it shuts people out. If a statewide system is put in place you need to establish some statewide standards.

5. Finally, the ethics issue mentioned by Ron Smith is very important and is not mentioned in the Nebraska Act, and it needs to be addressed.

Responding to questions, he said the ethical guidelines used by the Supreme Court for censoring of attorneys would be good guidelines to look at.

Afternoon Session

The Chairperson reconvened the Committee at 1:35 p.m. She asked if the Committee would be willing to introduce legislation, basically the Nebraska Act, with some additions such as the ethics clause, another addition would be the privacy, which was mentioned by Larry Rute, and the third question would be should we include a source for funding such as the docket fee. She said there probably should be some vehicle for attorneys, courts, and mental health center people to provide information on how to access the system. She said she would entertain a motion and discussion was in order.

The Committee discussed the proposal. A member said a lot was being done in the mediation area already and he wondered if legislation was necessary.

The Chairperson responded she thought there was a need for a coordinator, and possibly a position in the Office of Judicial Administration. That probably the large counties were using mediation but as the Committee heard from Earlene Stover from Reno County the awareness of mediation is not everywhere.

Another member stated it seemed to be a sound concept and he appreciated the Chairperson bringing the issue forward. He would support the introduction of the legislation but he had some concerns regarding where the gaps are in the present system and how it would affect the court systems of mediation already in place, as he did not want to create another system to overlay what is already in place.

Another member suggested the state might best serve this by being a promotional arm, rather than a mandated system where we might get into licensing and the liability issue. He suggested we might be creating another layer of bureaucracy.

The Chairperson explained how the Nebraska Act is set up, and said it did not interfere with the way the courts do business as it just offers another alternative and it has very little bureaucracy. Staff reported to the Chairperson that Nebraska has only two full-time state employees, (the coordinator and her secretary), while the five regional directors are not state employees.

Another member said she wholeheartedly supported introduction of the legislation and she would be willing to even go further but not necessarily in the original bill draft; and she hoped mediation could become made more available to the residents of the state.

Representative Teagarden moved to introduce the Nebraska Act with the suggested changes. Representative Glasscock seconded the motion. Discussion followed. The Chairperson appointed Representative Denise Everhart and Representative David Heinemann to work with staff

to draft the legislation. Staff asked for clarification regarding the increase of fees for funding, and the consensus was not to include revenue sources at this time, although it might be added at a later date. There being no further discussion, the Chairperson called for the question. The motion carried.

The Chairperson stated Dr. Stephen Feinstein had been invited to address the Committee, because he had been the superintendent of a joint psychiatric center and training center in Oregon and she thought this information might be helpful in formulating plans for the mental retardation and mental health situation in the state.

Dr. Feinstein reported on the background of how the facility in Oregon came to house the two groups. He said it was not set up that way but it just evolved when both superintendents left under extenuating circumstances. It was not set up that way to save revenues, and he frankly did not think it was the best way to run an agency, as there are too many differences in the way you approach the two disciplines. If you do consider one facility on the same campus site you are going to hear the developmental disability side scream with dissatisfaction, because they have fought a battle for 20 years to separate the two groups. There are some savings to be had by combining laundries and kitchens, but by combining one training unit, one medical record and one quality assurance unit that will not save a lot and he was not sure it would be worth it. It takes a great deal of staff, and they must be knowledgeable in both fields, and it is a very difficult situation for the superintendent, and he/she must be willing to delegate a lot of the responsibility.

He stated one item he wanted to mention was that in psychiatric hospitals there are a lot of mentally ill developmental disability patients mixed in with the general psychiatric patients, and he thought it was unfair for them as their needs are different and they are taken advantage of. He would like to see a separate unit in one of the state hospitals for this group.

The Chairperson remarked that she did not envision having these patients on the same wards, as she knew that was not a workable solution. But if a hospital had to be closed maybe a campus could house both disciplines, but continue to maintain their own system of management.

Dr. Feinstein mentioned it was difficult to hire qualified professionals to come to rural areas to practice, one reason being they are isolated from their peers. There was some Committee discussion on this issue.

The Chairperson thanked Dr. Feinstein for coming and sharing his experience and concerns with the Committee, and stated his visit had been scheduled for information purposes.

The Chairperson announced the Appropriation Committee would be operating differently next legislative session, partly because the Division of Budget recommended it to her and Senator Bogina. They suggested the object code system of looking at the budgets be eliminated, because after we go through and look at the budgets and see what is budgeted for each item it ends up in one line item anyway, and they do whatever they want to with it. She said the assignment to Subcommittees will be basically looking at the outcome of that agencies programs, and if the program is justified, and if it is not it will be discontinued. Representative Mead's Subcommittee used this process last year.

She said the problem areas such as mental and retardation issues, the sentencing guidelines, and parole board, she hoped to look at early on and asked the entire Committee to look at it at that time, then the Subcommittee would be in charge of what comes before the Committee.

It would not be an easy process. A meeting was scheduled regarding the handling of budgets and the potential changes, at this time staff was looking at how other states handle their budgets, and eventually she hoped the state would go to a two year budget program.

A member of the Committee said he was delighted with the proposed change as he was on Representative Mead's Subcommittee last year and it was difficult, but you are forced to look at public policy programs and outcome, and accountability has got to be looked at. He was convinced it was the way to go.

Staff explained how he envisioned this working, and said some agencies were already running pilot programs.

Dr Feinstein was asked to comment on the biennial budgeting process that was used in Oregon. He stated it was easier than planning an annual budget and there was some time savings, as it requires a great deal of time to prepare budgets. He responded to several questions regarding how Oregon's legislative sessions are scheduled.

In regard to the process of looking at the budgets, a member of the Committee suggested it would be helpful if all subcommittees used the same process, and if staff could develop some guidelines for them and the agencies, and a dictionary of terms so that everyone could be able to understand what was being talked about.

Some concern was expressed regarding the proposed change. The Chairperson stated she thought the changes would improve the process and eventually it should make it easier.

The Chairperson said she was going to recommend that the SRS and Corrections subcommittees meet together early in the session to talk about juvenile intensive care programs; how to combine into savings court services, probation officers, parole officers, the sentencing guidelines, boot camps, and community correction residential programs as all of these items are things that affect the budget. We are going to be called on to make some serious cuts and we are going to have to look at every single agency if we are going to balance the budget, so we are going to have to set some priorities and learn how to say no. She suggested members of the Committee might want to start looking at some of these programs with staff.

The meeting adjourned at 3:00 p.m.

Prepared by Lila McClaflin
Edited by Scott B. Rothe

Approved by Committee on:

November 23, 1993
(Date)

9-30-1993

House Committee on Appropriations

Please Print

Name	Agency	Address
Bill Henry	Ks. Association of Defense Counsel	Topeka
KEN STEWART, Atty	CHAIR, KBA - ADR Comm	1030 1st Nat Pl Bldg, Wichita 67202
ART THOMPSON	Ks Bar Assn., STAFF	TOPEKA
Ron Smith	" " "	"
ROXANNE EMMERT-DAVIS	Social Worker Ks. Childrens Service League	Topeka
Oddie Lacey	Ks. Childrens Service League	"
Nancy Hughes	Heartland Mediators Association University of Kansas Psychological Clinic Mediation Project	315 Fraser Hall Lawrence, KS 66045
JERRY BENEVENTI	KANSAS COMMITTEE FOR COMMUNITY MEDIATION	3211 Clinton Pkwy C Lawrence, KS 66047
Helen Wahl	Ks. Legal Services	465 S. Parker, Ste 103, Olathe, KS 66061
JERRY RIFE	KAN Legal Services	712 S. Kan Topeka, 66603
GARY KRETCHMER	Court Services 10th Judicial District	Olathe KS
Paula Williams	KS Agricultural Mediation Services	901 S. Kansas Topeka, KS
Greg Krissel	" " "	" "
STAN WARD	FACTS, KSBOA	KSJ MANHATTAN
Monty Bertelli	Dept. of Human Resources - PERB	512 W. 6th Street, Topeka
KAREN TAYLOR	Better Business BUREAU	501 SE Jefferson Topeka 6660-
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Kathleen Stover	Consumer Mediation Participant	Rt 1 Box 69 Burlington, KS

**ALTERNATIVE DISPUTE RESOLUTION
HOUSE APPROPRIATIONS COMMITTEE**

SEPTEMBER 30, 1993

**TESTIMONY OF PATRICIA HENSHALL
GENERAL COUNSEL
OFFICE OF JUDICIAL ADMINISTRATION**

Good morning, ladies and gentlemen. Thank you for this opportunity to talk with you about Alternative Dispute Resolution.

Kansas district courts use ADR extensively. A survey taken last week and included as Attachment A shows that 23 of the 31 judicial districts use ADR procedures regularly. Seventeen of these districts have programs established by local court rule or directive. For some courts, mediation is an intrinsic part of their domestic proceedings. Other courts find settlement conferences, med-arb or arbitration extremely useful ways to resolve civil matters. Mediation is also used in small claims cases and has been used in juvenile offender cases. The ADR proceedings are conducted by judges, court services officers, mental health professionals, attorneys and volunteer mediators.

In short, ADR is alive and well in the Kansas judicial system. However, some things remain to be done.

In 1988, the Supreme Court of Kansas appointed its Committee on Alternative Dispute Resolution. Its members included judges, mediators, court personnel and lawyers. I served as staff. The committee presented a report in 1989, making recommendations to the Supreme Court concerning the future role of ADR in the courts. Attachment B is a section of the report which summarizes the committee's findings and recommendations.

The committee concluded that ADR had shown itself useful in the judicial system, especially in the mediation of custody and visitation issues. The committee recommended the Supreme Court to:

1. Encourage the use of ADR by the district courts;
2. Designate pilot ADR programs for more study and evaluation as models for other courts.
3. Establish by Supreme Court Rule minimum qualifications for court-appointed mediators; and
4. Appoint an ADR coordinator and advisory board to implement the committee's recommendations.

Through these recommendations, the committee sought to ensure all Kansans have an array of effective ADR techniques available to them. The recommendations are very similar to the legislation enacted by Nebraska and used to support its ADR programs.

*Appropriations
9-30-93
Attachment 1*

Testimony on ADR
Patricia Henshall
September 28, 1993
Page 2

After reviewing the report and proposed rules, the Supreme Court requested funding for the position of ADR coordinator in its 1992 FY budget. No monies were appropriated for the position. Without funding, it is impossible for the judicial branch to carry out the recommendations of the Supreme Court's Committee on Alternative Dispute Resolution.

District	Regular use of ADR	Court ADR rule or directive	ADR services provided by:	
			Court staff	Other
1st	Xa	X	X	X
2nd	X		X	X
3rd	Xb	X	X	X
4th	X		X	X
5th	X	X		X
6th	X	X	X	
7th	X	X		X
8th			X	X
9th	X	X	X	X
10th	X	X	X	X
11th	Xc	X	X	
12th	Xc	X	X	X
13th	d		X	X
14th	Xe		X	
15th				
16th	X		Xf	X
17th	X		X	X
18th	X	X		X
19th	Xc	X	X	
20th	X			X
21st	g			X
22nd				
23rd	h			X
24th	X	X	X	X
25th				Xc
26th	Xi	X		X
27th		j		X
28th	X	X		X
29th	X	X	X	
30th	Xc		X	X
31st	X	X	X	

a - Settlement conferences for chapter 60 cases and mediation in domestic cases

b - Uses judge other than that hearing the case to conduct settlement conferences in civil cases

c - Mediation in custody and visitation disputes

d - Frequently mediate divorce matters

e - Settlement conference in civil cases

f - In limited indigent cases

g - Would use mediation regularly if resources were available

h - Use mediation in 10% of domestic cases; other ADR less frequently in other civil matters. Is considering mandating mediation in all disputed custody cases.

i - All disputed custody cases must go to mediation.

j - Sometimes use ADR

I N T R O D U C T I O N

The Kansas Supreme Court established its Committee on Alternative Dispute Resolution on April 21, 1988 and requested that it submit its written conclusions and recommendations to the Supreme Court on or before April 3, 1989.

The duties of the Committee were:

- 1) to examine the current state of alternative dispute resolution in Kansas, with special attention to the ways in which District Courts use the different methods;
- 2) to explore and examine strategies and methods by which a court or a community interested in alternative dispute resolution could establish its own program; and
- 3) to recommend guidelines for the qualifications of mediators to whom a court makes referrals.

Goal

To examine the potential of alternative methods of resolving disputes and make recommendations to the Supreme Court.

Objectives:

- 1) Examine existing ADR programs in Kansas and the nation and mention those where there may be a clear beneficial use by members of the judiciary.
- 2) Establish a subcommittee to recommend guidelines for the qualifications of mediators to whom a court makes referrals. This subcommittee was charged with contacting a number of existing organizations for copies of their qualifications, and establishing a consensus set of qualifications.
- 3) Make recommendations on policies Kansas courts may wish to follow in establishing beneficial ADR programs.

The Committee has met regularly throughout the year and was divided into five subcommittees in order to address the assigned duties in more detail. Draft copies of the report were distributed to interested organizations across the state for their review and comment. Appropriate recommendations were incorporated into the final report. It is the hope of the committee that the large amount of supportive materials will be compiled into a separate volume at some later date.

RECOMMENDATIONS OF THE COMMITTEE

The Committee's work during the past year showed that Kansas has a strong and growing interest in ADR. A variety of areas of the law lend themselves to methods of dispute settlement outside of traditional court procedures. Mediation and other forms of ADR are being offered by the federal and state district courts; associations and public agencies operate programs; private persons and corporations sell ADR services. Courts, lawyers, mental health practitioners and lay people strongly endorse several of the programs now existing in Kansas, urging that ADR is and can be beneficial in the state through:

- 1) Increasing the number of disputes which stay resolved and reducing acrimony;
- 2) Reducing the cost and time for dispute resolution for courts and parties;
- 3) Encouragement to use the legal system; and
- 4) Obtaining results which satisfy all parties to the dispute.

Each ADR program in the state can affect the Kansas court system and the quality and administration of justice. A major concern of the Committee was that any recommended use of an alternative to an individual's use of the court not impinge upon obtaining the highest level of justice. Currently, ADR programs and services are developing without overriding supervision. Growth in ADR requires experimentation; however, the Committee believes the courts have an interest and a responsibility to ensure that ADR programs serve rather than hinder justice.

Therefore, the Committee urges the Supreme Court to continue the work begun by creating this committee, by taking a leading role in the development of ADR in Kansas. The Committee believes that the following recommendations will aid that development.

Judicial Use of ADR

The committee believes that judges have the inherent authority to use alternative dispute resolution techniques in all types of cases. The Supreme Court should reaffirm this power by establishing a court rule specifying the judge's authority to use ADR techniques or programs.

- A) CUSTODY/VISITATION: The Supreme Court should actively promote the use of mediation in custody and visitation disputes and in post divorce motions which involve children. Existing programs can serve as pilot projects by which the Supreme Court can evaluate the potential for mediation in this area.
- B) PROPERTY SETTLEMENTS: Mediation of property settlements in divorce cases should be encouraged. Mediators handling these cases should be familiar with the tax and other legal consequences of family law. The Committee recommends adopting a Supreme Court Rule or amending K.S.A. 23-601 et seq. to allow this.

- C) OTHER TYPES OF CASES: District courts should be encouraged to try ADR in other types of cases such as small claims, other civil and juvenile fields of law. Programs which currently exist should be evaluated in view of providing models for further development.

ADR Coordinator

The Supreme Court should appoint an ADR coordinator. The coordinator's duties would include:

- a) Assisting the Court to identify several existing ADR programs to serve as pilot programs;
- b) Working with the programs to gather statistics which will allow evaluation of the programs' strengths and weaknesses;
- c) Helping the pilot programs exchange information, share resources, apply for grants and develop in other ways;
- d) Assisting Kansas colleges and universities in developing interdisciplinary programs including practicums for training mediators.
- e) Continuing the cataloging of ADR programs and services in Kansas;
- f) Assisting in the creation of new court-based ADR programs;
- g) Exploring methods of providing ADR to individuals in all income levels; and
- h) Working with the ADR Advisory Board as directed by the Court.

Alternative Dispute Resolution Advisory Board

The Supreme Court should create an ADR Advisory Board to assist the ADR coordinator with carrying out the Court's directives. The members should be people with a thorough understanding of ADR, representing the courts, the legal profession, the mental health profession, the legislature and ADR professionals. The duties of the board members would include evaluating the Court's pilot programs, recommending development of new programs, and advising the ADR coordinator in each members' area of expertise.

ADR Advisory Board members who are experienced mediators could also act as resources for local judges in screening individuals who would like to serve as mediators in their areas. This system could act as an informal oral certification process. The ADR Advisory Board may wish to consider a recertification process which would be combined with the requirement to have a certain amount of continuing mediator education each year.

Minimum Qualifications

District Courts in Kansas should be encouraged to use mediators who meet the minimum qualifications listed in the Education and Guidelines Subcommittee report, which follows. The guidelines provide a framework which judges may modify as appropriate for individual districts or courts.

The Committee further recommends that mediators involved with family law matters be required to have specialized training in that area. Specialized training is recommended for any area in which mediators are used, but the

committee emphasizes special training in family law disputes due to the sensitivity needed in dealing with the effects upon children. Part of this specialized training would be to know when to bring in outside specialists to deal with issues with which the mediator is unfamiliar.

Pilot Programs

The Supreme Court should designate several ADR programs currently operating in the courts or with a significant number of court referrals as pilot programs. These programs would be studied and evaluated by the ADR coordinator and board to determine whether the growth of similar programs should be encouraged.

Requested Filing and Fiscal Information

Number of docket fees collected for all types of cases in FY
1992: 491,405

Additional revenue if \$3.00 is added to each docket fee:
\$1,474,215.00

Number of civil filings (Chapter 60 and Chapter 61 cases) for FY
1992: 156,506

Additional revenue if \$3.00 is added to each civil docket fee:
\$469,518.00

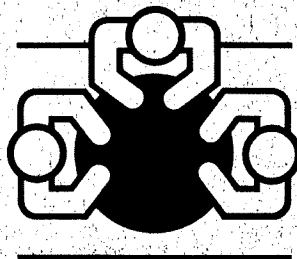
Additional revenue if \$1.50 is added to each civil docket fee:
\$234,624.00

SUMMARY OF DISTRICT COURT CASELOAD FOR THE STATE
YEAR ENDING JUNE 30, 1992

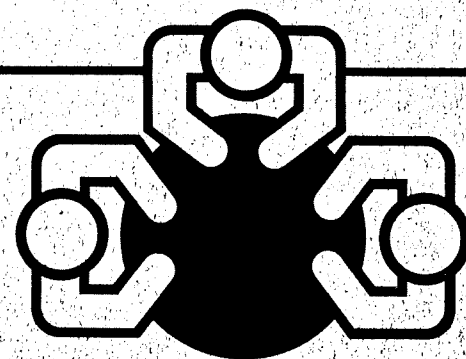
		<u>Cases Filed</u>	<u>Cases Terminated</u>	<u>Pending 6-30-92</u>
CIVIL CASES:				
Regular Actions		23,735	23,492	9,577
Domestic Relations		30,717	30,355	9,171
Limited Actions		<u>84,514</u>	<u>81,685</u>	<u>17,092</u>
Total, Civil		138,966	135,532	35,840
CRIMINAL CASES:				
Felonies		13,412	13,755	3,716
Misdemeanors		<u>16,986</u>	<u>19,022</u>	<u>2,620</u>
Total, Criminal		30,398	32,777	6,336
SUBTOTAL		169,364	168,309	42,176
Traffic Cases		267,696	267,689	
Formal Juvenile Cases		17,369	16,580	
Decedent Estates		5,120	4,672	
Fish and Game Cases		5,122	4,711	
Guardianship/ Conservatorship Estates		2,353	2,205	
Trusts		203	182	
Other Actions*		<u>27,057</u>	<u>27,057</u>	
TOTAL		494,284	491,405	
*Other Actions:				
Small Claims	17,540	Determinations of		1,606
Adoptions	1,838	Descent		
Treatment Proceedings	3,804	Miscellaneous Probate		2,269
		Actions		

Mediation Is. . .

- A process which allows parties in conflict to resolve conflict and reach a mutually acceptable agreement
- Facilitated by neutral, third-party persons who assist in the resolution of the conflict
- An opportunity for disputing parties to create their own solutions
- Usually less expensive and quicker than going to court
- A growing field of professional practice



Heartland Mediators
Association

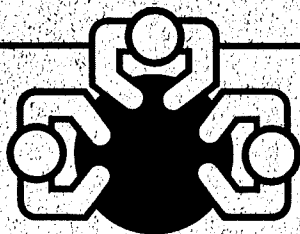


HEARTLAND MEDIATORS ASSOCIATION

Contact:

HEARTLAND MEDIATORS ASSOCIATION

Barry L. Carroll
1425 W. Murdock
Wichita, KS 67203-3178
(316) 262-6122 (h)



"There is one thing stronger than
all the armies in the world: and
that is an idea whose time has
come."
—Victor Hugo

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M E D I A T I O N

HEARTLAND MEDIATORS ASSOCIATION

Who Are We?

