

STATE BAR OF MICHIGAN

Annual Report of the ADR Section

2005-2006

While the practice of Court annexed Alternative Dispute Resolution (“ADR”) in the State of Michigan has not been uniformly accepted and implemented by all of the various State County Circuit Courts in accordance with the published guidelines and requirements promulgated by SCAO, the past year, nevertheless witnessed a significant amount of growth in ADR activity in a broad range of goals. Operating in general conformity with the Section’s original Strategic Plan, as amended; however the Section, through its various Action Teams, took advantage of the Strategic Plan’s flexibility, and began addressing new and important issues and areas of ADR. The Section Council began the year with its initial Strategic Plan review meeting facilitated by consultant Marty Jenkins, whose ideas and experience were relied upon for the initial creation and development of the Section’s Strategic Plan. Marty has continued to assist the Section by participating in the Section’s annual review and discussions relative to the Strategic Plan and the incorporation of new goals and ideas which the Section desired to focus upon.

The Strategic Plan’s flexibility provided the impetus to facilitate the Council’s creation of the new Judicial Action Team. Under the co-leadership of Council member Robert Wright, and Section member Judge Larry Root, retired, the Section took definitive steps towards the establishment of direct and ongoing communications with the organization of State Circuit Court judges, in order to achieve a variety of goals, including but not limited to, the creation of what is hoped to be a mechanism, providing such judges direct access to the Section and its wealth of information, knowledge and resources relative to ADR, which is particularly important when a Judicial Circuit is initially considering the use and formal integration of ADR into its pre-trial requirements. While the participants of this project quickly became aware that it would, of necessity, be a long term, multi-year project, it was nevertheless believed to be important enough to follow through with hopes that the benefits of direct communication with the organization of Circuit Court judges will generate benefits not only to the judges, but to the ADR providers, as well as the parties with legal disputes that may, and in many cases should, best be resolved by application of one or more forms of ADR. It is the Section’s hope that through these direct communications and establishment of the Section as an institutional source of providing access to ADR information and resources, more and more Circuits will eventually adopt a SCAO approved ADR plan for select types of cases within each particular Circuit.

One of the most active and successful action teams during the past year was the Access Action Team, with particular thanks going to Tony Braun for his non-stop, and often relentless, creative activities in order to accomplish many of the goals set by the Access Action Team.

In the area of access to ADR, the Access Action Team has planted the seeds for many ongoing and even new programs and projects for the purpose of making ADR more accessible to numerous and diverse groups of people within the State of Michigan.

As in the past, the Access Action Team continued its communications and activities with the DRAM organization under the direction of David Gruber. Many of these communications related simply to develop ways and means to increase access to ADR for disputants who (for one reason or another) end up working with their local Community Dispute Resolution Centers, which are located throughout the State of Michigan, but not yet in every potential geographical area or Circuit Court jurisdiction.

The Section, through the significant ongoing involvement by Dale Iverson, helped to design and implement all of the ADR related programming work which was presented at the National Bar Association ("NBA") conference which was held this year in Detroit, Michigan. Dale, as the Section's representative and liaison to the NBA, helped to plan presentations which were an important part of that organization's national convention, and continually reported on the progress of the project to the Section Council. Ultimately, the Council voted to subsidize a number of honorariums to be given to important ADR related speakers at the convention and though Dale's usual participation as an active member of the Council was interrupted, she nevertheless managed to keep us fully updated on the status of the project and ultimately was successful in obtaining positive recognition and national exposure for the Section and its work and other contributions with respect to the ADR component of the program.

However, perhaps one of the most successful programs co-sponsored by the Section in the area of access, resulted from the Access Action Team's working closely with a group of top notch presenters under the auspices and co-sponsorship of MSU-DCL School of Law, with leadership, and significant contributions provided by Professor Mary Bedikian, which culminated in a well conceived two day advanced Business to Business Mediations Access Training Program which took place at MSU's Troy Business Management Center this past June. The program was extremely well attended, well organized, and the amount of attendee active participation in the program was nothing short of incredible.

