New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

Memorandum Commenting on Proposed Amendment to NYCRR Part 1215
Dispute Resolution Section

DRS #1 September 4, 2014

Re: Proposed amendment of 22 NYCRR Part 1215, relating to a requirement that written letters of engagement inform clients about Alternative Dispute Resolution (ADR) programs available in the UCS website.

The New York State Bar Association Dispute Resolution Section ("DR Section") submits this memorandum in response to the memorandum of July 9, 2014 from the Office of Court Administration requesting comments on a proposal from the New York City Bar Association, Alternative Dispute Resolution Committee ("City Bar ADR Committee") for amendment of Part 1215 of the Joint Rules of the Appellate Division ("Part 1215") to require written letters of engagement to advise clients about information on ADR options and programs available on the Unified Court System Website.

The DR Section strongly supports the City Bar ADR Committee's efforts to promote ADR. The DR Section also agrees with the City Bar ADR Committee that robust mediation and ADR programs benefit both the court systems and litigants.

The DR Section shares the City Bar ADR Committee's concern that many initiatives to promote ADR have met with resistance. Such resistance is exemplified by the memorandum submitted by the New York State Academy of Trial Lawyers ("the Academy") opposing the City Bar ADR Committee's proposal. The DR Section does not agree with the Academy's argument that the proposed language is confusing. Nor is it correct that plaintiffs (or indeed other types of clients) do not have the opportunity to decide whether a case goes to mediation or arbitration. The Academy's opposition demonstrates that much work remains to be done in educating both the legal community and the community at large about the benefits of ADR.

Notwithstanding that the DR Section is in strong support of the objectives underlying the City Bar ADR Committee's proposal, the DR Section, is concerned that amendment to Part 1215 could serve more to provoke opposition among critics of ADR than to achieve the objective of promoting ADR. Part 1215, as pointed out in the City Bar ADR Committee's proposal, requires in certain circumstances written engagement letters to govern the relationship between attorney and client. Part 1215 is directed to this very specific and very important relationship between attorney and client. The current requirement in Part 1215 to discuss attorney/client fee arbitration falls squarely within this purpose.

In contrast, the language set forth in the City Bar ADR Committee's proposal is of a more general, informational, nature. The DR Section has concerns that mandating the inclusion of language in an engagement letter that does not deal directly with the relationship between the particular attorney and particular client is not the most effective way to encourage the use of ADR, and could have unintended consequences unrelated to the goal underlying its proposed inclusion. In light of these concerns, the DR Section is eager to work together with the Office of Court Administration and the City Bar DR section to identify more effective mechanisms to promote the use of ADR in New York State.

Chair of the Section: Sherman Kahn, Esq.

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

Memorandum in Opposition
Committee on the Tort System

Tort #1 September 4, 2014

RE: Proposed amendment of 22 NYCRR Part 1215, relating to a requirement that written letters of engagement inform clients about Alternative Dispute Resolution (ADR) programs available in the UCS website.

COMMITTEE ON THE TORT SYSTEM OPPOSES THIS PROPOSAL

In response to the July 9, 2014, memorandum from John W. McConnell, counsel to the Unified Court System soliciting comments on the above-referenced proposal, the New York State Bar Association's Committee on the Tort System **OPPOSES** this proposal and offers the following comments.

The Committee recognizes the benefits of Alternative Dispute Resolution. However, it does not believe that language concerning the availability of ADR should be mandated for inclusion in retainer agreements. It appears that the primary rationale offered by the proponents is merely to heighten the awareness of ADR options. The Committee agrees that Alternative Dispute Resolution is beneficial and appropriate in some cases, however, does not agree that the letter of engagement between attorney and client is the appropriate vehicle for disseminating such information.

Mandatory inclusion of such language in letters of engagement is unnecessary and potentially confusing. It serves to usurp the lawyer's function as an advisor to the client and could unnecessarily create friction in the attorney/client relationship. Since ADR is not always available for reasons beyond an attorney's control, the mandatory inclusion of this language may be misleading to the client. An individual litigant does not have the authority to select ADR without the consent of other litigants.