We are an organization which brings together individuals in the Kansas area who share a common interest in mediation as an alternate form of dispute resolution.

What Is Mediation?

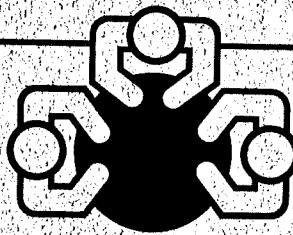
Mediation is a process which allows disputing parties to resolve the conflict themselves with the help of a neutral third party known as a mediator.

What Are the Goals of the Heartland Mediators Association?

The association advocates for and provides education pertaining to mediation. Our professional association provides a network for information, skill sharing and referrals.

What Will I Receive if I Become a Member?

As a member of the Heartland Mediators Association, you will receive newsletters, a membership directory and free or reduced training fees at quarterly meetings.



Mediators Are. . .

- Person who believe that disputants are capable of finding mutually agreeable solutions to conflict through mediation
- Persons with expertise in facilitating collaborative problem-solving
- Aware that informal discussions are less intimidating than court appearances
- Advocates for the resolving of disputes in ways other than litigation

MEMBERSHIP APPLICATION

Name: _____	Home Phone: _____
Address: _____	Work Phone: _____
City: _____	State: _____ Zip: _____
Employment: _____	
Primary Type of Mediation Services Provided: _____	
Membership: _____ General \$30 _____	
I am interested in learning more about: _____	



Domestic Court Services

GARY KRETCHMER
DIRECTOR, DOMESTIC SERVICES
FAX (913) 782-3297

STATE OF KANSAS
TENTH JUDICIAL DISTRICT
Johnson County

905 W. Spruce
Olathe, KS 66061
(913) 782-7252

September 27, 1993

House Committee on Appropriations
State House
Topeka, Kansas 66612

Re: Alternative Dispute Resolution

Dear Committee Members:

I am the Director of Domestic Court Services for the Tenth Judicial District in Olathe, Kansas. My staff and I provide mediation on contested child issues for divorcing families struggling with making decisions about their children. Our authority comes from K.S.A. 23-601 and local court rule which mandates mediation before the matter can be set on the court docket. Our local court rule was set in place in January, 1985.

Our program received a tremendous amount of support from the work done by the Kansas Supreme Court Committee on Alternative Dispute Resolution. In its final report of March, 1989, the committee's first recommendation was the support of judicial use of mediation in domestic relations cases. The committee's next recommendation was for a State office of Alternative Dispute Resolution. Its purpose was to coordinate and evaluate mediation programs on a statewide basis. We are fortunate to have a number of dedicated individuals and programs across the State utilizing mediation. However, we will not reach our potential until there is a coordinated effort to monitor these programs.

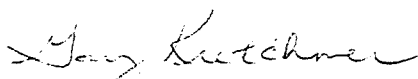
I believe our program has turned out to be a success. From 1985 until July, 1993, our office has worked with 2,252 families in mediation. These are families that have disagreements about custody and access of their children and are ready to let the court make some decisions about their family. Through our mediation program, at least 1,649 (73%) of these families have resolved their differences and have not had to depend on the court. The program has been a tremendous benefit both to the court and to these families.

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We feel it is extremely important to spread this news to every jurisdiction in Kansas. The principles of our success are not limited to the Tenth Judicial District. Our program is only one of many successful mediation programs existing throughout the State. A State coordinator can inform, educate, and evaluate all these programs. I have been fortunate to be able to spend time with the State Alternative Dispute Resolution coordinators in both California and Florida. They both point out the value of having State coordination of programming. I am personally convinced of the value and benefit of a State Alternative Dispute Resolution Office.

I sincerely hope you will give the funding of the State Alternative Dispute Resolution Office serious consideration. Mediation and other methods of Alternative Dispute Resolution have great potential. If you have any questions about mediation in the Tenth Judicial District or other issues involving Alternative Dispute Resolution, please do not hesitate to contact our office.

Sincerely,



Gary Kretchmer
Director of Domestic Court Services

Court Services
905 West Spruce
Olathe, Kansas 66061

(913) 782-7252

GK/ps

Earlene Stover
Rt, Box 69
Burrton, KS 67020

September 30, 1993

To the House Committee on Appropriations:

SUBJECT: Participation in Mediation

Thank you for the opportunity to be here today. It is a privilege to be among such accomplished people. My purpose is to give a personal account of my participation in a mediation process. I want to give some background as to how this came about for us; what went on during our sessions, and then to give my evaluation. My situation had to do with divorce. Unfortunately, I can not say that we mediated the whole process, but the potential for successful completion certainly was there.

We did manage to resolve the most important issues by mediation. They were division of property, and where the children would live, as well as the visitation routine. This was quite an accomplishment for us because we had previously been engaged in a year long custody battle (encouraged by the attorneys, I believe), which cost \$1000 - resources neither one of us had.

The successful mediation was done in two sessions each about two hours long. But division of debt became a "sore point" between us. We never did mediate this issue because it was not mandated and at this point my ex-spouse preferred the adversarial approach. We soon found out we were thrown back into a frustrating court situation.

To give some background information, finding out about mediation in Reno county was just by chance. A year ago I didn't even know what mediation was. In the last few years my former husband had made a career change into ministry. To make a long story short because of the continued intensity of our divorce, and the "tug of war" with children, I had asked the church system for some help for us.

Mediation was suggested by the district office and originally it was going to be provided through some type of clerical intervention. Instead we found a mediator suggested by one of the attorneys. Just to show how little we all knew about the process at that time, we were supposed to resolve all our issues in a one hour setting according to the attorney. I remember wondering after such grueling court battles and intense hurt inflicted upon one another, how we could "clean up the mess" in such a short time. Needless to say, we didn't.

The mediator himself is an attorney, one of the few trained people for this in Reno county. He charged us \$75 an hour and we divided the cost. Mediation, while not very common in Hutchinson is more available in Wichita, Salina and McPherson. I have learned since by talking to other divorced

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people that they had obtained services there because they did not think mediation was accessible to them in Reno county.

What happened during our sessions? When we met together for the first session we hadn't been together in the same room (except the courtroom) for about one year. That was a major accomplishment in itself because until then we hadn't developed any spirit of co-operation with one another. This is not say that at some point in our sessions angry words did not fly. After all, we had been warring. But the skill of the mediator was apparent. Always his purpose was to hear us, diffuse the negative energy and bring our purpose back into focus. The goal was to resolve the issues at hand as quickly as possible and show us where we had made progress via our written agreements.

What were some of the highlights of our mediation sessions? We started with the less "explosive" topics for discussion, those that would be the easiest to resolve. We divided the household possessions fairly easily. Agreeing on the division of photographs was a more emotional experience. After all, we were talking about a twenty year history together with a lot of family memories. In mediation we talked about possible ways of doing the dividing, even the idea of including our children in the process. From this I realized that the mediation approach focuses on the emotional side of divorce, something the courts often overlook.

The second two hour session had to do with custody and visitation of children. Also there was discussion on how we would communicate about them - to basically lay some ground rules. During the sessions the mediator used a large board and marking pen to write our ideas and help us compose our own agreements. For example together we created this parenting statement: "We both love our children. We want to promote their love for us as their parents. We want to share them. We care about the future of our children. Within the limits of our physical and financial resources we want to provide for our children the opportunity for them to make the most of their lives. No matter what happens in the future should we remarry, we will focus together for our kids."

Our sessions sometimes required a referee. Because both of us had so many unresolved issues one of our mediation agreements was to seek some counselling for ourselves and our children. As adults we had a lot of anger towards each other and the purpose was to uncover the underlying problems in dealing with each other, as well as promote some constructive communication for the future.

I felt triumphant over myself when I was able to make a personal statement in mediation which went like this: "I realize that mediation involves give and take. I want to do my part to expedite this process by listening without interrupting. When it is my turn, I will try to speak in an unthreatening way. I want to make a sincere effort to stay focused on the specific topics to be mediated. As related emotional issues arise, I agree to "save" the discussion for a more appropriate time."

As we went along our parenting statement as well as our mutual agreements created by us were written by the mediator and sent to the respective attorneys.

I feel the whole process was an empowering experience, especially when we could focus positively together on our biggest asset - our children. This gave me a sense of being able to steer my own destiny rather than be subjected to disappointing decisions after some frustrating court experiences. It is wonderful to have some sense of control in what often seems like the out of control nightmare of divorce.

By identifying our own problems we could then begin to identify our own resources and start to reconstruct our lives. I appreciated the creative techniques used in mediation. After coming to an impasse in one session we were allowed to caucus. Each discussed our options privately with the mediator and became better equipped to reach an agreement.

What were the drawbacks? Since the concept of mediation was new to us we went into the process without much understanding of what to expect. That in itself made for lack of equal commitment by both parties to mediate for the duration. Also some of the skepticism came from the attorneys who seemed to have some difficulty in understanding and translating the mediated terms into journal entry form.

I believe we should have been encouraged to continue with the process once it was started. It was obvious we had achieved some success and that we could be resourceful. I think court ordered mediation may have been in order here. In the long run it would have been less expensive and less time consuming and less stressful for everyone. We could have avoided the repetition of dealing again with previously resolved issues as they resurfaced in court.

I would have liked for the attorneys to have been more included, at least in the understanding of the mediation process. I noticed they sometimes remained in the "fight" mode even when we were not. Also, I would have liked for the judge to have been kept informed along the way as to what was being accomplished, and to know that progress was being made.

Finally, if I had a wish I would have liked for my case to have been part of a plan whereby we would have been fully encouraged to develop our own solutions as well as tap into already existing resources. Net-working of resources within the community for the purpose of helping in cases such as ours is a cost effective measure in itself.

Already of great help to me has been area ministries for divorced people and single parents. These topics are discussed: What are the most common needs of single parents? What are the available resources? And more importantly, How can we be resources for each other?

Coordination of existing services and good communication among agencies sometimes presents challenges. But I'm convinced that the inherent resources in people are limitless. If the mediation process was fully supported a

more humane approach would occur, better enabling families to "pick up the pieces". By stopping the "fight" and promoting self responsibility we are doing a service not only to ourselves and our children but the rest of society as well. I truly hope that as the advantages of mediation become better understood there will be more demand for this service and it will become a regular occurrence within our legal system in Kansas.

TESTIMONY TO THE KANSAS HOUSE APPROPRIATIONS COMMITTEE
SEPTEMBER 30, 1993

Presented by Jerry Beneventi, Spokesman
Kansas Committee For Community Mediation
3211 Clinton Pkwy Ct., Lawrence, KS 66047
(913) 843-9111

Madame Chair, Distinguished Members of the Committee:

I'm grateful for the opportunity to testify today in response to this committee's interest in the Nebraska Dispute Resolution Act of 1991.

I am Jerry Beneventi from Lawrence, Kansas. I speak today on behalf of our Committee for Community Mediation which formed roughly a year and a half ago to explore the possibility of drafting and introducing legislation in Kansas which creates and funds community mediation centers much like those described in the Nebraska Act. Represented on the Committee are coordinators of non-profit organizations already providing mediation services in several cities in Kansas, as well as private mediators interested generally in the development of mediation in the state.

At this point, the bulk of our efforts has been to research legislation already enacted in other states relating to community mediation. Just recently we finished the first draft of a bill, and were in the process of discussing revisions and legislative sponsorship when we became aware of this hearing.

This morning I'd like to share two aspects of our research findings that may assist this Committee. The first relates to legislative trends generally in the area of mediation, and the second relates to approaches other states have taken in funding their programs.

First, on legislative trends we discovered from a report by the ABA's Special Committee on Dispute Resolution that state legislation falls into one of five categories: 1) comprehensive laws on **community mediation**; 2) comprehensive laws on **family/divorce mediation**; 3) laws **appropriating state funds** to promote mediation generally; 4) laws supporting **small claims** mediation programs; and 5) **Miscellaneous provisions** in various statutes using or mandating mediation. The Nebraska Act is a comprehensive act relating to community mediation. A comprehensive act, from what we can tell, refers to an act which both creates and funds community mediation centers statewide. Kansas, at the time of the report, fell into category five - a state which had enacted provisions using or mandating mediation. I'm unsure whether that status has officially changed. In any case, it is our sense that the state of Kansas is at an amenable but very formative time to enact more comprehensive legislation.

At this time, three of the five states bordering Kansas have already enacted comprehensive community mediation legislation in the form of Dispute Resolution Acts. Specifically, Nebraska in 1991, Colorado in 1983, and Oklahoma in 1983. A fourth border state, Iowa, has not enacted comprehensive legislation in this area, but passed provisions in 1985 which establish and encourage community mediation

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centers in the prosecuting attorney's office of the department of justice. Other states which have also enacted comprehensive community mediation laws are New York, Texas, Ohio, Michigan, Oregon, and California. In short, we believe there is advantage in enacting comprehensive legislation on mediation in the way some of these states have, rather than approaching it in a piecemeal fashion as the more "pioneering" states were left to do without the benefit of hindsight and experience available to us in 1993.

Secondly, on the issue of funding these programs, we discovered that states typically establish a separate dispute resolution fund, but approaches vary on where the money comes from, who administers the fund, and who qualifies for funding.

Most funds are created from money received from an increase in civil filing fees anywhere from two to ten dollars. One state, Wisconsin, also singled out a filing fee area where they apparently wished to discourage activity, and adopted a \$25 increase in post-judgment modification motions for domestic cases. In addition to filing fees, many states also encourage funding through other public and private funding sources, gifts, grants, and user fees. The Nebraska act appears to make a large initial appropriation from the General Fund (\$109,361 in 1991 and \$239,840 in 1992) without tying it to an increase in civil filing fees, and then allows each center to obtain additional funding from unspecified public and private funds, and user fees. Other states, like Oregon and Ohio also encourage funding from private and public sources. This may be a good policy. A conversation we had with Jan Allen who was then the Director of the Oklahoma program indicated that their healthiest center was Tulsa, which had begun to develop prior to state funded assistance. It was her opinion that Tulsa's success was tied to its sense of responsibility in securing adequate funding to operate.

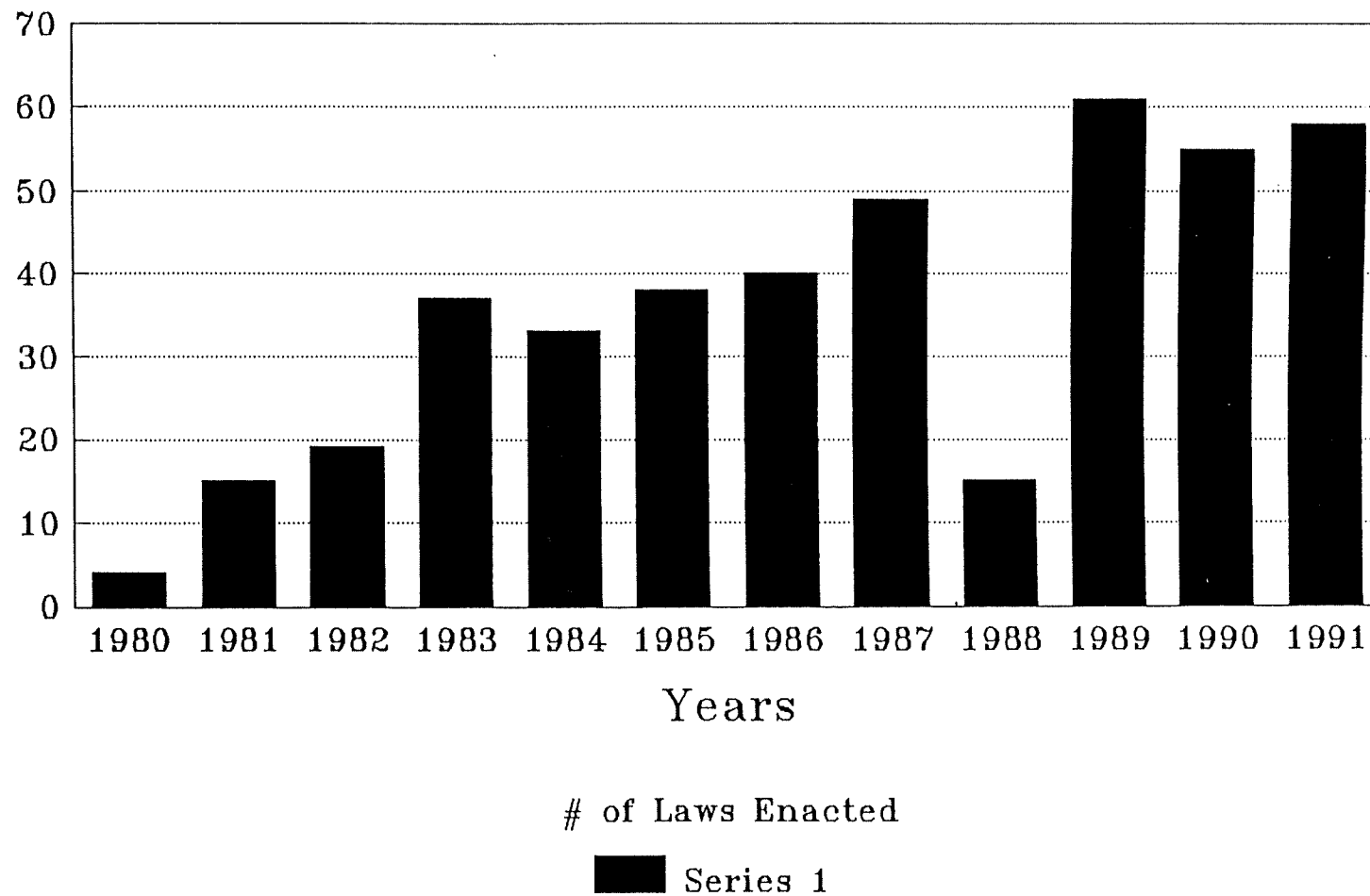
Most Dispute Resolution Acts run their programs through the state court administrator's office, but California used the department of consumer affairs, and Texas authorizes each county to establish and fund their own ADR programs. Legislation can pre-establish which programs qualify for funding, or delegate responsibility to either a Director or Commission to establish standards and rules. In some states qualifying programs are limited to public, non-profit organizations; while others do not discriminate between private or public but emphasize organizations whose programs promote the use of mediation.

In closing, I would just like to say that while we do have a first draft of a bill, and hope to introduce it for consideration in the next legislative session, we still are discussing some of the issues I've mentioned today, and welcome the input of this Committee and others in the shaping of the bill for the benefit of the people of the state of Kansas. We would be happy to make copies of our first public draft available to this Committee and its members at your request, probably sometime later in October.

Thank you for making this forum available to us, for your attention today, and for your interest in the subject of alternative dispute resolution.

STATE ALTERNATIVE DISPUTE RESOLUTION

Legislative Growth



BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS
of the
KANSAS LEGISLATURE

SEPTEMBER 30, 1993
ROOM 313-S
KANSAS STATEHOUSE

MEDIATION

by

BERNARD J. DUNN, J.D.
Kansas Mediation Service
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1

THE ROLES OF A LAWYER

Several years ago, the American Bar Association recognized in a publication that there is a variety of roles for a lawyer.¹ Refining the concept further, there are several roles a lawyer may play. It is helpful to briefly describe a few as a context for this presentation.

- CONSULTANT - providing information, when needed, regarding the law and legal matters.
- COUNSELOR - advising on the options and the preferable and most advantageous choices within the law.
- ATTORNEY - acting for and on behalf of another to do for the person what the person is permitted but is powerless, unable or unwilling to do in dealing with other people, the government, the courts or business entities. In this role the lawyer represents the client to others or the court.
- ADVOCATE - asserting the interests of a person or organization in the arena of alternative, and possibly conflicting, interests. This may include some balancing of power among participants making choices which affect the client.
- ADVERSARY - defending the interests of the client in the face of harmful attacks and assertions by others; or, affirmatively asserting the interests of a client against the other to recover what is justly and fairly due to the client. As part of the function in this role, the facts are typically developed supporting and favoring the interest of the client. When the other side does likewise, and the matter is presented to a judge, a fact finding and truth testing process ensues, resulting in the imposition of a decision legally binding upon the parties. The process requires both lawyers to fully develop the facts honestly, and the judge to hear and decide fairly, to function well. It is typically referred to as the adversary system or process.

Several roles may be played at one time or in succession for the same client.