As always, the Skills Action Team continued to build upon the initial planning from the prior year's Skills Action Team, working with program partner ICLE, and made possible from the hard work of our Section Skills Action Team members together with Shel Stark and his excellent support staff at ICLE, whereby the 2006 Advanced Negotiation and Dispute Resolution Institute ("ANDRI") was easily the best attended and highest rated program of its type to date. The Section made arrangements to have

Nina Meirding participate as the key note speaker and the day's program was nothing short of spectacular! Shortly after the March 2006 ANDRI program took place, the Skills Action Team, together with other volunteers and persons invited by ICLE, met on two occasions (in April and May) during which the planning for the March 2007 ANDRI program was conceptualized and developed, including but not limited to, selection of a key note speaker, selection of subject topics which will be covered, and selection of an outstanding group of presenters and moderators to address the many facets of ADR.

In addition to its work on ANDRI, the Skills Action Team also worked diligently to put together exciting and interesting educational components for this year's annual meeting programming which will take place as part of the annual meeting scheduled to take place on September 8 and 9, 2006, at St. John's Golf & Conference Center in Plymouth, Michigan.

This past year also marked perhaps the Section's greatest, and most effective usage of its website/ListServ with the ListServ Action Team chaired by Jim Vlastic, putting together and sending out timely and effective communications to all Section members who provided their email addresses for such purposes. Importantly, the ListServ was also used a conduit for transmitting our Section's publication, *The ADR Newsletter*, as well as other information thought to be of interest to Section members. As time progresses, the ListServ will be employed more regularly to provide the Council with a quick and efficient methodology to communicate whatever types of information or activities are deemed important to the Section members, Section associates, and others who have requested that they receive information through our ListServ.

As per past practice for a number of years, under the leadership and direction of Ben Kerner working diligently with Anne Bachle Fifer, the Publication Newsletter Action Team generated additional issues of *The ADR Newsletter* (the Section's publication sent to its membership) which continued to provide exceptionally high quality articles and information addressing many valuable subjects to the Section membership. In addition, the Newsletter continued to print notices of known ADR training opportunities, upcoming seminars and conferences and an opportunity for Section members to contribute substantively important articles related to the field and/or practice of ADR in the State of Michigan and elsewhere. Working closely with the Website Action Team, the Newsletter Action Team shared responsibility for reviewing all proposed postings for publication on the Section's website and review of proposed ListServ announcements, to insure compliance with the Section's various requirements, policies and procedures.

Finally, but certainly of no lesser importance, was the great quantity of projects undertaken and extraordinarily high level of quality exemplified by the Effective Practices Action Team under the co-leadership of Susan Hartman and Donna Craig. The Effective Practices Action Team addressed a very broad range of issues over the past year in addition to its review and commentary relative to all new statutes, court rules, regulations and other procedures dealing with ADR in the State of Michigan. The Effective Practices Action Team met consistently on an ongoing basis to address its various responsibilities, and through hard work, completed a number of changes to the

Section's By-laws which had been updated during the prior year and endeavored to follow not just Michigan-based legislation and procedures, but actions undertaken in various States throughout the Country to assess such measures and determine whether or not they may be appropriate for adoption in Michigan. Of great future significance was the undertaking of a detailed review of the substance of the Revised Uniform Arbitration Act, with recommendations relative to possible adoption of parts or all of the Act by the Michigan legislature to soon be communicated to the Section members and other interested parties.

One of the most significant issues which arose during this past year was a perceived "loss of control problem" in the present procedures employed by many Circuit Courts which order cases to arbitration upon stipulation of the parties pursuant to the Domestic Relations Arbitration Act. The Section was called upon to assess a number of specific problems which were articulated by a number of Judges, and the Section is currently undertaking the challenge of identifying specific problems, with the goal of suggesting possible solutions and specifically what steps might be taken and how, in order to eliminate the problems brought to the Council's attention through conversations which took place with a number of Circuit Court Judges. It is the Section's hope to come back with a number of specific recommendations, possibly some for consideration by SCAO in terms of the possible adoption of one or more Domestic Relations Arbitration Form Orders for use in conjunction with the Orders sending domestic relation cases to arbitration, which forms, may contain provisions to eliminate some or all of the problems which were brought to the Council's attention by the Judges.

All in all, the year was very productive and resulted in a number of new ongoing projects which, it is hoped, will lead to the more frequent and problem-free use of ADR in and throughout the State of Michigan. Importantly, the Nominating Committee expended a significant amount of hours, attended meetings, and exchanged ideas to recommend persons for Council seats as well as Council leadership positions, who are not only hard working, but will assure the continuation of projects which the Council has undertaken to perform, and will also be sensitive to new problems or issues which will likely require action on the part of the Section through its Council and Executive Committee.

Respectfully submitted,

Alan M. Kanter, Esq.
Chairperson 2005-2006