There seems to be an underlying assumption in support of the proposal that attorneys will not advise their clients on the availability of ADR in contravention of the client's interests. The Committee is simply unaware of any evidence to suggest that attorneys fail to advise their clients of ADR options in cases where such options are available and appropriate.

In the absence of a strong supporting rationale for this rule, the potential confusion and conflict which may arise from the inclusion of this language in the engagement letter, is significant enough to outweigh the benefits of the proposal.

The Committee is further concerned that should this proposal be adopted, an attorney could be disciplined for failing to include the reference to ADR in an engagement letter. We are not in favor of adding to the mandatory requirements imposed on attorneys in terms of the way we communicate and contract with our clients.

In conclusion, this proposal is unnecessary. It undermines an attorney's judgment as to whether ADR is appropriate for his/her particular case. Further, the proposal does not provide any real benefit to the practitioner or the client; rather the intent of the proposal – to promote ADR – can be accomplished in ways other than mandatory inclusion in the letter of engagement.

Based on the foregoing, the New York State Bar Association Committee on the Tort System **OPPOSES** this proposal.

Co-Chairs of the Committee: Margaret Comard Lynch, Esq. and A. Craig Purcell, Esq.

September 5, 2014

John W. McConnell, Esq., Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

RE: Proposed amendment of 22 NYCRR § 1215, relating to a requirement that written letters of engagement inform clients about ADR programs available on the Unified Court System's website.

Dear Mr. McConnell:

Thank you for accepting our comment upon the proposed amendment of 22 NYCRR § 1215; we appreciate your consideration. Unfortunately, the New York State Trial Lawyers Association ("NYSTLA") cannot support this proposal in its present form. By implication, this proposed amendment to the Rules runs counter to the principle that the courts are the ultimate arbiters of justice. On a more practical level, this proposal places an unnecessary additional burden upon attorneys, particularly counsel representing individuals in personal injury, medical malpractice and wrongful death claims, with no compensating benefit to their clients.

This proposed amendment would require that an attorney's engagement letter include a "citation or other reference to the explanation of Alternative Dispute Resolution options" on the New York State Unified Court System's website, if the engagement "involves an actual or potential litigation matter." The purpose of the proposed amendment, according to the New York City Bar Association's Alternative Dispute Resolution Committee, is to "heighten the familiarity" of both attorneys and their clients with ADR options in a "limited and targeted" manner.

By way of background, NYSTLA is a bar association made up of attorneys primarily representing litigants in personal injury, malpractice, and wrongful death litigation. NYSTLA's 3,500 members represent hundreds of thousands of individual clients each year, and our Association's members are committed to providing the best possible representation to each client, whether that be in civil litigation or in an ADR forum. However, as a core principle, NYSTLA's members strongly support the constitutional right of all New Yorkers to a trial by jury. For these reasons we would like to share our response to this proposal. Our clients' cases are almost never begun by way of an engagement letter, but rather entail the execution and filing of a retainer and retainer statement. However, pursuant to Section 1215.1(c), such retainers must address the issues referenced by the rest of the Rule. Accordingly, this suggested rule change

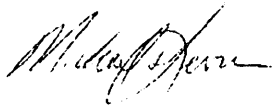
implicates thousands of personal injury, malpractice and wrongful death retainers annually. Whether and why this was intended is not clear.

As a general proposition, while ADR may be appropriate in some circumstances as a means to resolve cases, NYSTLA strongly favors the right to seek justice in the court system. The courts are intended to be the ultimate arbiters of the law, and as such the Rules governing the courts and specifically the relationships between clients and their attorneys should be guided by that principle. This proposal does not expressly advocate alternative means of dispute resolution. However, if adopted, this proposed amendment would by implication place the authority and legitimacy of the Rules, and of the Office of Court Administration, behind ADR. Attorneys are already aware of the availability of ADR, and are more than capable of communicating that option to their clients. Granting ADR the imprimatur of the Rules is not necessary and may only serve to undermine the courts themselves, however subtly. On these grounds alone, NYSTLA respectfully suggests that this proposal should be rejected.