¹Marvin W. Mindes, "Trickster, hero, helper: Do lawyers want to be liked - or would they rather be feared and hated?", The Bar Leader, published for Bar Association Officials by the American Bar Association (Volume 8, Number 6, May-June 1983), Pg 14.

2

LEGAL REPRESENTATION OF NEITHER, NOT BOTH

"As a peacemaker, a lawyer has a superior opportunity to be a good person." This comment is attributed to Abraham Lincoln, a lawyer in private practice.

A lawyer can only represent both sides in a transaction, when real threat of conflict does not exist.² What of those situations where conflict is not only a threat, but is a present active reality?

The lawyer may do what others also may do - the lawyer may represent neither, while serving the interests of both.

As a neutral third party, the lawyer may fill a role that may also be filled by a social psychologist, a minister, a relative or a friend. It is the nature and complexity of the problem in conflict, and the format selected to resolve the conflict, which determines which of these backgrounds would best serve the interests of the parties. It may be that a lay volunteer can help resolve a neighbor to neighbor dispute, if consequences are relative modest. If significant legal or psychological consequences may result, a mediator with greater education and experience should be used.

3

NEUTRAL THIRD PARTY FORMATS

How does a neutral third party fit into the resolution of the conflict?

There are several formats or processes which can be used, depending on the results needed and the feelings of the parties.

ARBITRATION - both parties agree in advance to be bound by the decision imposed upon them by the arbiter. Both then present the issues, the background, the facts and their desired and suggested solutions to the arbiter. The arbiter then decides. The parties are bound and can obtain an enforcement in court in necessary. This is like a private judge in a simplified process, with a little less legal power of the state behind it. Parties choose, in advance, to

² Code of Professional Responsibility _____

- give up their power to decide and their control over the outcome. There are some variations of this process.
- MEDIATION - both parties agree to involve a qualified neutral third party as mediator to assist them in negotiation to avoid a breakdown in the discussion, or after they are at a point where they are stuck, can no longer talk to one another, but wish to retain control over their choices and the outcome. Their interests usually are served by preserving some aspect of their relationship and reducing the residue of expense and animosity. Parties retain control, and may leave the process at any time. They are free to agree or not to any particular point. They know that what goes on here is in the spirit of settlement negotiations and will not be used against them later in court, if they fail to reach an agreement.
- FACT-FINDING - parties present their differing version of the facts, and their desired outcome to the fact-finder. The fact-finder then presents back to the parties a single cohesive rendition of the facts, and may also present recommendations for resolution of the issues for the parties to consider. Parties agree in advance that the facts will be the facts they will proceed upon in negotiations from that point forward. Typically, parties accept the recommendations of the fact-finder, or something close to the recommendation.
- CONCILIATION - parties are brought into the presence of a prestigious person having the respect of the parties, as well as the respect of the community in which the dispute arises. The conciliator encourages the parties to settle the dispute on their own. The conciliator may arrange for the parties to have a private, protected and neutral area in which to discuss settlement. This takes place figuratively and often physically, as when the mayor, the minister or respected member of family or society makes herself or himself present to the dispute. the conciliator is depending on status and image to both encourage settlement and give a safety and respectability to making concessions. The physical loaning of the conciliator's office as a safe neutral place to talk is often the physical embodiment of the

psychological safety. This allows saving face
in the bargaining.

The mini-trial is a combination of several of these formats, fact-finding and mediation.

4

TRUE MEDIATION : VOLUNTARY AND PRIVATE

Mediation is best when the relationship between the mediator and the parties is private, and voluntary, with the parties and mediator all present together in the same place, and when it allows adequate reflection time. Under current law, if parties agree in writing to the mediation, it is protected from subpoena. This is also true in some court ordered mediation settings.³ Mediation functions best when the internal pressure to settle is reduced or eliminated, although it is helped when there is outside pressure to settle. In other words, the mediator should not threaten the parties that the mediator will impose a decision on the parties or settle it for them or report them to the court if they don't settle. Threats by someone holding power over the parties, or by the mediator to force a settlement is harmful. They should remain free to control their own decisions. However, the outside pressure of the upcoming court date, contract deadlines, mounting damages, the impending loss or unwanted change, the cost of the mediator's fee and expenses and the like, all help to provide incentives to the parties to settle. Also the obvious pressure that if they don't settle, the decision control will be ultimately taken from them and given to the court, is also an incentive to settle, so long as the party wants to control the decision.

Forced settlement gets the case off the docket of the court, but virtually assures later disputes, anger and attempts to sabotage the so called agreement forced upon them. Forced settlement has a role in the overall legal process, but it should not be confused with true mediation. Mediation loses its key asset of knowledgeable ownership and acceptance of the terms of agreement, when the resolution is forced upon the parties.

5

MAKING THE SERVICE AVAILABLE

MEDIATOR IN PROFESSIONAL

PRIVATE PRACTICE - this is the preferable method of service delivery from the standpoint of privacy, freedom of choice, voluntary participation, time for reflection, and the quality of service resulting from fair unsubsidized competition in

³ K.S.A. _____

the professional service marketplace. However, this tends to be the more expensive way and is out of the reach of many. This is especially true in personal, family and neighbor disputes, and in some consumer disputes. As Judge James Buchele of the 3rd Judicial District stated: "Mediation is great, but its just too expensive." Expense is slightly less of a problem in the commercial, insurance and labor settings, or where a large group can share the costs.

MEDIATOR AS EMPLOYEE OF
COURT SERVICE -

This is normally cheaper for the participants, since it is taxpayer funded. However, because it is taxpayer funded two things happen which are not good. Internal pressure develops to settle. The mediator insists the parties settle, whether they agree to the terms or not. Often a threat to report the person who doesn't agree to terms to the court, when it is this judge who will later be hearing the case which failed to settle ostensibly through this person's "fault" of stubbornness. This problem is fostered by the very fact that it is less expensive (or free) and the parties can argue for free, refusing to give in, just as they would in their own surroundings. They often view the court as surely deciding in their favor since they are obviously in the right, when this may not be the case at all. They see themselves as having nothing to lose, which is the classic formula for a breakdown in negotiations. The mediator is in a terrible dilemma. The court may be sympathetic, or maybe not. In commercial disputes, this is less of a problem.

COURT ORDERED MEDIATION

WITH A PRIVATE MEDIATOR _

In this situation the parties are required to at least start mediation. If, after a reasonable try, parties refuse to negotiate or cannot reach an agreement, then it comes back to the court for a decision. The parties pay the fee of the mediator, often on a reduced or sliding scale fee arrangement based upon ability to pay

VARIATIONS ON THE ABOVE THEMES EXIST.

6

PERSONAL BACKGROUND

When I established the Dispute Alternative Resolution Center, now the Kansas Mediation Service, it was to make mediation, and other third party neutral services, available to the community through a private professional practice.

I have served as arbiter, mediator, fact-finder, and conciliator. I have also conducted a mini-trial combining attributes of fact-finding and mediation. I have served for the American Arbitration Association, Kansas Children's Service League, Rural Assistance Corporation, Better Business Bureau, Topeka Early Settlement Project of the Topeka Bar Association in Shawnee County District Court, Public Employees Relations Board, and the Kansas Department of Human Resources.

7

SOME DYNAMICS OF MEDIATION

Peacemaking is a tedious process for the parties and the mediator. Its hard work.

Agreement for the sake of peace at any cost, without a firm foundation on realistic facts, does not last. It leads to anger, resentment, and sabotage of the agreement.

Maximization of self interest by each party must be the objective.

Gathering facts, challenging the other side and analyzing the facts in a realistic context, is the prerequisite for the development of plausible options. Conflict is managed with the assistance of the mediator.

Parties' selection of options which satisfy their own underlying interests, is the goal - not argument over differing positions.

Bargaining, "horse trading", can be helpful tool when the facts serve the interests of both parties or neither, but it is not the guts of mediation. Hard-nosed development of options and choices based upon realistic facts is the main focus. Mediation does not condone whining. Quite the contrary, it allows each side to confront the other, with the guidance of the neutral third party, and to test facts and assumptions. Challenging the other side takes some strength.

The mediator can help to balance power to a limited degree. If the power imbalance is too great, mediation may not be safe.

The mediator can use information to convince the parties to settle but does not push them to settle. The desire, in the mediator, to control the outcome, is anathema.

When the mediator controls and directs the result, especially in a court service or court ordered mediation, it is not mediation at all. Rather, it becomes arbitration; in effect a "People's Court" - without a proper appointed judge, - without legal counsel, - without fair access to witnesses, - without the process which is due when a decision is imposed without one's consent; in short, it is a denial of the constitutional right to a fair trial.

Mediation should be a way to maintain control over one's fate; to maximize self interest and minimize the expenses of conflict. Thus, mediation should be a sought after alternative to the adversary process resulting in a decision by a judge, rather than a trap to be avoided. Mediation should not be a pressurized settlement conference resulting in a forced resolution.

A mediator may suggest possible choices, but should never advise parties to select a particular option. The search for viable solutions should be conducted by the parties with the mediator facilitating the process by skill and techniques designed for that purpose.

Mediation is not a research and investigation process for the court. It is important to look for the facts. This investigation serves mediation and it serves the court, but mediation should not be twisted into a research device for the courts. Mediation should be secret and voluntary.

While parties normally do have something to gain by negotiation, whether financial, emotional or practical, it occasionally happens that there is really nothing to be gained. In this case negotiations are impossible and mediation is a waste of effort. However, many times the parties don't see what they have to gain by negotiations, or lose by refusing to negotiate, until they are in the presence of a skillful mediator. Therefore a first attempt should always be made.

8

STATE GOVERNMENT - A HELPER

There is something to be said for a legal framework, perhaps by legislation, modifying slightly, parts of the code of civil procedure, making it safe and helpful for attorneys to refer to a private professional mediator to serve their client's interests.

There is also something to be said for mediation by volunteers in a network of private practitioners or organizations providing the service.

There is even a strong case to be made for a state established and operated mediation agency and service.

All of these can be good, if true mediation is the product, the service, being presented to the public.

9

STAYING OUT OF COURT

If clearing the courts dockets is the objective, then high pressure settlement conferences can give results. The danger is the unrest and disappointment in the public court system, when parties get a settlement stuffed down their throat, by someone who is supposedly helping them negotiate. It is expected that a judge will impose a decision, and can be accepted. Having a decision forced upon them makes the parties resent the court and lose faith in the justice system.

If the objective is settlement based upon full assessment of realistic facts, and the creation and selection of options, to be owned and accepted by the parties, then private practice professional mediators may be best.

The main point is to keep mediation out of the court system. It can be done by organizations or individuals, with or without state backing, but should be free and clear of any entanglements with the court, which will be resorted to if the negotiations fail to reach settlement.

The judges should remain judges to decide based on the evidence at trial. Judges should not enter into negotiations as mediator, directly or indirectly.

If mediation remains a good product, it will help reduce the cases that go to court. Further it will help the settlement last so it does not come back later in a different form. This can save on court time and money. Fewer expansions in the number of courts will be necessary in the future. Mediation is cheaper in the long run, and also can preserve relationships which are valuable in the personal and commercial life of the society and its members.

10

ENCOURAGING THE PRIVATE PROFESSIONAL PRACTICE

Many things can be done by the state legislature to encourage, facilitate, protect and foster the use of mediation. Making it required to use the process before going to court in particular kinds of cases is one. Helping to protect and assist

the private practice lawyer who chooses to serve his client by referring the client to mediation is another. The right to counsel and to trial should ultimately be preserved, if the state is going to become a player in the game.

A recognition of the private practice mediator as a discreet and important part in the justice system also would be helpful.

Establishing guidelines for when a professional is necessary and when a lay volunteer is correct also could be helpful. Whether the mediator is paid or volunteer, certain disputes are going to need the professional expertise, not only of mediation skills, but also of the law, mental health or engineering training and experience of the mediator.

11

BUILDING A NETWORK OF VOLUNTEERS

Many organizations, provide some form of mediation service. Many mental health professionals and lawyers have mediation training and experience. The state could create a network, establishing standards. This could be done in addition to some previously mentioned changes in the law.

12

A NEW STATE AGENCY SERVICE

Some states have installed various forms of state-backed mediation systems. A straight out state agency, running parallel to the court system, may have some advantages. A highly trained, dedicated staff of mediators, operating under policies and procedures could make a reliable source, especially if the process is required before using the court system.

13

CONTRACTS WITH PRACTITIONERS

A State contract with private mediators, or an organization of mediators could also be helpful.

14

THE KEY TO SUCCESS: AVOID THE QUICK-EASY

It is important to remember, that mediation comes to us from way back in the cultural history of humankind, especially the Jewish and the Chinese traditions. Further, it is done in every family and society in some way. Part of why it works is its informality, its privacy, its freedom and its power to avoid the involvement

of the government and the court system with its heavy handed laws and adversary b process. It should not be over regulated or it will die. People are already beginning to ask: Whatever happened to mediation ? It seemed like such a good thing, but it seemed to fail in its effect. ⁴ Juana Woo discussed some of the failings of mediation in her article in the Wall street Journal. However, what she describes as "mediation is NOT mediation. It is arbitration or some similar form of forces settlement where the phrase " argue their own case" and "... mediator required her to give up her Northern California home and job and return to Southern California..." These are not the characteristics of true mediation but are the result of trying to keep people out of court or an overly directive mediator. It is precisely this which has prevented the fragile life of mediation to flourish in private and in freedom.

One client was overheard speaking about her lawyers admonition: " Either you do what I tell you to do, or I'll send you to mediation, and you don't want that do you." Clearly the implication that mediation is going to result in a settlement being crammed down her throat. No wonder mediation seems to fail as the government uses it as a device to reduce the case load of judges. The point and the merits of true mediation have been missed. They will likely continue to be missed in court operated mediation systems.

Mediation takes time, it takes energy, it requires privacy, and freedom of choice. It also require that parties not be permitted to argue without cost, to yank the other side around for free and without consequence.

15

THE GOAL: FOSTER AND PRESERVE TRUE MEDIATION

The benefit to individuals and to society is found in true mediation. The reduction of court case loads must remain an incidental by-product, or it will kill the goose laying the golden egg.

16

THE OBJECTIVE: GROWTH AND CREATIVITY WITH CONSISTENCY

To gain the goal, foster mediation. Help it to grow. Whether it be Uncle Fred or Aunt Tilly as the outside neutral in the privacy of a family dispute, or a team of engineer, lawyer, and clinical social worker in a complex neighborhood hazardous waste pollution case, mediation's fragile environment must be protected or the great and valuable benefits will evaporate.

⁴ Juna Woo, "Mediation Seen as Being Biased Against Women", the Wall Street Journal, 8-4-92. (" I think the idea of mediation started out really good, but somewhere something went wrong" , Mrs Theroux- the woman in mediation.)

The establishment of consistency and reliability in the process, for quality control and the safety of the public, can be addresses without heavy handed over regulation, blocking out many who do it, whether formally or informally, and the many fine results they obtain.

Thank You for your interest and your effort.

Bernard J. Dunn, J.D.

TESTIMONY OF LARRY R. RUTE
(913) 233 - 2068

HOUSE COMMITTEE ON APPROPRIATIONS
ROCHELLE CHRONISTER, CHAIRPERSON
Thursday, September 30, 1992
Room 313 - State House

I would like to thank the Chairperson and members of the Committee for the opportunity to appear before you today to discuss alternative dispute resolution and, in particular, mediation services.

I am the Deputy Director of Kansas Legal Services (KLS). As you are probably aware, KLS is a private, non-profit corporation dedicated to providing free or low-cost legal services to low and moderate income Kansans. Last year our attorneys and support staff, located in 12 offices throughout the state, provided legal advice and representation to approximately 20,000 Kansans.

With my appearance today I am also wearing two other hats. I have long been interested in alternative dispute resolution techniques through my involvement as Chair of the Topeka Bar Association's Alternative Dispute Resolution Committee and as a long time member of the Kansas Bar Association's Alternative Dispute Resolution Committee. I also appear before you as Chair of the Corporation for Change's Family Court Committee. The goal of the Family Court Committee has been to explore the feasibility of a family court system in Kansas.

I am very pleased that the Appropriations Committee has chosen to give serious consideration to the Nebraska Dispute Resolution Act. I believe that a bill such as this one, modified slightly to meet the needs of Kansas citizens, would do much to serve as an effective vehicle to resolve conflicts between individuals as well as to reduce the inflow of cases into our overburdened court system.

DISPUTE RESOLUTION SERVICE - OLATHE

The Committee may not be aware of the fact that a prototype of a local dispute resolution center as envisioned by the Nebraska Act is currently in operation under the name Dispute Resolution Services, in Olathe, Kansas. Dispute Resolution Services (DRS) was established in 1985 through the joint efforts of the Kansas Bar Association and Kansas Legal Services, Inc., to explore alternatives to the court system for the resolution of disputes. Dispute Resolution Services is based in the Kansas Legal Services of Olathe office and serves all residents of Johnson county regardless of age or income. Priority is given, however, to disputes involving parties who have a limited income.

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Dispute Resolution Services began accepting referrals in January of 1986 after extensive groundwork had been laid for the project and training of volunteers was completed. Project staff trained approximately twenty (20) volunteers from the community to mediate minor disputes. Approximately 60% of the volunteers were attorneys and the other volunteers ranging from mental health professionals to business persons and other interested individuals. The original focus of the project was on the resolution disputes between neighbors, landlord-tenant disputes, consumer complaints, and family disputes.

The Director of this project, Ms. Helen Wahl, is in the audience today and I am sure she is more than willing to answer any questions regarding the specifics of DRS project operations. Today, DRS staff and volunteers continue to be heavily involved with neighborhood dispute mediation under a grant through the Johnson county small claims court. Parties to small claim disputes are provided a brochure at the Clerk's office advising them that if they are thinking about filing a lawsuit, have filed a lawsuit, or are defending a lawsuit, mediation may be an alternative worth considering. Under the program, mediation can be provided prior to filing a lawsuit, after filing but before the court date, and at the date of the court appearance. If the legal issue is not resolved in mediation, parties are given additional time to present their case before the judge at the court docket.

In addition to small claims court mediation, DRS also provides family mediation services in divorce and post divorce matters. Problem resolution will commonly center around issues concerning custody and visitation. Family mediation cases are co-mediated, generally involving male and female attorney and non-attorney mediators.

I have set up below dispute resolution statistics for 1992 and the first six (6) months of 1993, as follows:

	<u>1992</u>	<u>1993</u> (through 7/30)
* Small claims cases	306	164
* Cases reaching agreement, sm. cl.	176	95
* Ratio of agreements to cases mediated (small claim)	58%	58%
* Compliance with agreements, sm. cl.	83%	92%
* Office mediations	17	8
* Office mediations reaching agreement	13	7
* Ratio of agreements to office mediations	81%	88%
* Telephone/in-person contacts	423	284

DRS is currently developing a proposal for victim/offender mediation in the juvenile court. This form of mediation will bring victims and the perpetrator before a mediator to establish an agreed restitution in the victim's behalf. We believe that the potential for beneficial impact by this type of mediation in the juvenile court is quite high.

FAMILY COURT STUDY

As I indicated earlier, I serve as the Chairperson for the Corporation for Change's Family Court Advisory Committee. Early in July, the Corporation for Change issued a report prepared by the Family Court Advisory Committee suggesting that the Kansas Legislature and Judicial branch might "dramatically improve the quality and appropriateness of court services to Kansas children and families" by pursuing a family court system. The report entitled, "A Family Department for the District Courts of Kansas," found that many Kansas families are directly and indirectly impacted by our judicial system. Excluding minor cases, in excess of 56 percent of all civil cases filed in Kansas District Courts for the year ending June 30, 1992, were domestic relations and juvenile matters.

The role of the Corporation for Change in developing its report was authorized by the 1992 Kansas Legislature and funded by a one-time grant from the Judicial Education Fund. This grant permitted the Corporation to hire two consultants, E. Hunter Hurst, the Director of the National Center on Juvenile Justice, and Jeffrey Kuhn, the Director of the National Family Court Resource Center.

Over a five-month period, these consultants interviewed members of the judiciary, court service workers, legislators, family law practitioners, and members of the general public to study the Kansas court system and to make an attempt to take the best aspects from family court models currently in existence and apply those concepts to our judicial system. The consultants' recommendations were put in final form by the Family Court Advisory Committee in May. In early June, the report was presented to Justice Holmes and the other members of the Supreme Court by Jolene Grabill, Judge Jerry L. Mershon, and myself in a two-hour informal conference.

On September 8, I had the honor of presenting the Family Court proposal to the Joint Committee on Children and Family. I did feel that our presentation was relatively well received by the Joint Committee. In fact, the Committee Chair requested that the Family Court Advisory Committee draft proposed legislation and make it available to the Joint Committee at its next meeting in November.

