



Our Inaugural Issue will Describe Content of Chapter Newsletter

Welcome! As you may know, our Chapter is a relatively new organization; we've been here only for about three years. But, already, we have had an impact on the Dispute Resolution field: co-hosting the joint ACR/DRC conference in October 2003.

As we all know as dispute resolution professionals, communication is key to understanding. Now, as we move into the organization's next phase, we believe it is important to increase communication about our Chapter and among our Chapter Members. Thus, your Board of Directors has initiated this Chapter Newsletter.

Our initial thoughts about content are: chapter news items; ACR announcements; and, each issue, an article or two introducing or discussing an area of dispute resolution – while mediation will figure prominently, since many of our member dispute resolution professionals are mediators, the articles will not just focus on mediation. Since this newsletter's success rides on whether it meets your needs as an ACR Chapter member, we welcome your input: gripes; cheers; and especially items or articles are all welcome and greatly appreciated. Send them to ACR Florida Chapter News, c/o Christopher M. Shulman, by email, which is the preferred means, cshulman@adrservices.biz, or by "snail mail", 2701 W. Busch Blvd., Suite 208, Tampa, FL 33618.

Please help us make this Newsletter a success – make it a tool you use regularly, that enhances both your practice and your ACR Chapter membership experience.

Chapter News

Your ACR Florida Chapter recently assisted with a fine program offered by University of West Florida's Office for Informal Dispute Resolution and ACR's Training and Community Sections: "The Second Annual Conflict Resolution Management Forum", May 23-27, 2005, in Pensacola, FL. Dr. Fernandra Ferguson, ACR Florida Chapter Board of Directors member, was the primary organizer of the event, which was hailed as a great success.

Our Next Meeting

Our next Chapter meeting will occur in conjunction with the Florida Dispute Resolution Center's *14th Annual Conference for Mediators and Arbitrators: Great Expectations*, on August 25-27, 2005 at the Rosen Centre Hotel in Orlando. We will hold our Chapter meeting on Friday evening, August 26, 2005 from 5:30 – 6:30. The location will be listed on a flyer you will receive at DRC.

At the meeting, we will elect officers and directors, and discuss our plans for the upcoming year. The vacancies to be filled will be: President-Elect (one-year term); Secretary (two-year term); and four Directors (i.e., members of the Board of Directors, each for a two-year term). Nominations for any or all of these positions may be sent to Chapter Secretary Ken Starr, by email: k.r.starr@worldnet.att.net, or by regular mail to ACR Florida Chapter, c/o Carol Tyson, 3490 Beach Boulevard, Jacksonville, FL 32207. Self-nominations are welcomed.

We'll see you at the Annual Meeting!

Dispute Resolution Practice Article: Voluntary Trial Resolution

By Christopher M. Shulman¹
President-Elect, ACR Florida Chapter

Intro. Created by the Florida Legislature in 1999 in response to concerns about dwindling judicial resources and increasing delays in getting trial dates, Voluntary Trial Resolution (also sometimes referred to as “private trials”) provides a process likely to address most litigators’ and parties’ concerns nicely. Voluntary Trial Resolution, at its base, is an alternative dispute resolution process where the parties agree to have someone other than a sitting judge hear and decide the dispute. Moreover, this process offers the parties the opportunity to select a decision-maker with subject-matter expertise in the area of the dispute.²

Process. Here’s how it works, at least in the Thirteenth Judicial Circuit.³ Once the parties or counsel have agreed to have the matter heard by a Trial Resolution Judge (“TR Judge”) – which agreement usually occurs presuit, but which may also occur after suit is filed) – the case is assigned to a Circuit or County Judge, whose

¹ Note: an earlier version of this article was published as “Voluntary Trial Resolution: Revision 7 Relief?”, Hillsborough County Bar Association *Lawyer*, Vol. 14, No. 7, at 40-41 (April 2004).

² In fact, an important use of the Trial Resolution Judge process is for referral of technical aspects of the dispute for resolution of summary judgments or the like – where subject matter expertise is at least as important as experience adjudicating disputes.

³ Please see, 13th Judicial Circuit Administrative Order S-2001-027 (13th Jud. Cir. Ct. May 3, 2001), www.fljud13.org/AO/DOCS/2001-027.pdf. The author believes this is indicative of how other circuits/counties that have addressed Voluntary Trial Resolution have handled it. *See, for example*, Administrative Order PA/PI-CIR-00-04 (6th Jud. Cir. Ct. January 26, 2000), available at <http://www.jud6.org/legalpractice/aosandrules/aos/aos2000/ao04papi.html>.