Furthermore, as a practical matter, this proposal ignores the reality of practice for many attorneys, particularly those representing individuals in personal injury and wrongful death matters. The economics of personal injury litigation and the appropriate need for both parties to consent to ADR means that ADR is utilized in only a relatively small minority of such cases. ADR, then, is just one of many potential eventualities that may or may not arise in a personal injury or wrongful death case, ranging from extensive motion practice and intrusive social media discovery to interlocutory appeals and issues involving collection of a judgment. Should the need arise, each of these possible actions must be explained, in detail, to the client. However, explaining, at the time of engagement, every potential hurdle in bringing a claim would needlessly confuse the client, lengthen the retainer itself, complicate the engagement and potentially discourage people from asserting their rights. The same is true of ADR – there is no benefit to the individual client in lengthening an already potentially confusing retainer to heighten their awareness of an option that in the majority of instances will never arise. Indeed, there are already a host of eventualities that occur far more often than ADR that neither have to be spelled out at the instant of retention, nor should they have to be.

NYSTLA is sympathetic to the goal of expanding ADR where appropriate and where the option of seeking a final determination in court is protected. However, this proposed amendment addresses a problem that simply does not exist while implicitly lending legitimacy to ADR at the expense of the court system. NYSTLA must therefore strongly recommend that this proposal be rejected.

Sincerely,



Michael S. Levine, President
New York State Trial Lawyers Association

to John McConnell 7-30-14

NEW YORK CITY BAR

DEBRA L. RASKIN
PRESIDENT
PHONE: (212) 382-6700
FAX: (212) 768-8116
draskin@vladeck.com

July 25, 2014

The Honorable A. Gail Prudenti
Chief Administrative Judge
State of New York
Unified Court System
25 Beaver Street
New York, NY 10004

Dear Judge Prudenti:

Thank you for noticing for public comment the proposal of the Alternative Dispute Resolution Committee of the New York City Bar Association to amend Part 1215 of Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York. The proposal would require letters of engagement to advise clients about the information on alternative dispute resolution ("ADR") options and programs available on the New York State Unified Court System's website.

As you are well aware, knowledge and use of ADR options by litigators and members of the public has not been as wide-spread as it might be. We expect this proposal will allow actual and potential litigants and in some instances their lawyers to be better informed. The benefits would accrue to the courts, members of the public and their lawyers.

Please let me know if you need us to provide any additional information.

Very truly yours,

Debra L. Raskin

NEW YORK COUNTY
NYCLA
LAWYERS' ASSOCIATION

Hon. Ariel E. Belen (Ret.)
Chair
ADR Committee
NYCLA
14 Vesey Street
New York, New York 10007

October 21, 2014

Proposed Amendment to 22 NYCRR Part 1215 Regarding
ADR Language in Attorney Engagement Letters

The ADR Committee[1] reviewed the Office of Court Administration proposal recommended by the New York City Bar Association's Alternative Dispute Resolution Committee, which would require written letters of engagement to advise clients about information on Alternative Dispute Resolution (ADR) options and available programs.

After consultation, the members of the ADR Committee support the proposed amendment to 22 NYCRR Part 1215, which governs attorney engagement letters, to add a new subclause (3) to section 1215.1(b) concerning ADR.

The amendment would require that in any written letter of engagement, when the representation involves an actual or potential litigation matter, the attorney shall provide a citation or other reference to the ADR options described on the website of the Unified Court System. Over the last two decades, ADR procedures have been increasingly recognized as providing a valuable tool for resolving disputes, both before and after litigation has been commenced.