The reason that I am discussing the Family Court proposal with you today is that those states that have been successful in establishing family courts have utilized alternative dispute resolution techniques as an important if not vital element in developing a successful family court system.

There are several principles that are commonly discussed as encompassing a comprehensive family court. These principles include the following:

1. The family court requires carefully selected, trained, and experienced judges and staff;
2. One judge, one staff, one family;
3. Maintain an aggressive case processing and management system;
4. Maximize the use of non-adversarial methods of family dispute resolution;
5. Provide maximum access to all members of society;
6. Maximize the use of community services and trained volunteers; and
7. Broad based jurisdiction.

Obviously, a major element that must be developed to maximize the efficiency of a family court system is the use of alternative dispute resolution. Mediation techniques often serve as the best way of dealing with family problems. By maximizing the use of alternative dispute resolution the Court becomes a facilitator to help people exhaust their own resources to settle the matter prior to entering into a potentially destructive and expensive adversarial hearing.

MEDIATION PROGRAMS OUTSIDE THE STATE OF KANSAS

Mediation is becoming increasingly popular in the United States. Community mediation-dealing with disputes between neighbor, friends, relatives, former spouses, landlords and tenants, ect.- has grown rapidly, with the development of more than 250 mediation centers that conduct over 230,000 mediation each year. Family and divorce mediation are also becoming prominent, as is small claims and civil court mediation.

In California all contested child custody and visitation disputes must be referred to mediation. Courts in at least two California counties have been making significant use of mediation in non-family cases including small claims cases.

In 1989 the California Department of Consumer Affairs surveyed forty ADR programs then receiving funds pursuant to the 1986 dispute resolution programs act (DRPA). That report included several highlights:

- * 38,842 people chose to resolve their disputes through a program funded under the DRPA during the survey period (fiscal year 1988-89).
- * 7,194 dispute resolution proceedings were held pursuant to the DRPA with an average success rate of sixty-three percent. The average waiting time to enter a dispute resolution proceeding was twelve days while the average session lasted two and one half hours.
- * \$1,757,244 in filing fees was used to fund dispute resolution programs.

- * The average cost per disputant was \$46 and the average cost per session was \$244.33.
- * 30,362 hours of mediator volunteer work and 8,802 hours of non-mediator volunteer work were donated to the programs.
- * Of a total of forty programs, twenty-two programs provided free services. The remaining eighteen programs charged according to a sliding scale based on the disputant's income.

NEBRASKA DISPUTE RESOLUTION ACT

As I indicated at the beginning of my testimony, I believe that with slight modification the Nebraska Dispute Resolution Act will go a long way toward establishing a coordinated system to promote the use of Alternative Dispute Resolution. We do, however, recommend at least two modifications, as follows:

1. Page 5, Section 11, paragraph (2) provides that if the court requests a copy of agreement the center shall provide it. We recommend that this provision be excluded in favor of ensuring the confidential relationship between the mediator and the parties.
2. Page 5, Section 13, provides for community mediator to have 30 hours of mediation training and divorce mediators 60 hours. We would recommend that community mediation have 20 hours of mediation training and that mediators involved with domestic relation issues have 40 hours of training.

CONCLUSION

For years, child advocacy, family law practitioners, and domestic and juvenile judges have searched for a way to improve the quality and appropriateness of court services to Kansas children and families. The use of mediation centers provide an important vehicle by which court dockets can be reduced and we can begin building a less advocarial and more client-centered approach to problem resolution. I urge the committee to give favorable consideration to the model provided by the Nebraska Dispute Resolution Act.

What are the benefits of using Mediation?

- **confidential** - allows the parties to keep the dispute private;
- **voluntary** - parties choose whether to participate, which is an empowerment process;
- **informal** - no public documents are filed and parties work together around a table;
- **economical** - these procedures usually take less time to resolve the issue(s) in dispute than does avoiding the conflict or pursuing traditional methods of resolution, so less money and time is spent resolving the problem;
- **effective** - compliance rates on voluntary agreements are much higher than imposed solutions;
- **maintains relationships** - fostering problem-solving, communication, and negotiation protects working relationships;
- **better agreements** - solutions are better for the parties and for the community because disputants have worked together to find the solution rather than in win/lose competitions;
- **durable solutions** - agreements are forward-looking and long-term and can address ways to deal effectively with conflict in the future.

DISPUTE RESOLUTION SERVICES OF KANSAS LEGAL SERVICES, INC.

465 S. Parker, Suite 103 • Olathe, Kansas 66061

Phone: (913) 764-8585

WHO IS DISPUTE RESOLUTION SERVICES?

DRS was established in 1985 through the joint efforts of the Kansas Bar Association, Kansas Legal Services, Inc. and the city of Olathe. Its goal was to explore mediation as an alternative to court action for resolving disputes. Although located in Olathe, the agency serves clients in the surrounding metropolitan area in several satellite offices. Its mission continues to be to offer third-party neutral intervention in the resolution of disputes.

WHAT IS MEDIATION?

Mediation is a process in which a neutral third party (mediator) helps parties resolve their disputes in a consensual and informed manner. The mediator facilitates communication between the parties and assists them to explore options; the parties however create their own solution. Mediation is informal, without attorneys present. It is forward-looking, not concerned with fault-finding. Mediation is not therapy or the practice of law although it draws from both.

WHAT KINDS OF DISPUTES CAN BE MEDIATED?

BUSINESS DISPUTES:

- family owned business conflicts
- rental/lease agreements
- client lists
- job discrimination
- wrongful termination
- professional fees
- personal injury insurance

COMMUNITY DISPUTES:

- environmental
- housemates
- vandalism
- animals

- harassment
- boundries
- zoning
- government/neighborhood

LANDLORD/TENANT DISPUTES:

- repairs
- security deposits
- property damage
- broken leases

ORGANIZATION DISPUTES:

- contracts
- greivances
- harassment
- inter-agency
- community Boards

SCHOOLS/COLLEGES DISPUTES:

- special education disputes
- truancy
- course credit
- IEP (individual educational planning)

CORRECTIONAL DISPUTES:

- inmate grievances
- victim-offender disputes

FAMILY DISPUTES:

- parent-adolescent
- divorce, custody, access
- adult-older parent
- nursing home placements
- open adoption

OLDER ADULT DISPUTES:

- grandparent visitation
- age discrimination
- family conflict
- housing discrimination

CONSUMER/MERCHANT DISPUTES:

- bad checks
- faulty repair
- defective goods or services

WHO USES MEDIATION SERVICES?

The following is a listing of examples of mediation clients:

business owners, insurance companies, housing authorities, consumers, tenants, landlords, employers, employees, families, spouses, students, city governments, victims of crime, birth and adoptive parents, grandparents, community Boards, special needs persons such as hearing impaired persons and persons with AIDS.

WHO CAN REFER CLIENTS FOR MEDIATION?

Anyone can make a referral for services. Typical referrals are received from:

district and municipal judges, self referrals, small claims court, community agency providers, city and county government, district attorney, colleges and schools, attorneys, landlords, tenants, business owners, consumers, employers, employees.

WHAT IS THE CLIENT'S ROLE IN MEDIATION?

The mediation process is designed to eliminate the win-lose atmosphere common to much litigation. The goal is to achieve a settlement acceptable to both parties and controlled by both parties, thus creating a win-win situation. Parties should be aware of the need for their commitment of time and their willingness to negotiate. They should be aware of their expectations and be willing to assume responsibility for a positive outcome.

WHAT IS THE MEDIATOR'S ROLE?

It is the mediator's function to assist the parties in defining the issues, exploring options for solution, negotiating and writing an agreement. The mediator's commitment is to a fair, unbiased settlement in the best interests of all parties affected by the agreement.

WHAT ARE THE ADVANTAGES OF MEDIATION?

- **CONFIDENTIAL**
Mediation sessions are confidential and no information is released to third parties without the consent of the parties.
- **FAIR**
Agreements reached must be acceptable to all parties.
- **FAST**
Mediation sessions can be scheduled within days once all parties have agreed to mediate. Days, evenings or weekends may be arranged.
- **REASONABLE**
Fees range from a small administrative fee for community disputes to a sliding scale based on individual income for more complex cases. Contract-based fees are available to agencies.
- **MENDING**
When relationships are continuing, processes that mend rather than pull apart best serve individuals.
- **EMPOWERING**
The mediation process can teach or enhance person's skills for solving problems.

HOW ARE DRS SERVICES PROVIDED?

DRS uses two tiers of mediators: volunteer mediators conduct community disputes and have twenty hours of mediation training; professional mediators have forty hours of mediation training and handle more complex conflicts. In addition, they complete a twenty hour internship program through DRS. Professional mediators work as a team composed of male-female, attorney-mental health professionals.

DRS also conducts community programs to inform citizens about mediation. Workshops, mediator training, mediator study groups and consulting on establishing a community mediation agency are available services.

WHAT DO DRS CLIENTS, COMMUNITY AND NATIONAL LEADERS SAY ABOUT MEDIATION?

"Mediation keeps the solution between the parties involved — it does not impose a resolution by a third party". (Homeowner)

"Having a neutral party regulate the conversation and redirect it to the issues, allowed an opportunity to resolve existing conflicts". (Divorced parent)

"It saved the time of court and was probably more emotionally beneficial for the other party (facts and her feelings were allowed; court would only allow facts pertaining to landlord-tenant law). The compromise probably left two winners instead of one winner and one loser". (Rental manager)

"In situations where two parties are able to communicate face-to-face, the long-term benefit of achieving a win-win settlement outweighs the short-term emotional pain that is a result of mediation". (Divorcing parent)

"I would recommend mediation strongly for problems before they become too big. It saves friendships, neighbor relationships and helps a lot with stress which you can do without." (Business person and neighbor)

"I found mediation a better way to go than court. If you enter mediation with an open mind and realize each side has to give then it can truly be a good experience with a good outcome." (Tenant)

"I am convinced of their (DRS) dedication to provide alternative dispute resolution services for the community." (Director, Domestic Court Services for Johnson County)

"I am confident that the Judges will continue to use your services. Frankly, I am very pleased with your work." (Administrative Judge, Tenth Judicial District, Johnson County)

"The public should be encouraged to create and use informal neighborhood dispute resolution approaches." (Justice Sandra Day O'Connor)

"By the year 2000, alternative dispute resolution will be a major activity for many people who are now engaged exclusively in the adversarial process and in litigation." (Robert Coulson, Pres., American Arbitration Assn.)

"We should look to community-based conciliation programs as our 'courts of first resort' rather than making conciliation/mediation simply an 'after the fact' case processing option." (Raymond Shonholtz, Pres., Community Boards, San Francisco)

Services Offered Are....

- FAST
 - ▶ Sessions can be held within two weeks of contact. Days, evenings or weekends may be arranged

- FAIR
 - ▶ Agreements must be acceptable to both parties. All sessions are confidential

- REASONABLE
 - ▶ DIVORCE-related fees are based on a sliding scale
 - ▶ COMMUNITY fees are \$10 to the initiating party
 - ▶ CONTRACT-based fees are available to agencies

- DIVERSIFIED
 - ▶ Community Education Programs Available
 - ▶ Networking and Special Events Sponsored

DISPUTE RESOLUTION SERVICES

For The Quickest....
Least Expensive....
Most Satisfying....

Method to Settle Your Dispute

Consider

Mediation

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Mediation Is....

- A process to allow parties to resolve their conflict and arrive at a mutually acceptable agreement
- Facilitated by neutral, third-party professionals who assist in the resolution of the conflict
- An advantage over litigation because the parties create their own solution
- Usually less expensive and quicker than going to court
- Not therapy or the practice of law although it draws from both
- A growing field of professional practice — generally a mental health practitioner and attorney co-mediate

Disputes Handled Are....

- Any two party disputes which do not involve major property damage or serious bodily harm
- FAMILY disputes
- OLDER ADULT disputes
- DIVORCE disputes:
 - ▶ Property Division
 - ▶ Custody/Visitation
- LANDLORD/TENANT disputes:
 - ▶ Repairs
 - ▶ Security Deposits
 - ▶ Property Damage
- CONSUMER/MERCHANT disputes:
 - ▶ Bad Checks
 - ▶ Faulty Repair
 - ▶ Defective Goods or Services
- COMMUNITY disputes:
 - ▶ Environmental
 - ▶ Housemates
 - ▶ Vandalism
 - ▶ Animals
- ORGANIZATION disputes:
 - ▶ Contracts
 - ▶ Greivances
 - ▶ Harassment
 - ▶ Fees

Our Mediators Are....

- Attorneys and mental health professionals trained in mediation
- Facilitators of communication, not decision makers for the resolution of the conflict
- Aware that informal discussions, without attorneys and witnesses, are less intimidating than court appearances
- Experienced in helping parties deal with angry feelings, so problem-solving can begin
- Advocates for the resolving of disputes in ways other than litigation
- Leaders, both locally and nationwide, in the mediation movement

KANSAS BAR ASSOCIATION
ALTERNATIVE DISPUTE RESOLUTION
KANSAS - 1993

ADR Judges' Survey

In 1988, the KBA Alternative Dispute Resolution (ADR) Committee conducted a survey of all judges in the state on what they knew of ADR and to find if any of them use it. Few used it and many could not recognize some of the terminology.

In 1992, a survey was sent out to all administrative judges in the thirty-one districts by the KBA Alternative Dispute Resolution Committee. The goal of the survey was to compile a list of ADR activity by the district courts. Twenty-seven of the thirty-one districts responded and twenty-two of the responding districts use some form of ADR. Five districts did not but four of these are interested in exploring starting some type of project. The 10th district was changing administrative judges and did not respond but was one of the first in the state to require mediation in custody/visitation cases.

Seven districts require mediation in **custody/visitation** cases and one used it in personal injury cases. In another district, two judges require mediation in custody/visitation and two encourage its use. Twelve districts use court service officers (CSOs) as mediators. Attorneys are used in twelve districts and mental health practitioners are used in fourteen districts. Most districts use a mix of these groups. Three districts use "others" as mediators.

In the three districts which use only CSOs as mediators and the nine others which use CSOs occasionally, the CSO's salaries allows the system to operate. Apparently the CSOs are used in some districts to mediate the disputes of people living on low incomes and higher income people pay for private mediators. Fourteen districts require the party or parties to pay for the mediators. Volunteers are used in one small claims mediation project.

Seven districts use a law degree as partial or all the requirement to be a mediator. Six districts require a behavior science degree. Seven districts also require some type of unspecified training and another seven require 40 hours of specialized mediation training (the requirement recommended by the Court's ADR Committee). Three districts apparently do not have any requirements for who is a mediator and one district listed "any" specialized training.

Attachment 8
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Child Custody/Visitation Mediation

The KBA ADR Committee has been a major advocate for the mediation of child custody/visitation cases - if no abuse is evident. Data collected from other states' programs show that the use of mediation in these cases has a high settlement rate (75-80%) and a low recidivism rate. There is also the belief that the children benefit by having the parents learn how to negotiate on issues which emotionally effect their children and by keeping the children out of court.

Most of the training, legislation, seminars and public relations efforts have been to advocate the use of mediation in these cases. Several judicial districts require mediation of custody and visitation cases, other districts occasionally use it and others are considering such a requirement. In some of the areas where judges want to use mediation, there is the chicken or the egg problem. If there are no trained mediators they can not start a program but if there is no program to encourage people to take mediator training there won't be any trained mediators.

Who can be a mediator?

The KBA approved a recommendation from its ADR Committee to encourage the Supreme Court to establish a committee to review the fast changing use of alternative dispute resolution methods and make recommendations in a number of areas. The Court established its own ADR Committee in 1988 and it produced a recommendation to the court on minimum mediator qualifications. The KBA ADR Committee was most interested in seeing minimum qualifications established for who can be a mediator and criteria established for what defines adequate training. This is to protect the consumer and not to restrict who could be mediators. In the last KBA mediator training program only 2 out of 24 participants were lawyers.

KBA Mediator Training

In order to encourage judges to use trained mediators, the KBA began offering twice a year 40 hour mediator training to both lawyers and non lawyers in October of 1990. As of October of 1993, approximately 130 mediators have been trained.

Legislation

The ADR Committee is a proponent of the use of state revenue to support ADR programs in the state. Short of that income, there is support for court filing fees to finance increased use of court sponsored ADR programs. The Board of Governors approved this concept but the legislation was rejected by the Senate Judiciary Committee in 1993. The KBA has also supported legislation to make mediation sessions confidential and to set up the ability of district courts to establish child custody/mediation programs.

ADR CLE Seminars

The ADR Committee has sponsored a number of continuing legal education seminars on ADR methods to encourage their use by lawyers. There has been a noticeable growth in support for ADR techniques in the last ten years. Most legal disputes settle out of court and ADR techniques are seen as simply shortening the time it takes to settle the dispute.

Neighborhood Dispute Resolution

The KBA ADR Committee helped organize and sponsor the initial minor dispute mediation program in Johnson County which has now turned into Dispute Resolution Services. This program and the Neighborhood Justice Center in Wichita attempt to use mediation to settle minor disputes, generally between people who will have an on going relationship. The theory is that people who will have to continue to deal with one another can better settle the current and future minor disputes through learning to mediate. Minor is generally defined as a type of case which would appear in small claims courts.

The KBA has also supported efforts to integrate mediation of minor disputes into school systems. Nancy Maxwell, past Chair of the KBA ADR Committee, helped organize such a system in the Topeka school system. Select children were trained as mediators to help settle disputes which might arise between other students. The theory is to show at an early age that many disputes can be resolved between individuals without resorting to going to court.

Funding

The Kansas Bar Foundation's IOLTA program has contributed over \$85,000 to support the Neighborhood Justice center previously sponsored by the Wichita Bar Association. The KBA gave up to \$10,000 in in-kind and direct contributions to the Olathe Dispute Resolution Project over two years.

Arbitration

The Topeka Bar Association's ADR Committee sponsors an arbitration project which has been experimented with over the last 18 months. The program has trained lawyers to serve as arbitrators. District court judges select cases which have had difficulty settling and the court refers these out to an arbitrator. The case is arbitrated in a court room and generally takes a short amount of time. Data collection is greatly abbreviated. Up to this point the ADR Committee believes that the program has been successful in encouraging earlier settlement of these select cases. In the past the arbitrators have not been paid but there is some consideration to pay them a fee for their services to encourage a high caliber of arbitrators.

Federal Judge Kelly out of Wichita uses a settlement conference to quicken the rate of closure on many of his cases. Prominent lawyers selected by the Wichita Bench/Bar Committee hear a greatly abbreviated presentation of a case. They then work with the parties to see if there is a way to reduce or eliminate the dispute. There is the requirement that disputants with the power to make decisions in regards to the case must be present. The settlement lawyers are paid an hourly fee. This concept is also being used in select state district courts.

Hire a judge

There are a few retired judges who have made themselves available to help settle cases. Some of these judges take cases referred by the American Arbitration Association and other advertise their availability. This concept is very big in the larger states. In California, these types of cases can be appealed over other types of cases for consideration.

The Future

What the ABA and Dan Quayle have both advocated is the concept of the multi-door courthouse. This would have a person with a legal problem going to a courthouse intake person who would refer them to the type of dispute resolution mechanism appropriate for their type of dispute; mediation, arbitration, settlement conference, conciliation, rent a judge or a trial.

Problems

The two most identified problems with the growing use of ADR is that at some point it might restrict or retard a citizen's right or ability to have access to the formal legal system. Most court ADR systems allow for an appeal of an ADR decision to a judge. The second problem that might occur is that when additional steps are required to settle a dispute it might take longer to get to the court stage. In some courts the ADR techniques are required prior to when the disputants would normally have access to a court trial.

The Kansas Supreme Court has identified the need to have a staff person to help coordinate their efforts in this area. There is precedence for doing this by funding for a coordinator for the CASA and court trustee programs through the Office of Judicial Administration. The court has felt that they do not have the resources to adequately develop the data, training resources and expertise in such a complicated area. There are 31 judicial districts and many more municipal courts which could each have an ADR program designed to deal with local needs and conditions. There is bountiful information and resources available to local courts if there were only staff to coordinate them.