Judicial Assistant serves as the TR Judge’s JA for the matter, coordinating with other court resources for the trial: arranging for bailiffs, clerks, reporters, courtrooms, and, if demanded, a jury *venire*. However, the selected TR Judge presides over the pretrial litigation and the trial itself in the same manner as a Circuit or County Judge who would otherwise have heard the case. Fla. Stat. § 44.104. The TR Judge has the authority to enter orders on motions to dismiss and for summary judgment, resolve discovery disputes, and the like. *Id.* § 44.104(7)-(8). While the TR Judge does not have contempt powers as such, he or she does have the power to sanction parties pursuant to Rule 1.380 for discovery violations and the like. *Id.* Once the TR Judge has ruled on the dispute, judgment is entered thereon, upon application of the prevailing party to the assigned Circuit or County Judge. *Id.* § 44.104(11), (13).

Once commenced, the TR Judge handles the matter as the judge of the case. The matter proceeds as it would in state court, except that the parties may, at their agreement or upon order of the TR Judge, agree to a discovery schedule. Such schedules are very helpful to keep the matter on track. Further, if there are discovery disputes or the like (and when aren’t there?), counsel need not attend a cattle-call type, Uniform Motion Calendar hearing; instead, since the TR Judge is “your” judge, you are generally able to get these matters heard quickly and expeditiously. If appearance is required, rather than a telephonic hearing, the hearing need not occur at the courthouse; it can occur at either side’s office, at the office of the TR Judge, or some other location. The TR Judge, compensated by his or her “customers”, is likely able to be more accommodating in this regard than most sitting judges, who simply do not have the time or resources to schedule such hearings in a manner more conducive to the parties’ schedules.

Finally, one can get a trial date certain with a TR Judge. Unlike state court dockets, where counsel are at the mercy of the several other cases set for trial on the same docket (those of us who litigate know the hurry-up-and-wait, nail-biting anguish of the typical trial calendar), the

TR Judge schedules the trial to begin at a date and time for which you, your clients, and your experts can plan.

Arbitration v. Voluntary Trial Resolution. As described above, the fact that you can have expedited proceedings and a decision by a subject-matter expert are strong reasons for using Voluntary Trial Resolution; but they are reasons shared by arbitration. So, why choose VTR instead of arbitration? The principal feature of binding arbitration that leads some attorneys and parties to have a preference against its use – at least to arbitrations the subject of pre-dispute agreements – is the limited scope of review of the arbitration award. *See*, Fla. Stat. § 682.13 (fraud, corruption, evident partiality of the arbitrator, exceeding scope of jurisdiction, or similarly egregious conduct usually required to vacate an award).⁴ By way of contrast, the legal conclusions made by a TR Judge are appealable by right, as if entered by a constitutionally appointed or elected judge; however, like arbitration, TR Judges’ factual determinations have essentially limited review.⁵

⁴ Please note that at least one commenter, Arbitrator/Mediator (and Chapter Secretary) Kenneth R. Starr has suggested an important qualification to this description:

It is true that traditional arbitration carries with it an extremely limited right of review. However, arbitration is a "creature of contract." In a matter which has already proceeded to the litigation stage, the respective parties are not bound by a pre-existing arbitration provision. The parties are free to draft their own arbitration agreement and can specify exactly how the Final Award can be reviewed and upon what grounds. As I see it, this type of arbitration agreement can provide the parties even more control over the review forum, time and costs of an ADR procedure than the VTR procedure described in [the] article.

⁵ While Fla. Stat. § 44.104(11) provides that, “. . . Factual findings determined in the voluntary trial are not subject to appeal,” it is the author’s opinion that the grounds for overturning an arbitral award, Fla. Stat. § 682.13, would also apply to TR Judges’ decisions, since, absent specific qualifiers within section 44.104, it seems likely that the balance of the section, which applies to both binding

Conclusion. Voluntary Trial Resolution offers parties and counsel advantages over both binding arbitration and civil trial in Circuit or County Court. The expense of the TR Judge’s services should be more than offset by the savings the parties would realize through reduced delay and attendant costs. With its combination of formality and flexibility, the involvement of a subject-matter expert as presiding neutral, and preservation of appellate remedies, Voluntary Trial Resolution may very well become the wave of the future.

Sidebar ☺



Concluding Message

Well, that’s all for this issue. We hope you have found it informative and helpful. In our next issue, we will spotlight another, cutting-edge dispute resolution process: Parental Coordination. If there are others you’d like to see discussed in these pages, please let us know. Also, if you have comments to what has been written here, especially responses to the subject of the Dispute Resolution Practice Article, please send those in – we may start a “Letter to the Editor” feature. See you in August!

arbitration and voluntary trial resolution, should apply with equal force to both arbitrators and TR Judges. *See*, e.g., Fla. Stat. § 44.104 (2) (specifying identical appointment procedures for either type of dispute resolution professional.



ACR Florida Chapter News

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