Acknowledging that earlier resolution benefits litigants and helps courts manage their ever more crowded dockets, in recent years almost every court in the New York City metropolitan area, state as well as federal, has adopted some form of court-annexed ADR program. In some courts, participation in ADR programs is mandatory. Therefore, it has become essential for both lawyers and clients to be familiar with the various ADR options that will likely be encountered in any litigated dispute in New York City.

The Unified Court System website provides a valuable resource in familiarizing attorneys and their clients with the ADR options available in the New York courts. The website provides an overview of the programs and explains the procedures in clear and easily understood language. The ADR Committee endorses the proposed amendment because the Committee believes that including in engagement letters a reference to the ADR material on the Unified Court System website is a simple, non-prescriptive way to acquaint clients with the availability of ADR options. The proposed amendment neither mandates the use of any particular language in the letter nor directs lawyers to take any position with respect to the utility of ADR options in any particular case. As such, the proposed amendment does not intrude on the lawyer-client relationship while advancing the worthwhile goal of heightening client awareness of ADR.

[1] The views expressed are those of the ADR Committee only, have not been approved by the New York County Lawyers' Association Board of Directors, and do not necessarily represent the views of the Board.

THE SUFFOLK COUNTY BAR ASSOCIATION

560 Wheeler Road
Hauppauge, New York 11788-4357
(631) 234-5511 • FAX (631) 234-5899
E-Mail: scba@scba.org
Website: www.scba.org

September 15, 2014

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Reference: **Proposed Amendment 22 NYCRR Part 1215**

Dear Mr. McConnell:

I have read the proposed amendment to 22 NYCRR Part 1215 which seeks to add a requirement that written letters of engagement inform clients of optional Alternate Dispute Resolutions (ADR) programs available on the Unified Court System's website.

As President of the Suffolk County Bar Association and on behalf of our Officers, Directors, and members of our ADR Committee, we respectfully oppose the adoption of this proposed amendment.

The current rules regarding the content of engagement letters protects the client and the attorney by setting forth the necessary terms and conditions to establish the attorney/client relationship, namely fee structure and scope of engagement. The client is adequately informed of avenues to pursue if a dispute arises in that context.

According to the letter in support of the amendment, this proposal is intended to promote knowledge of ADR options by expanding the scope of this letter far beyond its actual purpose. The information on the Unified Court System's website, if applicable, should be imparted to the client as part of the attorney's representation and within the context of the matter, rather than as part of the document setting forth the attorney/client relationship.

The proposed amendment also creates potential confusion in providing the client with an opportunity to obtain information without seeking appropriate legal advice in the attorney/client relationship. If the client wishes additional information concerning ADR opportunities, the client's interest is neither promoted nor impeded by the addition of this proposed amendment in the retainer letter. The opportunity for the client to obtain information about ADR outside the attorney/client relationship remains available.

The letter in support of this amendment claims that the addition of this proposal will also serve to familiarize attorneys and clients of the Unified Court System website and educate attorneys of the ADR options. An engagement letter establishing a relationship between attorney and client is not the vehicle to educate attorneys with respect to ADR options. The inclusion of this provision would create confusion for the client without promoting the purposes of the retainer agreement.

The Suffolk County Bar Association opposes this proposed amendment for all of the above reasons.

Very truly yours,

William T. Ferris
President

BAR ASSOCIATION
OF ERIE COUNTY

438 Main Street, Sixth Floor
Buffalo, New York 14202
Phone 716-852-8687
Fax 716-852-7641
mail@eriebar.org
www.eriebar.org

August 26, 2014

John W. McConnell, Esq.
Office of Counsel
Office of Court Administration
25 Beaver Street
11th Floor
New York, NY 10004

Re: Proposed Amendment of 22 NYCRR Part 1215

Dear Mr. McConnell:

The ADR Committee of the Bar Association of Erie County supports the goal of the proposed amendment which seeks to disseminate neutral information about alternatives to litigation.