Mediation Training in Child Custody and Visitation Cases

Kansas Law Center

1200 Harrison, Topeka

October 22, 23, 24, November 6 & 7

40 CLE Credit Hours

including 2 CLE Ethics Hours

Sponsored by the Kansas Bar Association



**KANSAS BAR
ASSOCIATION**

**ENROLLMENT IS LIMITED TO 24
PARTICIPANTS.**

**RESERVATIONS WILL BE TAKEN ON A
FIRST COME BASIS.**

Friday, Oct. 22 **8:00 a.m. - 5:30 p.m.**
A Look at Mediation and Negotiation
Listening with Reflection and Reframes
The Role of the Mediator
Setting the Stage
Simulation*
Neutrality and Language

Saturday, Oct. 23 **8:00 a.m. - 5:30 p.m.**
Conciliation after Divorce?
Linking and Accurate Empathy as Tools
The Emotional vs. the Legal Divorce
Simulation*
Conflict Theory
Generating and Evaluation Options
Simulation*
Handling Transitions

Sunday, Oct. 24 **8:00 a.m. - 5:30 p.m.**
Focusing on the Children and Healthy Access
Family Systems - Whose Divorce is it?
Simulation*
Addressing all the Issues
Writing the Agreement
Simulation*

Saturday, Nov. 6 **8:00 a.m. - 5:30 p.m.**
Family, Mediation, and Child Support Law
Simulation*
Lawyer - Mediators
Ethics and Dilemmas (2-4 p.m. - 2.0 Hrs of Ethics Credit)
Simulation*

Sunday, Nov. 7 **8:00 a.m. - 5:30 p.m.**
Should the Stepparents Attend?
Using Caucus
Impasse Prevention
Simulation*
Larger Issues
Setting Up Your Practice
ADR Professional Organizations

*Indicates group exercise

The use of mediation to resolve child custody and visitation cases is increasing in Kansas and all across the country. Already, a number of both urban and rural court districts in the state have mandated or are strongly encouraging the procedure. There has been a recommendation to the Supreme Court from its Alternative Dispute Resolution Committee to initiate some form of custody mediation in each judicial district in the near future. More mediators are needed to fill the potential demand.

The Kansas Bar Association has designed this special in-depth training based on national and state standards. The training will include screening of cases, the mediation procedures and skills, writing agreements, and cooperating with the lawyers on the case. Three trainers, widely experienced in mediation and mediation training in Kansas, will provide you with the foundation skills for mediation. Mediation coaches will join the trainers in providing you with "hands-on" exercises that will allow you to practice and reinforce your newly learned skills. If you want to expand your practice to include family mediation, this training is for you.

WHAT DISTINGUISHES THIS TRAINING?

- It is focused entirely on child custody and visitation issues
- It meets the proposed Kansas standard for custody mediator training
- It features trainers who understand the practical problems of mediating child custody in Kansas
- The training schedule allows you to participate without missing valuable in-office time
- It meets the standard of quality for Kansas Bar Association CLE programming

WHO SHOULD ATTEND:

Training coordinators and sponsors recommend that participants have at least one year's experience in their current professional affiliation. A law or family counseling background is helpful.

MEET THE TRAINERS:

Jeanne Erikson, Ph.D., helped establish court-ordered divorce mediation programs in Butler and Sedgwick Counties. She mediates full-time and specializes in complex custody-visitation and farmer-lender disputes. Dr. Erikson has mediated almost 400 divorce and farm disputes. She has trained custody-visitation, small claims court, and parent-adolescent mediators in Kansas, and has served as a consultant to the Kansas Bar Association on mediation matters. Dr. Erikson has an M.S. in Marriage and Family Therapy, and a Ph.D. in Social Work. Her doctoral research explored impasse in court-ordered custody and visitation mediation. She is currently in the process of publishing several articles on this topic.

Nancy Hughes, Ph.D., is a social worker and contributing faculty member in the University of Kansas Psychology Clinic. Through the Clinic's Mediation Project, she teaches divorce mediation to clinical psychology graduate students and supervises their work with voluntary and court-referred families. She works with the Douglas County District Court to promote the use of alternative dispute

resolution and she serves on the Kansas Supreme Court's Alternative Dispute Resolution Committee. In 1982, she founded The Mediation Center in Lawrence, specializing in conflict resolution training, domestic and community mediation, and family arbitration. As a member of the Kansas Board of Agriculture Mediation Panel, she mediates farmer/creditor cases. Dr. Hughes earned her BFA from the University of Colorado, her MSW from the University of Denver, and her Ph.D. from the University of Kansas.

Gary Kretchmer is a Court Services Officer III for the Tenth Judicial District in Johnson County, Kansas. As the Director of Domestic Court Services, he and his staff provide mediation for families struggling with disputes over custody, access, and parenting issues. Court staff have worked with over 2,500 families in mediation since 1985. Mr. Kretchmer has an M.A. in Counseling from the University of Missouri-Kansas City. He serves on the Kansas Supreme Court's Committee on Alternative Dispute Resolution. In 1988, Mr. Kretchmer received the Liberty Bell Award from the Johnson County Bar Association. Mr. Kretchmer is an Approved Training Consultant for the Academy of Family Mediators.

REGISTRATION FORM:

Mediation Training

#1163

Mail to: Kansas Bar Association, P.O. Box 1037, 1200 Harrison, Topeka, KS 66601-1037. You may FAX your MasterCard or VISA registration to 913-234-3813.

Name _____
Address _____
City _____
State _____ Zip (+4) _____
Phone (____) _____ Member# _____
Charge to ☐ MasterCard ☐ VISA
Account Number _____
Expiration Date _____

KBA Member Registration\$550_____

Regular Registration\$600_____

Course materials are included in registration fee.

Enclosed is my check made payable to the
Kansas Bar Association in the amount of\$_____

Please send me information about
hotel accommodations _____

COACHES:

Robert Fairchild, JD

will make a presentation on what lawyers need to know about their involvement in mediation. He will discuss the Supreme Court rules which govern lawyers who choose to mediate. He is a practicing lawyer with Riling, Burkhead, Fairchild, & Nitcher, Chartered, Lawrence, who specializes in domestic issues and mediates custody/visitation cases.

Patricia E. Henshall, JD

is the General Counsel for the Office of Judicial Administration, Kansas Supreme Court. She has staffed the Supreme Court Advisory Committee on Alternative Dispute Resolution since its inception in 1988. She currently serves as chair of the Alternative Dispute Resolution Committee of the KBA.

E. Bernard Hurd, JD

is the chief prosecutor for the city of Topeka, and the director of the Topeka Neighborhood Justice Center. He has mediated divorce and community conflicts. Besides being a lawyer and a mediator, Bernard is also an ordained minister.

Kathy Kirk, JD

is Vice President of the Heartland Mediators Association. Her conflict resolution involvement includes voluntary mediation in the areas of divorce/custody, parent/adolescent, small claims and matters dealing with the disabled. She has taught basic mediation skills in small business settings.

Susana L. Valdovinos, JD

directed the mediation practicum at the Washburn Law Clinic for five years, and as part of that position, both taught and practiced mediation. She is currently completing her LLM from the Wisconsin University Law School at Madison, Wisconsin.

Helen Wahl, ME

has over ninety-six hours of mediation training and seminars. Her professional background is that of teacher, counselor and community college instructor. She has worked in the mediation field since 1984 as a mediator, program director and trainer.

List of Coaches subject to substitutions and changes.

THINGS TO KNOW:

Fee: Includes instruction, course materials, and refreshment breaks. Lunch is provided on Friday, Oct. 22, 1993.

Refunds: Prepaid registration, minus a \$100.00 administrative fee, will be refunded for requests submitted before Friday, Oct. 8, 1993. No refunds will be allowed after that date.

Cancellation: The Kansas Bar Association reserves the right to cancel the workshop and return all fees.

Income Tax Considerations: The cost of education to maintain or improve current professional skills may still be deductible under the Tax Reform Act. Expenses which may qualify are tuition, travel, meals and lodging. Check with your financial advisor.

Continuing Education Credits: Subject to Supreme Court Rule 803, this course has been approved by the Kansas Continuing Legal Education Commission and the Missouri Bar for a maximum of 40 CLE credit hours. **By attending this seminar from 2-4 p.m. on Saturday, Nov. 6, 1993, you will meet the two-hour CLE Ethics requirement.** A record of actual hours attended will be forwarded to the Kansas CLE Commission. The Missouri Bar is self reporting.

Behavioral Sciences Credit: Such credit has been requested by sponsoring organization.

Attention Persons with Disabilities: We will make every effort to ensure that our meetings are held at facilities which are fully accessible to persons with mobility disabilities. If you plan to attend our program and will need special facilities or assistance relating to a disability or special diet, please contact the CLE Department at least 48 hours prior to the seminar, at (913) 234-5696.

Hotel Accommodations: The KBA has secured a block of sleeping rooms for the evenings of Oct. 22, 23, Nov. 5 & 6 at The Senate Luxury Suites. To request information regarding The Senate Suites, check the space provided on the registration form.

PARTICIPATION LIMITS: To ensure more individualized and small group training, enrollment will be limited to 24 participants. Training space and materials will be reserved in the order that registrations are received. Full payment of the registration fee must be paid to guarantee your participation in the training.

Certificates: Certificates of completion will be given to those who attend all sessions.

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P.O. Box 1037
Topeka, KS 66601-1037

KANSAS BAR
ASSOCIATION



Kansas Bar Association Directory

The seal of the Kansas Bar Association is a circular emblem. It features a central shield with a balance scale, symbolizing justice. The shield is flanked by two sheaves of wheat, representing the state of Kansas. The entire emblem is encircled by a wreath. The year '1882' is inscribed at the bottom of the seal.

Lawyer Providers on Alternative Dispute Resolution

*Produced by the Kansas Bar Association
Alternative Dispute Resolution Committee*

Fall 1993

INTRODUCTION

This directory is provided as a public service to those individuals who are seeking to resolve their dispute through use of a lawyer trained and/or who has experience with mediation, arbitration, conciliation, settlement conferences or other methods of settling a dispute. It is the position of the Kansas Bar Association that there are many disputes which can be better served through one or more of the dispute resolution techniques. The Kansas Bar Association has advocated the use of a variety of these methods for some years.

We are currently working with the courts and the Kansas Legislature to expand their use. If you have any questions or comments, please feel free to contact the KBA Alternative Dispute Resolution Committee.

Sincerely,

Ken Stewart, Chair
KBA Alternative Dispute Resolution Committee
P.O. Box 1037
Topeka, KS 66601

DEFINITION OF EDUCATIONAL DEGREES

AB — bachelor of arts
BA — bachelor of arts
BBA — bachelor of business administration
BS — bachelor of science
JD — doctor of jurisprudence
LLB — bachelor of laws
MA — master of arts

LISTING OF KBA LAWYERS BY CATEGORY OF EXPERTISE

The five categories of dispute resolution and their definitions are as follows:

Custody/visitation mediation. A growing number of state district courts use or encourage mediation to settle child custody and visitation issues.

General mediation. Some courts use and some clients request mediation to resolve a variety of types of cases.

Settlement conferences. The Federal Court system is engaged in procedures to settle cases through the use of experienced lawyers. State courts and private entities also utilize this resolution method.

Arbitration. A growing number of companies use arbitration to settle disputes, some put arbitration clauses in contracts.

Minor dispute resolution. Several communities in Kansas have mediation programs which settle minor disputes between neighbors, landlords and tenants, consumers and business, and citizens and agencies.

This directory will list the lawyers in alphabetical order under each category.

Pamela E. Bailey
106 W Douglas, Suite 1030
Wichita, KS 67202-3395
316-264-7321

EDUCATION: BA University of Kansas, 1980; JD University of Kansas, 1983;
TRAINING: 40 hours domestic mediation; Neighborhood Justice Center training;
EXPERIENCE: domestic, small claims, landlord/tenant, merchant-consumer, & business-commercial contract disputes;
CATEGORIES: general mediation; settlement conferences; minor dispute resolution.

Honorable Michael A. Barbara
Washburn University Law School
1700 SW College Avenue
Topeka, KS 66621
913-231-1010 ext 1668

EDUCATION: BS in Education, Emporia University, 1949; JD Washburn Law School 1953;
TRAINING: federal court mediators program conducted by U.S. district court of Kansas - 4 hours; American Arbitration Association seminar on large complex case program, Kansas City, Missouri - 6 hours;
EXPERIENCE: member, federal and state court mediation panel, AAA arbitration and mediation panel; more than 15 private mediation services and private arbitration services; participated in many settlement conferences 1967-1980; cases include insurance, personal injury and property damage, civil rights matters including discrimination;
CATEGORIES: general mediation; settlement conferences; arbitration.

Jenifer Blum
8686 W. 96th Suite 100
Overland Park, KS 66212
913-341-0303

EDUCATION: MA in guidance and counseling, University of Missouri at Kansas City;
TRAINING: Mediation & the Law, 2 hour academic course at University of Missouri, Kansas City School of Law; 40 hour course, Robert Benjamin in the mediation of family & business disputes;
EXPERIENCE: mediator, 2 years with small claims court of Johnson County, Kansas;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences.

Donald Bostwick
155 North Market
PO Box 1034
Wichita, KS 67201-1034
316-265-8591

TRAINING: conference conducted by U.S. District Judge Wayne Alley and U.S. Magistrate Judge Pat Irwin;
EXPERIENCE: approximately 30 federal court mediation conferences since 1984 and 12 state court mediations (Sedgwick, McPherson, Comanche and Barber counties) ranging from bankruptcy, civil rights, products liability, construction disputes, age discrimination, officer and director liability, RTC banking, oil and gas matters, insurance and ERISA coverage; panelist/speaker at four mediation seminars since 1992;
CATEGORIES: general mediation; settlement conferences; arbitration.

Philip Bowman
PO Box 1034
Wichita, KS 67201-1034
316-265-8591

TRAINING: Wichita Bar Association mediation and commercial arbitration seminars;
EXPERIENCE: member, federal and state court mediation panels; conducted 10 federal and state court mediations and mediated matters prior to initiation of court proceedings; subjects include products liability, construction disputes, real estate, legal and medical malpractice, officer and director liability, contract questions and corporate dissolutions; appointed to arbitrate cases involving contract interpretation, insurance agency agreement and securities law; appointed to serve on teacher due process hearing panels;
CATEGORIES: general mediation; settlement conferences; arbitration.

N. Jack Brown
100 Security Bank Building
707 Minnesota Avenue
Kansas City, KS 66101
913-371-1272

EDUCATION: LLB, University of Kansas 1958;
TRAINING: mediation of federal court cases chaired by the Honorable Patrick F. Kelley, 1992;
EXPERIENCE: U.S. district court panelist for Kansas; mediated one case and participated representing a party in another federal court case;
CATEGORIES: general mediation; arbitration.

Micheline Z. Burger
302 East Park Street
Olathe, KS 66061
913-829-9118

EDUCATION: BA University of Kansas, 1968; MAT 1970; JD 1977;
TRAINING: 40 hours mediation and negotiation, Academy of Family Mediators, Dallas, Texas;
EXPERIENCE: mediation & arbitration in divorce matters, custody disputes; confidential child custody and visitation evaluations;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences; arbitration.

Honorable Marion W. Chipman
District Judge, retired
1012 Stratford Road
Olathe, KS 66062
913-829-4124

EDUCATION: BA Fort Hays State, 1942; JD Washburn University School of Law, 1948;
TRAINING: University of Missouri, Federal Court Mediation Training for Neutrals; American Arbitration Association (AAA) training; U.S. district court seminar for mediators;
EXPERIENCE: arbitration and mediation of commercial, construction and securities disputes; serving in U.S. district court for the district of Kansas and District of Johnson, Wyandotte, Shawnee and Geary counties of Kansas and the Circuit Court of Jackson County, Missouri; settlement conference judge, appointed by Supreme Court; panelist for AAA and Midwest Arbitration and Mediation Association, Inc.;
CATEGORIES: general mediation; settlement conferences; arbitration.

Maril Crabtree
6950 Squibb Road, Suite 400
Mission, KS 66202
913-831-4444

EDUCATION: JD University of Kansas, 1978;
TRAINING: over 80 hours in basic, community and family mediation; taught community mediation; member Heartland Mediators Association;
EXPERIENCE: divorce, post-divorce, family and community mediation since 1985; currently affiliated with Dispute Resolution Services in Olathe, Kansas;
CATEGORIES: custody/visitation mediation; general mediation; minor dispute resolution.

Gary D. Denning
104 E Iron
Salina, KS 67401
913-827-8224

EDUCATION: JD University of Kansas, 1979;
TRAINING: 40 hours, CDR Associates, Boulder, Colorado;
EXPERIENCE: domestic relations, foreclosures and bankruptcies;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences.

Robert W. Fairchild
808 Massachusetts
PO Box B
Lawrence, KS 66044
913-841-4700

TRAINING: 40 hour training by Robert Benjamin;
EXPERIENCE: 4-5 years domestic relations; 2 years personal injury/civil litigation mediation.

Floyd E. Gehrt
PO Box 4306
Topeka, KS 66604-0306
913-273-7722

EDUCATION: BBA, JD Washburn University, 1956/59;
TRAINING: certificate, "Early Assessment Program and Federal Court Mediation Training Program," certified federal court mediator;
EXPERIENCE: presiding officer for state agency board actions; civil settlement conferences and non-binding mediation; labor disputes mediator;
CATEGORIES: general mediation; settlement conferences; arbitration; minor dispute resolution.

John H. Gibson
1030 First National Bank Building
Wichita, KS 67202
316-264-7321

EDUCATION: JD;
TRAINING: various seminars; 40 hour program training;
EXPERIENCE: mediate medical malpractice cases;
CATEGORIES: general mediation; settlement conferences.

Max D. Goracke
324 E 11th, Suite 1610
Kansas City, MO 64106
816-472-8200

TRAINING: over 60 hours; certified in Missouri to mediate & arbitrate civil & domestic matters; member, Heartland Mediators;
EXPERIENCE: divorce, neighborhood disputes, civil & fee disputes; operates "Alternatives" offering resolution of divorce, custody/support/visitation, civil, personal injury, community and business disputes;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences; arbitration.

Brian G. Grace
Market Centre Suite 501
150 North Market
Wichita, KS 67202-1816
316-269-2006

EXPERIENCE: civil litigation ADR; mediator with Judge Kelly's program in the federal court since 1984; mediated over 40 cases; speaker at numerous Kansas and Wichita Bar Association ADR seminars and co-authored an ADR article for the Kansas Trial Lawyers Association;
CATEGORIES: general mediation; settlement conferences; arbitration.

James D. Griffin
40 Corporate Woods
Suite 1200
9401 Indian Creek Parkway
Overland Park, KS 66210
913-345-8400

EXPERIENCE: assisted in more than 50 mediations in civil suits, including medical malpractice and federal and state courts, and in commercial cases;
CATEGORIES: general mediation; settlement conferences; minor dispute resolution

David M. Hall
115 North Jennings Avenue
PO Box 147
Anthony, KS 67003-0147
316-842-5108

TRAINING: 48 hours by Erikson, Hughes & Kretchmer;
EXPERIENCE: certified mediator, divorce, child custody and visitation;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences; minor dispute resolution.

Patricia Henshall
Kansas Judicial Center
Topeka, KS 66612-1507
913-296-2877

TRAINING: KCSL—40 hours parent/adolescent mediation; adv. divorce mediation by Ricci & also Erickson, Knight & Haynes; inservice training/coaching with KCSL & DRS—Olathe;
EXPERIENCE: parent/adolescent mediation; divorce (parenting, support, & property) mediation.

Joanne Katz
121 W 63rd Street, Suite 203
Kansas City, MO 64113
816-444-5494; 913-648-5570

TRAINING: dispute resolution training & internship, KC, MO by Milton Katz; divorce mediation by Robert Benjamin; adv. farm/credit mediation family mediation, CDR; Community Mediation by Terry Amsler;
EXPERIENCE: farmer, lender; family owned business; divorce; not-for-profit groups; custody/visitation; custody arbitration; employee/employer; landlord/tenant; neighborhood.

Kathy Kirk
322 Woodlawn Drive
Lawrence, KS 66049
913-842-2240

TRAINING: Harvard Law School, Negotiation and Advanced Negotiation; Kansas Court Service Officers, Advanced Child Custody Mediation; Kansas Bar Association, Child Custody Mediation, Federal Court Mediation; Kansas Children's Service League, Parent/Child Mediation; Educators for Social Responsibility, Conflict Resolution for Children; Heartland Mediators Association, Commercial Mediation, and WU Law School, Alternative Dispute Resolution;
EXPERIENCE: conflict resolution consultant 1990-current; private practice, family law and mediation; court ordered and voluntary mediation for divorce/custody, small claims, parent/child and youth groups; provide basic skill training in mediation and negotiation; referral source for the disabled dealing with the ADA; KBA Mediation Coach; presenter for a number of mediation programs since 1991;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences; arbitration; minor dispute resolution.

Christel Marquardt
7400 West 110th Street
Suite 150
Overland Park, KS 66210
913-642-5100

TRAINING: 1/2 day U.S. District Court mediation program;
EXPERIENCE: mediator panelist for federal court in Kansas City, Kansas; 19 years law background in employment, domestic & wide variety other law.

Calvin Mc Millan
430 North Market
Wichita, KS 67202-2012
316-262-5275

EDUCATION: JD;
TRAINING: 36 years law practice and panelist on several mediation programs;
EXPERIENCE: actively engaged in settlement conferences and arbitration on both federal and state court panels, and by private contract through counsel;
CATEGORIES: general mediation, settlement conferences, arbitration, minor dispute resolution.

Honorable James J. Noone
5104 Valentine Road
Wichita, KS 67219
316-838-3131

EDUCATION: JD;
TRAINING: 12 years law practice, 27 years district judge;
EXPERIENCE: actively engaged in settlement conferences and arbitration since 1986 on both federal and state court panels, and by private contract through counsel;
CATEGORIES: settlement conferences; arbitration.

Maureen G. Ong
10901 Lowell, Ste 120
Overland Park, KS 66201
913-451-8089

TRAINING: KBA Mediation of Child Custody & Visitation Disputes;
EXPERIENCE: small claims disputes in Johnson County.

Kenneth E. Peirce
The Plaza, Suite 200
129 W. Second
PO Box 1868
Hutchinson, KS 67504-1868
316-663-7131

TRAINING: American Arbitration Association;
EXPERIENCE: member, National Health Lawyers Association; qualified for all types mediation;
CATEGORIES: general mediation; settlement conferences; arbitration; minor dispute resolution.

Tom Pinnick
PO Box 626
Ulysses, KS 67880
316-356-1904

EDUCATION: BS Psychology, University of Kansas 1972; JD Washburn University 1976; CDR certificate 1991;
TRAINING: 40 hours CDR mediation;
EXPERIENCE: general;
CATEGORIES: custody/visitation mediation; general mediation; minor dispute resolution.

Honorable David Prager
5604 SW Hawick Lane
Topeka, KS 66614
913-271-6835

TRAINING: American Arbitration Association;
EXPERIENCE: arbitration and mediation cases; U.S. district court, American Arbitration Association;
CATEGORIES: general mediation; settlement conferences; arbitration.

Michael D. Reed
10901 Lowell
Suite 120
Overland Park, KS 66201
913-451-1946

TRAINING: 80+ hours formal training;
EXPERIENCE: domestic relations, custody & visitation, division of assets and debts.

J. Neal Sawyer
Sinclair, Sawyer, Thompson & Haynes
4900 Main, Suite 600
Kansas City, MO 64112
316-531-5555

EDUCATION: University of Missouri and Yale Law School;
TRAINING: federal court seminars, "Early Assessment" and "Federal Court Mediator Training for Neutrals," both in Kansas City, MO in 1991; Kansas Bar Association mediation seminar;
EXPERIENCE: 28 years business law and litigation in private practice and corporate law departments;
CATEGORIES: general mediation; settlement conferences; arbitration; minor dispute resolution.

N. Trip Shawver
634 N Broadway
Wichita, KS 67214
316-262-6466

EDUCATION: JD 1970;
TRAINING: 40+ hours mediation for lawyers (Friends University) 1988;
EXPERIENCE: 5 years and over 150 cases, lecturer on ADR in litigation, domestic relations, medical malpractice, tort litigation;
CATEGORIES: custody/visitation mediation; general mediation; arbitration.

Jan Sheldon
Department of Human Development
& Family Life
Lawrence, KS 66044
913-864-4550

TRAINING: divorce & child custody mediation-CDR; teaching ADR at St. Louis Law School; teaching dispute resolution at University of California Law School; teach ADR at KU Law School;
EXPERIENCE: family mediation since 1981.

Roger Sherwood
833 N Waco Street
PO Box 830
Wichita, KS 67201-0830
316-267-1281

EDUCATION: BA in Business, Wichita State University 1958, JD Washburn University Law School, 1964;
TRAINING: U.S. District Court Mediation Seminar, CPA since 1960;
EXPERIENCE: member of mediation panel in U.S. district court since program implemented by Judge Kelly, approximately 1988; mediator in U.S. district court, approximately 10 occasions; arbitrator in dissolution of closely held corporation;
CATEGORIES: general mediation; settlement conferences, arbitration.

Michael W. Simpson
2300 1/2 S Fourth Street
Leavenworth, KS 66048
800-497-3678

TRAINING: 20 hours Oklahoma Supreme Court certification; 2 day "Mediating Settlements in Civil Disputes;" Oklahoma Bar Association mediation;
EXPERIENCE: mediate personal injury, real estate & other civil; serve Kansas, Oklahoma & Kansas City; written articles; mediation program presenter;
CATEGORIES: general mediation; settlement conferences; arbitration.

Ardith Smith-Woertz
1208 SW Tyler
Topeka, KS 66612
913-233-8333

EDUCATION: history, psychology degrees and JD at Washburn University;
TRAINING: 40 hours ADR; two semesters training at Washburn University Law School;
EXPERIENCE: co-mediate at WU clinic; pro bono mediation in domestic cases; family mediation since 1987;
CATEGORIES: custody/visitation mediation; general mediation; minor dispute resolution.

Kenneth P. Stewart
1030 First National Bank Bldg.
Wichita, KS 67202
316-264-7321

TRAINING: 16 hours Neighborhood Justice Center; coordinated KBA CLE on ADR, 1991; presenter at KBA CLE on Federal Mediation & Kansas Practice, 1993;
EXPERIENCE: general mediation through Wichita Neighborhood Justice Center;
CATEGORIES: general mediation; settlement conferences; minor dispute resolution.

Thomas F. Sullivan
8125 Mullen Road
Lenexa, KS 66215
913-492-6448

TRAINING: basic & advanced, U.S. Arbitration & Mediation & Midwest Arbitration & Mediation, Inc. in four states over five years;
EXPERIENCE: mediated more than 500 personal injury and business cases since 1987 including complex multi-party cases and one hour mediations;
CATEGORIES: general mediation; settlement conferences.

Paul Thomas
330 N Main Street
Suite 300
Wichita, KS 67202-1509
316-267-7399

EDUCATION: Washburn University 1965; Washburn University School of Law, 1968;
TRAINING: basic and advanced, Midwest Arbitration and Mediation, Inc.;
EXPERIENCE: mediated more than 300 personal injury and business cases which include complex multi-party matters and one hour mediations; former District Court Judge;
CATEGORIES: general mediation; settlement conferences; arbitration.

John C. Tillotson
606 Delaware
PO Box 10
Leavenworth, KS 66048
913-682-5894

EDUCATION: BA, JD;
TRAINING: mediation and arbitration, American Arbitration Association; certified arbitrator;
EXPERIENCE: 27 years in civil litigation; 12 years U.S. magistrate; 5 years private and court annexed mediation and arbitration; conducted mediation programs for Kansas Bar Association;
CATEGORIES: general mediation; settlement conferences; arbitration.

Honorable E. Newton Vickers
434 SW Woodlawn
Topeka, KS 66606-1247
913-235-9898

EDUCATION: BA Washburn University 1949, JD Washburn University 1950;
TRAINING: district court judge 29 years; federal court training seminar;
EXPERIENCE: federal court mediator; settlement conferences, state courts; arbitration for private disputes;
CATEGORIES: general mediation; settlement conferences; arbitration.

Kent G. Voth
112 West 29th Avenue
Hutchinson, KS 67504
316-663-0611

EDUCATION: BA Kansas University 1975; JD Washburn University of Topeka 1979;
TRAINING: 40 hour divorce mediation; CLE seminars & workshops;
EXPERIENCE: commercial arbitration; mediating child custody disputes and divorce;
CATEGORIES: custody/visitation mediation; general mediation; arbitration; minor dispute resolution.

Carl L. Wagner
106 W Douglas, Suite 1030
Wichita, KS 67202-3395
316-264-7321

TRAINING: 24 hours general training;
EXPERIENCE: domestic disputes; landlord/tenant; consumer/business; general business.

Honorable Herbert W. Walton
15722 W Locust Street
Olathe, KS 66062-5337
913-764-2885

EDUCATION: AB and JD, UMKC; National College of State Judiciary graduate, 1966; Adjunct Faculty Training, National Council of Family and Juvenile Judges 1984;
TRAINING: district judge, Johnson County, Kansas 1965-92, numerous settlement conferences; probate judge, Johnson County, Kansas; active participant in development of ADR as Kansas Judiciary member; numerous Kansas seminars and national professional association ADR meetings;
EXPERIENCE: district judge handling settlement conferences 1965-92; Chair, Supreme Court Advisory Committee on ADR 1989-present; research recommendations to Kansas Supreme Court on ADR; Chair, Family Law Advisory Committee of Judicial Council 1982-92, member 1992-present; research recommendations on mediation for model code of mediation; recommendations to Supreme Court on ethics and requirements for mediation by lawyers, Sup. Ct. Rule 901, U.S. district court mediator since retirement in 1992; member, ABA Mediation Section;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences; arbitration.

Peter R. Williams
129 West 8th, Ste 101
PO Box 874
Russell, KS 67665
913-483-3119

EDUCATION: Washburn University 1974, George Washington University 1976, JD Washburn University 1983;
TRAINING: 40 hours Divorce/Child Support & Custody Mediation, KBA;
EXPERIENCE: child custody mediation, divorce property settlement mediation;
CATEGORIES: custody/visitation mediation, general mediation.

Don Zemites
750 Ann Avenue
PO Box 171234
Kansas City, KS 66117
913-342-9300

EDUCATION: BA Social Science/Psychology, JD UMKC;
TRAINING: 40 hours Robert Benjamin; 8 hours Missouri State Bar; 6 hours Blaine Robison;
EXPERIENCE: 32 cases, 21 various agreements; 70 hours ADR, KLS Olathe; Johnson County district court & Johnson County district court small claims since 1989; participant in 10 federal mediations of major labor/management collective bargaining agreements;
CATEGORIES: custody/visitation mediation; general mediation; settlement conferences; arbitration; minor dispute resolution.

Ann M. Zimmerman
102 South 4th
Manhattan, KS 66502
913-537-2943

EDUCATION: BS Elementary Education, Kansas State University, 1979; JD Harvard Law School, 1988;
TRAINING: 2 credit hours "Mediation" Harvard Law School; 20 hours Neighborhood Justice Center; 18 hours farmer/lender mediation;
EXPERIENCE: farm mediations; Wichita Neighborhood Justice Center since 1988;
CATEGORIES: general mediation.

BODY/VISITATION

Blum, Jennifer
Burger, Micheline Z.
Crabtree, Maril
Denning, Gary D.
Goracke, Max D.
Hall, David M.
Pinnick, Tom
Shawver, N. Trip
Smith-Woertz, Ardith
Voth, Kent G.
Walton, Hon. Herbert W.
Zemites, Don

GENERAL MEDIATION

Bailey, Pamela E.
Barbara, Hon. Michael A.
Blum, Jennifer
Bostwick, Donald
Bowman, Philip
Brown, N. Jack
Burger, Micheline Z.
Chipman, Hon. Marion W.
Crabtree, Maril
Denning, Gary D.
Gehrt, Floyd E.
Gibson, John H.
Goracke, Max D.
Grace, Brian G.
Griffin, James D.
Hall, David M.
Peirce, Kenneth E.
Pinnick, Tom
Prager, Hon. David
Sawyer, J. Neal
Shawver, N. Trip
Simpson, Michael W.
Smith-Woertz, Ardith
Sullivan, Thomas F.
Thomas, Paul
Tillotson, John C.
Vickers, Hon. E. Newton
Voth, Kent G.
Walton, Hon. Herbert W.
Zemites, Don
Zimmerman, Ann M.

SETTLEMENT CONFERENCES

Bailey, Pamela E.
Barbara, Hon. Michael A.
Blum, Jennifer
Bostwick, Donald
Bowman, Philip
Burger, Micheline Z.
Chipman, Hon. Marion W.

Denning, Gary D.
Gehrt, Floyd E.
Gibson, John H.
Goracke, Max D.
Grace, Brian G.
Griffin, James D.
Hall, David M.
Noone, Hon. James J.
Peirce, Kenneth E.
Prager, Hon. David
Sawyer, J. Neal
Simpson, Michael W.
Sullivan, Thomas F.
Thomas, Paul
Tillotson, John C.
Vickers, Hon. E. Newton
Walton, Hon. Herbert W.
Zemites, Don

ARBITRATION

Barbara, Hon. Michael A.
Bostwick, Donald
Bowman, Philip
Brown, N. Jack
Burger, Micheline Z.
Chipman, Hon. Marion W.
Gehrt, Floyd E.
Goracke, Max D.
Grace, Brian G.
Noone, Hon. James J.
Peirce, Kenneth E.
Prager, Hon. David
Sawyer, J. Neal
Shawver, N. Trip
Simpson, Michael W.
Thomas, Paul
Tillotson, John C.
Vickers, Hon. E. Newton
Voth, Kent G.
Walton, Hon. Herbert W.
Zemites, Don

MINOR DISPUTE RESOLUTION

Bailey, Pamela E.
Crabtree, Maril
Gehrt, Floyd E.
Griffin, James D.
Hall, David M.
Peirce, Kenneth E.
Pinnick, Tom
Sawyer, J. Neal
Smith-Woertz, Ardith
Voth, Kent G.
Zemites, Don

COMMITTEE ON HOUSE APPROPRIATIONS
OF THE LEGISLATURE OF THE STATE OF KANSAS
REPRESENTATIVE ROCHELLE CHRONISTER, CHAIR

Hearing, Alternative Dispute Resolution - Mediation Services

Testimony: Ken Stewart, Attorney; Chair, Kansas Bar Association Alternative Dispute Resolution Committee; Director, Wichita Neighborhood Justice Center, Inc.

My name is Ken Stewart. I am privileged to add my testimony to the consideration which the Committee is giving to the subject of alternative dispute resolution mediation services.

I have practiced law at Wichita since 1950, and have been engaged in trial practice until 1985. My firm continues an extensive trial practice. My interest in alternative dispute resolution began more than ten years ago when I attended a three-day meeting in Denver, where I was first exposed to the possibilities of mediation in peace and justice issues. I learned how two sides in disputes may each "win" if a qualified neutral enables them to help each other in recognizing strengths and weaknesses of an argument and in making their own solution. How they can leave the table without acrimony and animosity. With a good feeling.

For more than five years, I have served the Wichita Bar Association on its ADR Committee. The Neighborhood Justice Center of Wichita was established in 1987. About the same time, I had the privilege of serving on the ADR Committee of the KBA, of which I am now chair for the second year.

I want to make my testimony as brief and helpful as possible. Other persons are better informed about certain aspects of ADR. I shall attempt to do three things with the information to be provided. I hope this information can be used by members of the Committee and the Legislature to establish:

- A. That there is sufficient experience with ADR in the state to demonstrate its effectiveness;
- B. That there is need for legislation to provide clarification, coordination and funding; and
- C. That the model of other states such as Nebraska are models well worth study and emulation as this Committee considers an appropriation to improve the justice system for the citizens of Kansas.

Appropriations
9-30
Attachment 9
9-1

I shall not have time to provide details about either the local efforts of the Wichita Bar Association or the settlement conference mediation of the U.S. District Court of Kansas, Chief Judge Pat Kelly, nor the Wichita Neighborhood Justice Center, Inc. Nor can I detail the information about statewide programs participated by lawyer-mediators and other mediators trained in other areas of substantial knowledge, especially helpful in dispute resolution. I submit fuller explanations of both in memos supplied by staff with the ADR Committee of the Kansas Bar Association and by the Wichita Neighborhood Justice Center. I direct your attention to both of those handouts.

A. SUFFICIENT EXPERIENCE

Because my experience starts at the local level, I refer first to the Wichita Neighborhood Justice Center, Inc. It was started in 1987. Early on, it established a training program for lawyers and non-lawyers interested in dispute resolution, primarily for landlord-tenant, neighbor and consumer-merchant disputes. The program got seed money from the Kansas Bar Association IOLTA (Interest On Lawyer Trust Accounts), which continued for several years and has still provided support in appreciable amounts, but I might add, not enough. Disputes were limited to smaller problems and smaller amounts not more than \$1500. Now, trained mediators number 45, both lawyers and non-lawyers. Cases are now received by referral from lawyers, from small businesses, from disputants who have had a dispute settlement experience, and more recently, referral of cases by the small claims court. Mediation is being provided in cooperation with the Department of Central Inspection of the City, relating to zoning and building code violations. Victim-offender mediation, which attempts to resolve the guilt of an offender and the resentment of a victim, in a constructive way, is in process of establishment. Since its beginning, Neighborhood Justice Center has expressed the idea of ADR to several thousand citizens of Wichita. The number of cases resulting in conciliation by Neighborhood Justice staff when contact is made, and other cases which go to mediation settlement, in and out of court, have increased approximately from less than 100 in the beginning, to over 500 in 1992. Already, through July 1993, 227 cases have been mediated in Sedgwick County Small Claims Court, and 291 cases through conciliation and mediation conferences outside court.

Before the Wichita program, the KBA ADR Committee helped to establish a minor dispute resolution program in Johnson County, which has developed into a private entity known as Dispute Resolution Services. Other efforts supported by lawyers and non-lawyers alike, have been established outside the court system.

The state of ADR in the State of Kansas' judicial system is best illustrated by these facts:

1. A survey conducted by the KBA ADR Committee among 31 judicial districts was answered by 27. Of these, 22 districts use ADR. Of the other 5, 4 were interested in beginning programs. Some districts use trained lawyers, some use trained court officers, some use trained mediators from other specialized substantive knowledge persons.
2. The wisdom of the Legislature in enabling domestic mediation in child custody and visitation, including K.S.A. 23-601, is proven. Especially in the metropolitan areas of the state, it is much used and approved. The law provides that "the court may order mediation of any contested issue of child custody or visitation at any time, upon the motion of a party or on the court's own motion ..." Divorce lawyers and marriage counselors are joined in supporting its effectiveness. Data collected from other states' programs show that the use of mediation in these cases has a high settlement rate (75%-80%) and a low recidivism rate.
3. Judge Kelly's program of settlement conference mediation in the U.S. District Court at Wichita was a forerunner in the federal court system. Its essential ingredient has been the cooperation of the bench and the bar to provide an arena of settlement mediation separate from the courtroom, without the time, stress and confrontation of trial, to speed up justice and reduce costs. Settlement conference mediation in the Kansas Federal District is now in effect all over the state, and it is working.

Arbitration. Other forms of ADR are in use, especially including arbitration, in which a non-judicial proceeding is presided by a trained arbitrator. He or she is given authorization by the parties to conduct the proceedings according to arbitration rules for the receiving of evidence, summary findings, and other techniques involving less time-consuming collection of facts than traditional trials.

ADR Training. The KBA, in addition to the survey, has been engaged in mediation training at all levels. A 40-hour program of training is provided twice yearly. Both lawyers and other persons with special substantive knowledge and experience have participated. Approximately 130 persons have been trained.

Seminars providing continuing legal education (CLE) in ADR methods are offered on a regular basis to lawyers.

Under our system, most legal disputes settle out of court. ADR techniques can speed the process, save money, and make happier settlements.

Public School Mediation. The KBA ADR has been helpful in the conduct of a program in the Topeka school system to teach students as mediators to help students solve problems, both in the classroom and on the playground. Professor Nancy Maxwell of the Washburn Law School and a past chair of the ADR Committee, has provided leadership for this effort.

Legislative Participation. The KBA, especially the ADR Committee, has been assisted in suggestions about legislation deemed appropriate to facilitate and foster ADR and its use. The Supreme Court of Kansas, through a task force, has studied the subject and endorsed the use of ADR.

The bar and the bench is pleased that this Committee is considering the subject.

B. CLARIFICATION, COORDINATION AND FUNDING

The KBA, through its ADR Committee, recognizes three special needs: (1) clarification; (2) coordination; and (3) funding. At present, ADR is provided both inside and outside law offices, as it should be, we think. Kansas law supports, instructs and explains domestic mediation and child custody and visitation matters (K.S.A. 23-601 et seq.); arbitration is dealt with in the Uniform Arbitration Act (K.S.A. 5-401 et seq.); a Supreme Court Rule relating to mediation is available for attorney-mediators, especially in family disputes (Supreme Court Rule 901, Mediation); and a Federal Court Rule regarding settlement conference mediation is provided (U.S. District Court Kansas Rule 214, Alternate Dispute Resolution). The Kansas system can benefit from clarification.

Coordination, to the extent possible, needs to be considered and implemented so that parts of the system work together, both the public system of our courts, with its judges and lawyers, and the private system involving agencies and groups served by trained persons with professional skill and experience in other fields. The Unified Court System under which Kansas courts and lawyers provide services is ideal to function in cooperation with an already existing federal system, both recognizing the need which is met by private mediation by systems and mediators outside the court system.