Understanding counsel has an obligation to *reasonably consult with the client about the means by which the client's objectives are to be accomplished*[1], the neutral, base line information offered on the website gives clients a passing familiarity with terminology and options, and allows for a more considered discussion of the best strategy to employ.

However, the specific proposal also raised several concerns:

1. We share the concerns expressed by other writers regarding the expansion of already lengthy engagement letters.
2. We have concerns that the direction to the court's website and the variety of information therein may be daunting and create unnecessary anxiety or 'analysis paralysis' for clients which undercuts those benefits of ADR having to do with saving time, money or energy.
3. There are areas of the state where neutrals may not be available for certain types of cases. For these clients the information may create an unnecessary and confusing detour.
4. Referrals to a website are subject to 'link rot' as information changes. (see, http://www.nytimes.com/2013/09/24/us/politics/in-supreme-court-opinions-clicks-that-lead-nowhere.html?_r=0)

With these concerns in mind we would suggest that rather than the link, the letter add a simple sentence to the effect that "to the extent these matters involve or may involve litigation, please be aware there are options known as "Alternative Dispute Resolution (ADR)" some of which are voluntary and cost effective and we will discuss those options as we develop the strategy for your matter."

We thank you for your time and consideration.

Very truly yours,

Laurie Styka Bloom

LAURIE STYKA BLOOM
President

cc: Bridget M. O'Connell, Chair
Alternative Dispute Resolution Committee

[1] NY Rules of Professional Conduct 1.4

September 29, 2014

Dear Mr. McDonnell,

I am writing to you in my capacity as the President of the Family and Divorce Mediation Council of Greater New York (the "FDMC"), a non profit organization which seeks to educate, inform and support those who work in the family mediation field and, in addition, to promote mediation as a standard dispute resolution process for all classes of family conflicts.

Yesterday, a proposed amendment of Part 1215 of the Joint Rules of the Appellate Division was brought to my attention that would require written letters of engagement to advise clients about the information on ADR options and programs available on the Unified Court System's website.

The FDMC strongly supports the above amendment. Although I believe the deadline for comment has passed, I hope that the support by the FDMC will be added to those of other organizations and individuals.

Thank you for your consideration.

Sincerely,

Antoinette Delruelle

FDMC President
212-613-5021

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

ONE COMMERCE PLAZA
SUITE 1705
ALBANY, NEW YORK 12260
518-465-5551
FACSIMILE: 518-465-2033

1300 CONNECTICUT AVENUE, N.W.
SUITE 600
WASHINGTON, DC 20036
202-955-6340
FACSIMILE: 202-223-0358

COUNSELORS AT LAW
990 STEWART AVENUE, SUITE 300
P.O. BOX 9194
GARDEN CITY, NEW YORK 11530-9194
516-741-6565
FACSIMILE: 516-741-6706
E-MAIL: meyersuozzi@msek.com
WEBSITE: http://www.msek.com

1350 BROADWAY, SUITE 501
P.O. BOX 822
NEW YORK, NEW YORK 10018-0026
212-239-4999
FACSIMILE: 212-239-1311

A. THOMAS LEVIN
MEMBER OF THE FIRM
ADMITTED NEW YORK, FLORIDA, US VIRGIN ISLANDS
CHAIR - LOCAL GOVERNMENT, LAND USE & ENVIRONMENTAL COMPLIANCE PRACTICE GROUP
CHAIR - PROFESSIONAL RESPONSIBILITY PRACTICE GROUP
PRESIDENT (2003-2004) - NEW YORK STATE BAR ASSOCIATION
DIRECT DIAL: 516-592-5704
E-MAIL: ATLEVIN@MSEK.COM

August 4, 2014

PERSONAL

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street
11th Floor
New York, New York 10004

Re: Proposed Amendment of 22 NYCRR Part 1215

Dear Mr. McConnell:

I write to express my personal views regarding the proposed amendment to 22 NYCRR Part 1215 to add a requirement that written letters of engagement inform clients about optional ADR programs available on the UCS website. I understand that comments on this proposed rule are being received until September 8, 2014.