Such clarification and coordination needs funding to provide standards and qualifications, so that the alternative to resolution of disputes outside the traditional judicial system of courts and lawyers, can be implemented with integrity and better effectiveness.

C. THE SYSTEM MODEL

It is my understanding that the Committee is looking at the Nebraska statute, which is identified to me as Legislative Bill 90, approved by the Governor June 5, 1991. The ADR Committee has authorized me as its chair, with the privilege of addressing this Committee, to support the concept of that law. We do not know how it has worked to date, but it would be, if adapted to Kansas, an excellent beginning to help us clarify, coordinate, and fund the needs of Kansas citizens as they reckon with disputes. Three of its premises illustrate the need:

- o There is a compelling need in a complex society for dispute resolution whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts;
- o Mediation can increase access of the public to dispute resolution and thereby increase public regard and usage of the legal system; and
- o Nonprofit dispute resolution centers can make a substantial contricution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes which cannot be resolved by means other than litigation.

If I might, I would like to close with a letter given me Tuesday by the Executive Director of the Wichita Neighborhood Justice Center, which I think speaks on behalf of the citizens of Kansas. The letter reads:

"Wichita Neighborhood Justice Center, Inc.: Recently your office helped mediate in a dispute with our roofing company ... We were able to come to a settlement with them only after your letter reached them. They seemed unwilling to talk before that. Even our calls to the president of the company weren't returned.

"We appreciate your help and have enclosed a donation to help with your costs. Your help saved us a greater expense of hiring a lawyer and going to court. That would have really put a dent into our already stretched income budget. Thanks again for helping "the common man" against a big uncaring business."

September 29, 1993
36:JANA:TESTIMON

upon request of the attorney affected. Statistical abstracts may, however, be drawn therefrom in an anonymous fashion.

CLE RULE 15: MAILING ADDRESS FOR COMMISSION

Kansas Continuing Legal Education Commission

Attn: Executive Director

Kansas Judicial Center

301 S.W. 10th Ave., Room 23S

Topeka, Kansas 66612-1507

[History: Am. effective May 27, 1992.]

CLE RULE 16: FORMS

Request for Affidavit for Preapproved Sponsor

Application for Approval of CLE Activity

Uniform Application for Accreditation of Continuing Legal Education Activity

Application for Approval of Teaching Credit

Application for Approval of Authorship Credit

RULES RELATING TO MEDIATION

Rule 901

MEDIATION

(a) Mediation under this Rule is the process by which a neutral mediator assists the parties in reaching a mutually acceptable agreement as to issues of a dispute. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator.

(b) An attorney may act as a mediator for multiple parties in a dispute if:

- (1) The attorney-mediator clearly informs the parties of the attorney-mediator's role as a mediator including the confidentiality of the process pursuant to K.S.A. 60-452a and they consent, in writing, to this arrangement;
- (2) The attorney-mediator defines the legal issues to the parties only in the presence of all parties in the matter;
- (3) The attorney-mediator advises and encourages the parties to seek independent legal advice before the parties execute any settlement agreement drafted by the attorney-mediator;
- (4) The attorney-mediator has not represented one of the parties beforehand in a matter that is the subject of the mediation; and
- (5) The attorney-mediator does not act on behalf of any party in court nor represent one party against the other in any related matter. However, the attorney-mediator may act as an attorney for a party after the completion of the mediation process if the subsequent representation is clearly distinct from the mediated issues.

(c) An attorney-mediator shall withdraw as mediator if any of the parties so requests, or if any of the conditions stated in paragraph (b) are no longer satisfied. Upon withdrawal, the attorney-mediator shall not continue to act, in any capacity, on behalf of any of the parties in the matter that was the subject of the mediation.

(d) An attorney acting as a mediator is not the legal representative of the parties and there is no attorney-client relationship between the parties and the attorney-mediator.

(e) Nothing in this Rule restricts the activity of:

- (1) attorneys representing clients in the negotiation process, or

(2) intermediaries, as defined by EC 5-20 of the Code of Professional Responsibility.

(f) In addition to the requirements of this Rule, an attorney involved in mediation of family disputes must comply with the Kansas Standards of Practice for Lawyer Mediators in Family Disputes, an appendix hereto.

[History: New rule effective May 6, 1987.]

JUDICIAL COUNCIL COMMENT:

The Judicial Council added section (a) to Supreme Court Rule 901 because the members believed a definition of mediation was necessary to distinguish mediation from other methods of dispute resolution, such as negotiation, arbitration and conciliation. This definition is taken from K.S.A. 23-601, which provides for court-ordered mediation in child custody cases.

Sections (b) and (c) are patterned after the Oregon disciplinary rule on mediation, which was recently adopted by the Oregon Supreme Court. These sections set out the basic obligations of an attorney engaging in mediation.

Section (d) makes it clear that an attorney doing mediation is not acting as an attorney in a representative capacity and no attorney-client relationship exists. This section eliminates the confusion in earlier ethical decisions, which erroneously decided that attorneys could not engage in mediation because the attorney-mediator was representing both parties. (See Silberman, Professional Responsibility Problems of Divorce Mediation, 16 Fam. L. Q. 107 [1982].)

The Judicial Council added section (e) because the members were concerned that the new rule on mediation may be perceived as limiting the negotiation activities of attorneys representing clients in adversarial activities. Negotiating on behalf of a client is distinct from mediating a dispute, because in mediation the mediator is not acting on behalf of either party and the parties negotiate for themselves. Also, the rule does not apply to the role of a mediator or intermediary as defined by the Code of Professional Conduct (EC 5-20) or the proposed Model Rules of Professional Conduct (Rule 2.2) because these codes envision the mediator or intermediary acting as an attorney, representing clients. Again, in mediation, as defined by this rule, the mediator is not acting as a representative and there is no attorney-client relationship.

Under section (f), attorneys who mediate family disputes must also comply with the more detailed Standards of Practice for Lawyer Mediators in Family Disputes. The Judicial Council added this section to clarify the interrelationship between the mediation rule and these Kansas Standards.

APPENDIX

Kansas Standards of Practice for Lawyer Mediators in Family Disputes

Introductory Comments by the Family Law Advisory Committee

In the past three years, the Family Law Advisory Committee (FLAC) of the Kansas Judicial Council has been studying ethical standards for attorneys doing mediation of family disputes. Because there was no uniformly recognized standards at the time FLAC began its study, the Committee began drafting its own standards. However, in August of 1984, the American Bar Association's House of Delegates approved a set of standards for

lawyers acting as mediators in family disputes. Although many members of FLAC preferred the FLAC standards, it was the consensus of the Committee that FLAC should adopt the ABA Standards, unless there was substantial disagreement with the ABA Standards. The Committee members reached this decision because they believed that general uniformity and the interpretation of the ABA Standards in other jurisdictions could assist Kansas in implementing the Standards.

To a great extent, FLAC has retained the ABA Standards as the ABA adopted them. However, there is one ABA position with which FLAC substantially disagrees. The members of FLAC disagree with the ABA's prohibition against a mediator acting as an attorney for either party after the mediation. Under the ABA prohibition an attorney-mediator, who mediated with a couple involved in a child custody dispute, could not be hired as an attorney by the father five years later to represent the father in a workmen's compensation case. According to the ABA, the reason for this prohibition is the protection of the neutrality of the mediation process. For example, if an attorney-mediator mediated a divorce between a professional spouse and a homemaker and after the mediation, the professional spouse hired the mediator as an attorney, the homemaker may question whether the mediator favored the professional spouse during mediation in the hopes of obtaining future legal retainers.

The members of FLAC, however, rejected the ABA position as too restrictive, particularly in rural areas. For example, a total prohibition against later representation would mean that attorneys in rural Kansas would not act as mediators because they would lose the parties as future legal clients. Consequently, FLAC adopted a less restrictive alternative by limiting later representation to those matters that are clearly distinct from the mediated issues. Although this position does not protect the public to the same extent as the ABA prohibition, FLAC believed that attorneys are accustomed to making decisions concerning conflicts of interest and attorneys should be trusted to distinguish those issues that are clearly distinct from the mediated issues. Attorneys can also seek advice from the KBA Ethics Advisory Committee if they are uncertain about whether the later representation of a mediation client is distinct from the mediation issues.

Besides these areas of disagreement, there are other FLAC amendments to the ABA Standards. However, these changes are not intended to substantially change the ABA Standards, but rather are seen as improvements and clarifications of the original proposal. Also, FLAC views these Standards as compatible with the statutory duties of an attorney-mediator who does court-ordered mediation under K.S.A. 23-601 *et seq.*

The following material sets out the amended ABA Standards.

PREAMBLE

FOR THE PURPOSES OF THESE STANDARDS, FAMILY MEDIATION IS DEFINED AS A PROCESS IN WHICH A LAWYER HELPS FAMILY MEMBERS RESOLVE THEIR DISPUTES IN AN INFORMATIVE AND CONSENSUAL MANNER. THIS PROCESS REQUIRES THAT THE MEDIATOR BE QUALIFIED BY TRAINING, EXPERIENCE AND TEMPERAMENT; THAT THE MEDIATOR BE IMPARTIAL; THAT THE PARTICIPANTS REACH DECISIONS VOLUNTARILY; THAT THEIR DECISIONS BE BASED ON SUFFICIENT FACTUAL DATA; AND, THAT EACH PARTICIPANT UNDERSTANDS THE INFORMATION UPON WHICH DECISIONS ARE REACHED. WHILE FAMILY MEDIATION MAY BE VIEWED AS AN ALTERNATIVE MEANS OF CONFLICT RESOLUTION, IT IS NOT A SUBSTITUTE FOR THE BENEFIT OF INDEPENDENT LEGAL ADVICE.

- I. THE MEDIATOR HAS A DUTY TO DEFINE AND DESCRIBE THE PROCESS OF MEDIATION AND ITS COST BEFORE THE PARTIES REACH AN AGREEMENT TO MEDIATE.

SPECIFIC CONSIDERATIONS:

Before the actual mediation sessions begin, the mediator shall conduct an orientation session to give an overview of the process and to assess the appropriateness of mediation for the participants. Among the topics covered, the mediator shall discuss the following:

- A. The mediator shall define the process in context so that the participants understand the differences between mediation and other means of conflict resolution available to them. In defining the process, the mediator shall also distinguish it from therapy or marriage counselling.
- B. The mediator shall obtain sufficient information from the participants so they can mutually define the issues to be resolved in mediation.
- C. It should be emphasized that the mediator may make suggestions for the participants to consider, such as alternative ways of resolving problems and may draft proposals for the participants consideration, but that all decisions are to be made voluntarily by the participants themselves.
- D. The duties and responsibilities that the mediator and the participants accept in the mediation process shall be agreed upon. The mediator shall instruct the participants that either of them or the mediator has the right to suspend or terminate the process at any time, unless the mediation has been ordered pursuant to K.S.A. 23-601 *et seq.*
- E. The mediator shall assess the ability and willingness of the participants to mediate. The mediator has a continuing duty

to assess his or her own ability and willingness to undertake mediation with the particular participants and the issues to be mediated. The mediator shall not continue and shall terminate the process, if in his or her judgment, one of the parties is not able or willing to participate in good faith. The mediator shall be satisfied that the parties can intelligently and prudently consent to all the waivers involved in the mediation process.

- F. The mediator shall explain the fees for mediation. It is inappropriate for a mediator to charge a contingency fee or to base the fee on the outcome of the mediation process.
- G. The mediator shall inform the participants of the need to employ independent legal counsel for advice throughout the mediation process. The mediator shall inform the participants that the mediator cannot represent either or both of them in their marital dissolution or in any legal action concerning the mediated issues.
- H. The mediator shall discuss the issue of separate sessions. The mediator shall reach an understanding with the participants as to whether and under what circumstances the mediator may meet alone with either of them or with any third party.
- I. It should be brought to the participants attention that emotions play a part in the decision-making process. The mediator shall attempt to elicit from each of the participants a confirmation that each understands the connection between one's own emotions and the bargaining process.
- J. The mediator shall warn the participants that their interests are in conflict. The mediator shall explain that mediation by an attorney of a dispute between participants whose interests are in conflict is being allowed only because of the participants' consent.
- K. The mediator shall inform the participants that neither of them is receiving legal representation from the mediator, that the mediator is not providing the services lawyers typically provide, and that no attorney-client relationship will exist.

II. THE AGREEMENT TO MEDIATE SHALL BE IN WRITING.

SPECIFIC CONSIDERATIONS:

The agreement to mediate shall be set forth in a written contract, signed by the participants, and shall contain all the conditions, consents, and waivers required under Standard I. of this rule. In addition the contract shall state:

- A. There shall be a full and fair disclosure of all information.

- B. That information revealed in the course of mediation shall be considered confidential by all participants except that information required by law to be disclosed or information that the participants agree, in writing, to disclose to third parties, shall not be considered confidential.
- C. The participants shall waive the right to subpoena or otherwise compel the mediator or the mediator's agent to disclose any matter disclosed in the process of setting up or conducting the mediation.
- D. That either participant or the mediator may terminate the mediation at any time, unless the mediation has been ordered by the court pursuant to K.S.A. 23-601 *et seq.*
- E. The fee to be charged for the mediation.
- F. The conditions under which the mediator shall suspend or terminate the mediation. These shall include:
 - 1. The participants interests are so complex and difficult that the participants cannot prudently reach an agreement without legal or other expert assistance.
 - 2. There is a known or potential conflict of interest on the part of the mediator which would affect the mediator's impartiality.
 - 3. There has not been a fair and full disclosure of all relevant information or a participant is unable or unwilling to participate in the mediation process.
 - 4. The continuation of the mediation process would harm a participant or the proposed agreement does not protect the best interests of the children.
 - 5. In the mediator's professional judgment the agreement does or will involve overreaching, duress, or unfairness.
- G. Although the conditions of mediation are embodied in the contract, the mediator shall explain the conditions to the participants and satisfy himself or herself that the participants understand and consent to the conditions of the mediation.

III. THE MEDIATOR SHALL NOT VOLUNTARILY DISCLOSE INFORMATION OBTAINED THROUGH THE MEDIATION PROCESS WITHOUT THE PRIOR CONSENT OF BOTH PARTICIPANTS.

SPECIFIC CONSIDERATIONS:

- A. The mediator shall inform the participants that the mediator will not voluntarily disclose to any third party any of the information obtained through the mediation process, unless such disclosure is required by law, without the prior consent of the participants. The mediator also shall inform the parties of the limitations of confidentiality.

- B. If subpoenaed or otherwise noticed to testify, the mediator shall inform the participants immediately so as to afford them an opportunity to quash the process.

IV. THE MEDIATOR HAS A DUTY TO BE IMPARTIAL.

SPECIFIC CONSIDERATIONS:

- A. The mediator shall not represent either party during the mediation process in any legal matters. However, the mediator may act as an attorney for a party after the completion of the mediation process if the subsequent legal representation is clearly distinct from the mediation issues. If the mediator has represented one of the parties beforehand, the mediator shall not undertake the mediation unless the prior representation was clearly distinct from the mediated issues.
- B. The mediator shall disclose to the participants any biases or strong views relating to the issues to be mediated both in the orientation session, and also before these issues are discussed in mediation.
- C. The mediator must be impartial as between the mediation participants. The mediator's task is to facilitate the ability of the participants to negotiate their own agreement, while raising questions as to the fairness, equity and feasibility of proposed options for settlement.
- D. The mediator has a duty to ensure that the participants consider fully the best interests of the children, that they understand the consequences of any decision they reach concerning the children. The mediator also has a duty to assist parents to examine the separate and individual needs of their children and to consider those needs apart from their own desires for any particular parenting formula. If the mediator believes that any proposed agreement of the parents does not protect the best interests of the children, the mediator has a duty to inform them of this belief and its basis. The mediator shall terminate the mediation if the mediator believes the agreement of the parents does not protect the best interests of the children.
- E. The mediator shall not communicate with either party alone or with any third party to discuss mediation issues without the prior written consent of the mediation participants.

V. THE MEDIATOR HAS A DUTY TO ASSURE THAT THE MEDIATION PARTICIPANTS MAKE DECISIONS BASED UPON SUFFICIENT INFORMATION AND KNOWLEDGE.

SPECIFIC CONSIDERATIONS:

- A. The mediator shall assure that there is full financial disclosure, evaluation and development of relevant factual information in the mediation process, such as each would

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reasonably receive in the discovery process, or that the parties have sufficient information to intelligently waive the right to such disclosure.

- B. In addition to requiring this disclosure, evaluation and development of information, the mediator shall promote the equal understanding of such information before any agreement is reached. This consideration may require the mediator to recommend that either or both obtain expert consultation in the event that it appears that additional knowledge or understanding is necessary for balanced negotiations.
- C. The mediator may define the legal issues, but shall not direct the decision of the mediation participants based upon the mediator's interpretation of the law as applied to the facts of the situation. The mediator shall endeavor to assure that the participants have a sufficient understanding of appropriate statutory and case law as well as local judicial tradition, before reaching an agreement by recommending to the participants that they obtain independent legal representation during the process.

VI. THE MEDIATOR HAS A DUTY TO SUSPEND OR TERMINATE MEDIATION WHENEVER CONTINUATION OF THE PROCESS WOULD HARM ANY PARTICIPANT.

SPECIFIC CONSIDERATIONS:

- A. If the mediator believes that the participants are unable or unwilling to meaningfully participate in the process; or that the issues are so complex and difficult that the participants cannot prudently reach an agreement; or that reasonable agreement is unlikely; the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help. The mediator shall recognize that the decisions are to be made by the parties on the basis of adequate information. The mediator shall not, however, participate in a process that the mediator believes will result in harm to a participant.
- B. The mediator shall assure that each person has had the opportunity to understand fully the implications and ramifications of all options available.
- C. The mediator has a duty to assure a balanced dialogue and must attempt to diffuse any manipulative or intimidating negotiation techniques utilized by either of the participants.
- D. If the mediator has suspended or terminated the process, the mediator should suggest that the participants obtain additional professional services as may be appropriate.

VII. THE MEDIATOR HAS A CONTINUING DUTY TO ADVISE EACH OF THE MEDIATION PARTICIPANTS TO

OBTAIN LEGAL REVIEW PRIOR TO REACHING ANY AGREEMENT.

SPECIFIC CONSIDERATIONS:

- A. Each of the mediation participants should have independent legal counsel before reaching final agreement. At the beginning of the mediation process, the mediator should inform the participants that each should employ independent legal counsel for advice at the beginning of the process and that the independent legal counsel should be utilized throughout the process and before the participants have reached any accord to which they have made an emotional commitment. In order to promote the integrity of the process, the mediator shall not refer either of the participants to any particular lawyers. When an attorney referral is requested, the parties should be referred to a Bar Association list if available. In the absence of such a list, the mediator may only provide a list of qualified family law attorneys in the community.
- B. The mediator shall inform the participants that the mediator cannot represent either or both of them in their marital dissolution.
- C. The mediator shall obtain an agreement from the husband and the wife that each lawyer, upon request, shall be entitled to review all the factual documentation provided by the participants in the mediation process.
- D. Any memo of understanding or the proposed agreement which is prepared in the mediation process should be separately reviewed by independent counsel for each participant before it is signed. While a mediator cannot insist that each participant have separate counsel, they should be discouraged from signing any agreement which has not been so reviewed. If the participants, or either of them, choose to proceed without independent counsel, the mediator shall warn them of any risk involved in not being represented, including where appropriate, the possibility that the agreement they submit to a court may be rejected as unreasonable in light of both parties' legal rights or may not be binding on them.

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M E M O R A N D U M

TO: Mr. Kenneth P. Stewart

September 27, 1993

FROM: Naomi Peterson Adam
Executive Director

RE: WICHITA NEIGHBORHOOD JUSTICE CENTER, INC.

HISTORY: In January, 1987, the Alternative Dispute Resolution Committee of the Wichita Bar Association established Wichita Neighborhood Justice Center. At the onset the ADR oversaw the activities and established all policy. In August, 1990, the ADR incorporated Wichita Neighborhood Justice Center, Inc. and its own board of directors was formed. The Wichita Bar Association remains closely related by providing office amenities as donation in-kind.

A volunteer board of directors, composed of eleven (11) dedicated community leaders, has full authority over all procedural and financial policies that carry out the mission of the organization. The executive director, Naomi Adam handles the day-to-day business including public relations, education, scheduling, office management and court liaison for both city and county offices.

STATISTICS: In 1992 a total of three hundred, forty-three cases (343) were mediated in Sedgwick County Small Claims Court. The previous Director, Darcy Eads, J.D. reported over 500 contacts through the office and a total of 38 cases mediated in the office.

In 1993, through the month of July, two hundred, twenty-seven (227) cases were mediated in Sedgwick County Small Claims Court. Cases handled through the office number 291, but the number of contacts is not certain, probably already over 500. About 25% of the calls that come through the office actually enter the system.

INFORMATION: Since early in 1993, a letter has been sent to all those persons whose cases enter the system through the office after the situation has been resolved, either through mediation or conciliation. This letter encourages those persons to make a contribution in appreciation of the administrative services. To date the response is approximately 10%. However, I anticipate this

Memorandum
Mr. Kenneth P. Stewart
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September 27, 1993
RE: WNJC

figure to increase as it has become a part of the initial contact conversation. I am including a copy of one such response to this letter.

I have attended many meetings in the community and have been invited and to programs for High School and College classes that relate to legal fields. I have most recently been invited to get involved with Inter-Faith Ministries "We are Family" community project.

In 1993 the contact was made and the Central Inspection Department of the City of Wichita has begun regularly scheduling parties for building code violation mediation. To date we have done twenty-eight (28) mediations.

Also in this calendar year we have made contact, and re-written our "Policies and Procedures" manual to include victim/offender mediation for the Sedgwick County District Court, Juvenile Division. We anticipate this will increase the mediations in the office by 10 to 12 per month.

SUMMARY: Wichita Neighborhood Justice Center, Inc. has a bright, busy future ahead, however, the funding of this organization is in grave danger. Application was made and denied by the City of Wichita. I am currently waiting on the appropriate paperwork from the American Bar Association so that a grant may be requested. This organization has reached out in many directions in this calendar year to include consultation in other counties for mediation services and serving on a committee to write proposed legislation for community mediation. This organization must train additional volunteers in order to equalize the supply and demand theory of growing. Administrative costs will not be the only need in 1994 and for future years to come.

Wichita Neighborhood Justice Center, Inc.

Recently your office helped mediate in a dispute with our roofing company.

We were able to come to a settlement with them only after your letter reached them. They seemed unwilling to talk before that. Even our calls to the president of the company weren't returned.

We appreciate your help and have enclosed a donation to help with your costs. Your help saved us a greater expense of hiring a lawyer and going to court. That would have really put a dent into our already stretched 1-income budget.

Thanks again for helping "the common man" against a big uncaring business.

Sincerely,

Mini Trial

This tool is most often used in complex commercial disputes. Attorneys for each side give presentations to a panel made up of people who represent each side and who have the power to make a settlement agreement. After the presentations, the attorneys step back and the clients attempt to negotiate an agreement. The clients have an opportunity to act as decision makers and to reach an agreement instead of having to rely on a court imposed decision.

Other

Other types of dispute resolution may be aimed at a specific field of business or a type of personal injury claim. Attorneys can assist in the establishment of internal grievance procedures for businesses and other organizations. Commercial contracts may be written to specify that disputes arising out of the contract which cannot be resolved directly by the parties shall be submitted to arbitration.

Dispute resolution methods, properly chosen, may help your legal dollar go further and save you valuable time. Your attorney can answer your questions about dispute resolution and assist you in making the proper choice.



**KANSAS BAR
ASSOCIATION**

This pamphlet is based on Kansas law and is published to provide general public information, not specific legal advice. No one should try to interpret the law without the aid of a trained expert who knows the facts, since the facts may change the application of the law.

If you have a legal problem or concern but do not have a lawyer, you can call the Kansas Bar Association Lawyer Referral Service toll-free from anywhere in the state. You will be referred to a local attorney and the initial 30 minute consultation fee will be only \$15.

**Kansas Lawyer Referral Service
Call Toll-Free 800-432-3593
In Topeka Call 233-4322**

(Also listed in the Yellow Pages under Attorneys)

As a public service of the Kansas Bar Association and the lawyers in your community, the following pamphlets are available in limited quantities through the Kansas Bar Association office, 1200 Harrison, P.O. Box 1037, Topeka, KS 66601.

Child Custody, Support, Visitation Rights
A Death in the Family - What Should I Do?
Aging and the Law
Introducing Your Lawyer
Joint Tenancy
Stop, Look and Check Before Buying a Home
What Is Probate?
Kansas Lawyer Referral Service
Marriage and Divorce
Domestic Violence: A Practical Guide for Victims
What's So Important About A Will?
Living Wills and the Durable Power of Attorney for Health Care Decisions
Juror - Your Rights and Duties

Ways to Settle Your Dispute

prepared & issued as a public service by



**KANSAS BAR
ASSOCIATION**

May 1991

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Legal Dispute Resolution

Many ways exist to resolve legal conflicts, including going to court. *Methods* other than the traditional court trial have become known as "Alternative Dispute Resolution" (ADR). This brochure describes several *methods and tools* which your attorney can use on your behalf in order to bring about an efficient and effective resolution to legal disputes.

Like any set of *tools*, the appropriate dispute resolution *method* must be used for the particular job. There are situations where going to court is the best choice. For example, court decisions are very important where there are unsettled questions of law. Other dispute resolution methods may be better where the parties want a quicker solution, where parties are interested in privacy, and particularly where parties must deal with each other in future business or personal relationships. Your attorney can help you select and arrange for the proper alternative.

Methods of Dispute Resolution:

Judicial Trial

A trial is a judicial proceeding which takes place in court. Most disputes initially appear to be headed for trial. In certain

cases, there are advantages for one party or another to go to court; however, most disputes are resolved through other means. Less than ten percent of all civil cases filed are actually tried in court. Alternative dispute resolution methods may be explored and abandoned if judicial trial methods appear to promise the best results.

Administrative Agency Hearings

An administrative hearing takes place outside the court system under uniform procedures utilized by an agency of government which regulates business and personal activities. Many types of disputes such as discrimination and workers compensation matters may be resolved in administrative proceedings. Administrative determinations may begin with informal resolution attempts, may progress to hearing before administrative law judges, and sometimes may be appealed to the courts.

Negotiation

A private means of dispute resolution, negotiation is the most common method of resolving legal disputes. It involves only the parties and their attorneys. Like most forms of dispute resolution, negotiation permits a variety of solutions and is done in private. Negotiation is a technique that most attorneys use frequently.

Arbitration

In arbitration, which is also private, attorneys representing the parties present arguments to an impartial individual or panel selected by the parties. The arbitrator or arbitration panel usually has expertise in the conflict area (e.g., construction, commercial contracts). The parties usually agree to be bound by the decision of the arbitrator and follow that decision as if it

were a court decision. In some contracts, the parties agree in advance to submit any dispute which may arise to binding arbitration.

Mediation

This method of dispute resolution is also private. It is often used in family law matters and sometimes in small claims cases and other civil matters in connection with a court proceeding. Helpful in disputes involving persons with a continuing relationship (e.g., neighbors, landlord-tenant), mediation is also very useful when a dispute involves many questions and the parties have been unable to reach an agreement on their own. In mediation, an impartial mediator works with the parties to assist them in reaching a settlement. In some cases, your lawyer may represent you in the mediation, and in most situations your attorney should examine the mediated agreement to assure that your legal rights are protected and to assist in putting the agreement in writing. A growing number of attorneys are being trained as mediators. Some courts require settlement conferences which are conducted by a mediator prior to court trial in an attempt to promote settlement.

Summary Jury Trial

The summary jury trial may be privately arranged or court ordered. A relatively new procedure, it is similar to an actual jury trial except each attorney presents a summary of his or her client's evidence to a jury instead of presenting evidence through witnesses. The jury decision can be helpful in resolving a dispute or reaching settlement. Trial proceedings which might take weeks are at times resolved in a few days using this method.

PROPOSED 11/3/92

**WASHBURN UNIVERSITY LAW CLINIC
LEGAL INTERN-MEDIATOR PROGRAM**

with the
Better Business Bureau of Topeka, Kansas

The Washburn Law Clinic (hereinafter called "Law Clinic") will provide free mediation services through legal interns to parties referred for alternative dispute resolution by the Better Business Bureau of Topeka, Kansas under the terms and conditions set out in this document.*

DEFINITIONS:

1. **LEGAL INTERNS:** Legal interns are advanced law students enrolled in the Law Clinic at Washburn University for a semester. Legal interns work under the supervision of a full-time law professor/mediator. The legal interns who provide mediation services have either taken a course in Alternative Dispute Resolution or received mediation training by a supervising law professor/mediator.

2. **MEDIATION:** Mediation is the process by which a neutral mediator assists parties in reaching a mutually acceptable agreement as to issues of a dispute. The role of the mediator is to aid the parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator. Legal intern/mediators will comply with Kansas Supreme Court Rule 901 on Mediation.

3. **DISPUTES:** the legal intern/mediators will only mediate disputes which arise between consumers and business companies where the available remedies include, but not by way of limitation: repairs; reimbursement for past repairs or services, and/or replacement or repurchase of the produce/service, or any other remedy that may be included in the company's precommitment to an alternative dispute resolution process. Punitive damages, allegations of fraud, or other asserted violations of law, or claims for personal injury, death, or mental anguish will not be mediated.

REFERRAL and INTAKE PROCESS:

1. The Better Business Bureau (BBB) will refer matters to the Washburn Law Clinic for mediation by telephoning the Law Clinic to initiate an "intake procedure."

a) The BBB will provide the complete names, addresses, and telephone numbers of the disputing parties and briefly describe the nature of the dispute.

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b) The BBB will only refer cases where all parties have previously agreed to submit their dispute for mediation. It will be the responsibility of the BBB to obtain the parties' agreement to mediate.

c) The completed intake form will be referred to the supervising law professor/mediator for review and assignment to a legal intern/mediator. The final decision whether or not to accept a referred case for mediation shall vest with the supervising law professor/mediator. Factors which are considered in making a determination to accept a case include, but are not limited to: whether a conflict of interest prohibits the Law Clinic's involvement in the matter, the educational value to the legal intern/mediator, the availability of an intern to handle the matter (legal interns are assigned to the Law Clinic on a semester basis and scheduling constraints may preclude acceptance of cases during semester breaks.)

d) If a case is accepted for mediation, the assigned legal intern/mediator will promptly notify the BBB of case acceptance and advise the BBB of possible dates for scheduling the mediation session. The BBB will have the responsibility of scheduling the mediation with the parties in accordance with the legal intern/mediator's schedule.

NEUTRAL LOCATION FOR MEDIATION SESSIONS:

All mediation sessions may take place either at the offices of the BBB or at the Law Clinic, whichever location is most convenient to both parties.

RULES GOVERNING THE MEDIATION:

1. The parties will be clearly informed that the legal intern/mediator, the law professor/mediator, and Law Clinic are not legal representatives for any of the participants to the mediation and that there is no attorney-client relationship between the parties and the legal intern/mediator or the law professor/mediator; that no party can look to the Law Clinic to protect their interests or to keep confidences of one party from the other except information disclosed by one of the parties in a caucus (private session) which the party expressly directs not be disclosed to the other party.

2. The parties will be required to consent, in writing, to submit their dispute to mediation by the legal intern/mediator and Law Clinic, along with a Professional Disclosure Statement and an agreement regarding Mediation Guidelines (tentative drafts attached).

3. The parties will be advised that, pursuant to K.S.A. 60-452a, no member of the Law Clinic staff, including the legal intern/mediator and the supervising law professor/mediator, may be subpoenaed or otherwise compelled to appear as a witness on behalf of any party to the dispute at any legal or administrative proceeding concerning the dispute.

4. The parties will be advised and encouraged to seek independent legal advice before executing any settlement agreement drafted by the legal intern/mediator.

5. The legal intern/mediator will define the legal issues only in the presence of all parties to the matter.

6. The legal intern/mediator, supervising law professor/mediator, and the Law Clinic will not later be able to represent any party involved in the existing dispute in any matter that is related to the existing dispute, whether a mediated settlement is reached or not.

7. The legal intern/mediator will withdraw as mediator if any of the parties makes such request; or, if the legal intern/mediator determines the mediation process to be at an impasse; or, if compliance with any of the rules governing the process can no longer be maintained.

8. Advocates and attorneys for any party to the dispute may be present as long as their involvement promotes the mediation process and as long as the mediator and other participants have been given prior notice.

9. The supervising law professor/mediator and Law Clinic will not offer either legal advice or legal counsel.

10. The supervising law professor/mediator may be present at any mediation session along with the legal intern/mediator. All of the rules governing the legal intern/mediator shall apply fully and equally to the law professor/mediator.

FINAL DISPOSITION:

At the termination of a mediation, the legal intern/mediator will make a report to the BBB limited to the following: that the mediation is terminated; the number of mediation sessions completed; and the number of hours required; and whether or not a mediated settlement was reached.

ARBITRATION:

Washburn University Law Clinic legal interns may provide voluntary arbitration services under the same terms and conditions as set out above in this document and in accordance with the established KANSAS RULES.

SUBJECT TO APPROVAL/MODIFICATION/TERMINATION OF PROGRAM:

This program or any modification of the program is subject to the approval of the Dean of Washburn University School of Law and the BBB of Northeast Kansas Board of Directors. The terms and conditions of the program may be modified by mutual agreement of the parties. The program may be terminated at any time by the Washburn Law Clinic or BBB on reasonable notice to the other party.

*Effective start-up date for the program will be at the beginning of the Spring semester, January 12, 1993.



THE KANSAS STATE BOARD OF AGRICULTURE

~~Sam Brownback, Secretary~~
Donald L. Jacka, Assistant Secretary

901 S. Kansas Ave.,
Topeka, KS 66612

Testimony of Dr. Stan Ward, Director of FACTS
to the Kansas House Appropriations Committee

Thursday, September 30, 1993

Good morning Chairperson Chronister and members of the House Appropriations Committee. I am Stan Ward, Director of the Farmers Assistance Counseling and Training Service, or FACTS office.

FACTS is a cooperative effort of the Kansas Board of Agriculture and Kansas State University. Farmer/Creditor Mediation is a major component of the services we offer to the agricultural community of Kansas. Attached with copies of my testimony are brochures which describe the mediation service currently offered to agricultural producers and their creditors.

In October, 1986, during the height of the farm crisis, the FACTS office, which had been legislatively created in 1985 (KSA 74-544 to 545) selected a group of qualified individuals from around the state to meet in Newton for intensive training in the mediation process. Their focus was upon mediation as a voluntary, confidential process in which a neutral third party helps farmers and creditors identify issues, options, and possible solutions to the financial difficulties affecting the agricultural producer. FACTS, through a contract with Prairie View Mental Health Center, coordinated a program in Kansas for the next several years.

As a response to the farm crisis nationwide, the U.S. Congress enacted the Agricultural Credit Act of 1987, which contained provisions for the creation of certified state agricultural mediation programs through the Farmers Home Administration of the U.S. Department of Agriculture. The 1988 Kansas Legislature then amended KSA 74-545 to authorize FACTS to provide mediation services and apply for USDA certification. FACTS, through the Kansas Board of Agriculture, was first certified later in 1988 and has remained so to the present time.

This same statute also makes Kansas a mandatory notification/voluntary participation state for agricultural mediation. Creditors are required to notify borrowers of the availability of mediation when accelerating a note or prior to foreclosure proceedings. Participation in the mediation process then is a voluntary decision. Kansas' approach is similar to

several other states in this manner. Only Iowa and Minnesota have laws making participation in mediation mandatory.

Currently 18 states have similar certified programs through the Farmers Home Administration of USDA. Generally, those states are from the midwest and southern portions of the nation and encompass approximately 80% of FmHA's annual delinquency cases. While the majority of mediation cases involve FmHA as a lender, other cases actively include lenders from Farm Credit Services, commercial banks, and unsecured creditors.

The Kansas program has serviced many borrowers since 1988. Many producers contact the program in the early or pre-mediation stages of their financial difficulties. Frequently, these cases are resolved through telephone interaction facilitated between the parties. But when this groundwork does not help find a solution, then a face-to-face mediation is scheduled. Based on a federal fiscal year, numbers of farmers serviced are as follows:

Year	Pre-mediation	Face-to-Face
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1989	@500	@100
1990	208	84
1991	280	29
1992	267	23
1993	250	25

The current program utilizes mediators from throughout the state and from various professional backgrounds. Annual training is provided both in mediation techniques and substance concerning agricultural management. Just last week, an advanced training was provided to mediators, farm attorneys, and representatives of FmHA and Farm Credit Services.

Thank you for allowing me to update you on the status of Kansas' Agricultural Mediation program. I will be happy to try and answer any questions the committee may have.

Testimony for

HOUSE COMMITTEE ON APPROPRIATIONS

Submitted by: Kansas Children's Service League
September 30, 1993

KANSAS CHILDREN'S SERVICE LEAGUE is a statewide agency whose mission is "To promote the well-being of all Kansas children by strengthening the quality of family life through the provision of prevention, early intervention, treatment, advocacy and placement services".¹ As you can see, this mission exemplifies a genuine commitment to children and families and is reflected in our 100 years of service.

Kansas Children's Service League currently sponsors two programs that deal with mediation services: the Parent-Adolescent Mediation Program and a curriculum/training program, Building Conflict Solving Skills.

The Parent-Adolescent Mediation Program

One of the hallmarks of families with adolescents is that relationships within the family undergo rapid change. Conflict between parents and adolescents is a major cause of dissolution of families with teens.

Mediation programs focusing exclusively on parent-child disputes were developed in the late 1970's and early 1980's as an alternative to the court for status offenders and their families. The underlying premise of these early parent-child mediation programs was that the court process can be inappropriate and ineffective for a large proportion of these cases. The adversarial nature of court processes can pit child and parent against one another and often focuses on the juvenile for problems which are usually family ones. Additionally, there is frequently very little a court can do other than order out-of-home placement when family conflict has escalated to the point of abuse or repeated runaway episodes.

Mediation provides a process in which options can be explored for improved communication and behavior. The process encourages people to view situations from one another's perspective, accept responsibility for developing solutions that are tailored to their own needs and to abide by the agreements reached. It is particularly suited to conflicts among family members: the process can focus on the family as a whole, rather than the behavior of one member and provides an opportunity to preserve family relationships. This view of mediation is the basis of our program at Kansas Children's Service League.

In 1987, the Topeka office of Kansas Children's Service League applied for and received one of nine two-year grants awarded to agencies across the United States by the Department of Health and Human Services. The grants required that agencies replicate a model of mediation developed by the Center for Dispute Settlement in Washington, D.C. to prevent adolescent abuse and neglect and to address the issue of teenage runaways. The service has continued, with local funding, as one of our agency's family based services and is seen as an early intervention option for parents and teens in conflict. This community-based service exemplifies the policy shifts needed to keep children in their families.

(Over, please, for more)

¹The League is a Charter member of the Child Welfare League of America, is accredited by the Council on Accreditation of Services for Children and Families, a member of the Association of Licensed Private Child Care Agencies, the Coalition for America's Children and one of the founding members of the Children's Coalition.

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Through mediation, more serious problems of family violence, delinquency, or placement outside the home may be avoided. Families are referred to the service by schools, juvenile intake service, court services, other agencies and families themselves. The model of mediation utilized is short-term, consisting on average of one to three sessions lasting up to three hours each. A series of joint and individual meetings with participants is used. Two mediators work together as a team to provide this service. Volunteers are used almost exclusively to provide the mediation service. A social worker on staff at the League coordinates the program including recruitment, training and support/supervision of volunteer mediators. We have consistently attracted professional persons as volunteers: social workers, teachers, attorneys and others. We currently have 20-25 active volunteer mediators. Mediators receive 30 hours of training in conflict resolution skills, issues of adolescence and family systems; they are then paired with experienced mediators as a means of further training and support. We ask for a commitment of one year service after initial training. Kansas Children's Service League has also provided training and consultation to other agencies who have established similar programs.

The Parent-Adolescent Mediation Service was funded for two years through the original grant and has been funded since by a combination of sources, including United Way allocations, fees for service and contributions to the agency. Funding has been and continues to be an issue. It remains difficult to cover the cost of staffing to support the efforts of volunteers. Currently, the only source of third party reimbursement is through Department of Social and Rehabilitation Services if the family happens to be clients of SRS.

Building Conflict Solving Skills

Originally developed by the Kansas Child Abuse Prevention Council in collaboration with Helen Swan, LSCSW, this eight-lesson course provides specific instructions for the classroom teacher to provide conflict resolution skills training to students grades 1 through 9. Without training, students frequently choose poor alternatives in conflict situations or feel powerless to resolve disputes. The Building Conflict Solving Skills program teaches positive skills to resolve conflicts, encouraging children to be responsible for finding solutions. Two skilled, professional trainers are available to present this training to school personnel. There is also a peer mediation component attached to this curriculum. The program has been pilot-tested and evaluated in Kansas communities and data is available upon request.

Presented by: Roxanne Emmert-Davis, LMSW
Social Work Supervisor/Trainer
Topeka District Office