I respectfully submit that such a requirement, while well-intentioned, would be an inappropriate requirement for written letters of engagement.

The letter of engagement requirement properly requires attorneys to assure that the terms and conditions of their retention for legal services is memorialized in writing. To that end, the current rules require those letters to include information regarding various aspects of the relationship between attorney and client, and also to include information regarding the obligations of the attorney in the event the relationship ends in dispute.

The current requirement also requires the attorney to provide information about the availability of a program for resolution of fee disputes, in which the attorney is obligated to participate but which is optional for the client.

The proposed amendment to the rule, however, goes beyond informing the client about the obligations of the attorney, and proposes to include instructions how the client

may locate information on the court website about dispute resolution procedures in which the attorney is not obligated to participate. I respectfully submit that this proposal should be rejected, for at least two reasons:

1. it is not the function of the letter of engagement to inform a client as to any particular method which may be available to resolve disputes, but which can be utilized only with the consent of the attorney and the client. If this were the case, consideration should be given to all such methods, and not just the particular ones which the court system has chosen to include on its website. The letter of engagement, which is already confusing and complicated enough from a client's point of view, should not be *further encumbered* by inclusion of such unnecessary information;

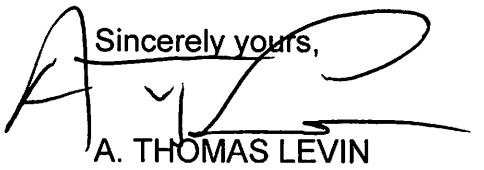
2. The current rule requires inclusion of information about the only alternative dispute resolution process which is available to the client and in which the attorney must participate. This is a reasonable requirement, which informs a client about an option which the client alone may elect. To add to this a requirement to include alternative procedures which may not be available even if the client should so elect is misleading and likely to lead to confusion. This would give clients an erroneous impression that those procedures are available to them upon request, as is the mandatory fee arbitration, when in fact the alternative dispute resolution methods are available only if the attorney also agrees.

This proposed rule will only serve to further complicate an already complicated engagement letter, and has a real potential to confuse a client by giving information about a process which in fact may not be available. Whether or not such alternative dispute procedures are a good idea, or advantageous in certain situations, are not the issue; the issue is whether this information should be added to those items which an attorney is required to include in the engagement letter.

This proposed amendment would require inclusion of information which is not relevant to the act of engaging an attorney, and highlights procedures which are only available in the case of mutual agreement between the attorney and client. The proposed amendment will serve only to further complicate the letter of engagement, and sow more seeds of distrust between attorney and client even as their relationship is at its inception.

I urge the rejection of this proposed amendment.

Sincerely yours,



A. THOMAS LEVIN

From: joel e davidson <jedlaw47@gmail.com>
Subject: 22 NYCRR 1215 ATT JOHN MCCONNELL
Date: July 16, 2014 12:02:14 PM EDT
To: RULECOMMITTEE@NYCOURTS.GOV
[redacted]

I am very much in agreement with the proposed change to add a reference to ADR in required retainer letters.

However, i believe the language should be slightly more expansive and specific. For example

"if this retainer involves a litigation matter or results in a litigation, please be advised that there are a number of alternatives to litigation that you may wish to consider, including arbitration and mediation. These processes often result in substantial savings in cost and a more expeditious resolution. There are many providers of these services who have participated in these processes for many years and have great expertise.
In some courts, you may be required to mediate your dispute at some point in time. You should carefully consider and review the early use of alternative dispute resolution with your attorney before commencing a litigation. Many very difficult and complex and acrimonious commercial and family law and other types of disputes are successfully resolved by these processes."

The present proposal may not contain enough information for the client and may cause attorneys not well-versed in mediation to not give adequate consideration to the benefits of ADR.

Thank you

Joel E. Davidson, Mediator, SDNY
Adjunct Professor, Fordham Law School

joel e davidson
jedlaw47@gmail.com
[redacted]

[redacted]

From: Chafee, Amanda M <amchafee@co.steuben.ny.us>
Sent: Friday, July 25, 2014 11:57 AM
To: rulecomments

I am the secretary for the Steuben County Bar. Here is a response to your inquiry that I am forwarding:

Our firm opposes the proposed amendment to 22 NYCRR 1215 relating to compulsory advertising of ADR in our engagement letters.
Enough already. There is no urgent public need for this to occur, and that is reason enough that it shouldn't. Our correspondence with our clients should not be regarded as a free-ride advertising vehicle for the state to tack-on promotions of things that it politically favors. Short of manifest public necessity, the merits of those things are irrelevant to the propriety of this intrusion into the doing of our work.
Thank you for your attention to our view.

Richard P. Rossettie

Rossettie Rosettie & Martino LLP
269 West Pulteney Street
Corning, NY 14830
Tel. 607-936-3739
online: www.rrmlaw.com
email: rick@rrmlaw.com

[redacted]

From: aggressivelawyer@live.com on behalf of Susan BetzJitomir <lawyer@betzjitomir.com>
Sent: Tuesday, July 29, 2014 12:24 AM
To: rulecomments
Cc: ADA Chafee
Subject: NYCRR22 part 1215 proposed rule change

To Whom It May Concern:

This note is to address the proposed changes to NYCRR22 part 1215, by compelling attorneys to inform potential clients how they may wish to do without our services after all. While the goal of educating the public about ADR is laudable, it is not appropriate for all cases, families where domestic violence is an issue comes immediately to mind, and the idea that we can include information without appearing to endorse it is unrealistic. Would you include information on the nycourts website that you did not endorse? Would anyone think you endorsed it if it was there? A better way to inform the public about this or any issue is to inform the general public through Public Service Announcements, information on the nycourts website, and education in the schools about how our government works. Compelling attorneys to appear to tell each and every client that they can handle their case alone through ADR is not a good approach. I understand the courts are over burdened. A better approach would be to fight for the funding needed to run the courts properly, and give people an opportunity to have their right to a day in court respected, rather than to cave in to the under funding that plagues the system to everyone's detriment, by suggesting that professionals ought to appear to endorse the idea that they are not needed.

Susan BetzJitomir
http://www.betzjitomir.com/
http://www.steubenlawyers.com/bath-ny-susan-betzjitomir.htm
http://elmiracorningnaacp.org/leadership.htm

[redacted]

From: shaffermediation@gmail.com on behalf of Gary Shaffer <gary@shaffermediation.com>
Sent: Tuesday, October 21, 2014 3:36 PM
To: rulecomments
Subject: Proposed Amendment to Attorney Engagement Letter

I write in support of the New York City Bar Association's ADR Committee's recommendation to require written letters of engagement to include a reference to the Unified Court System's ADR website in instances where the representation involves actual or potential litigation. Chris Hyman's letter of April 9, 2014 cogently and compellingly sets forth the reasons for inclusion of such language.

Many state and federal jurisdictions have enacted robust and successful ADR programs over the past ten years. These programs have been shown to provide an efficient, cost effective, and fair process for resolving cases. While the NYS court system at this point has only a limited number of court annexed ADR programs, the nycourts.gov website provides parties with useful information as to available ADR alternatives that can aid in resolving disputes. The proposed amendment to the attorney engagement letter will provide clients with a means for finding out this information, which in many instances they would otherwise be unaware of. This will expand the options open to clients and may stimulate conversation between clients and their counsel as to alternative means for resolving a given matter.

The proposed amendment should be approved.

Respectfully,

Gary Shaffer, Esq.

[redacted]

From: Elizabeth Donlon <est8medi8@gmail.com>
Sent: Monday, September 08, 2014 11:24 AM
To: rulecomments
Subject: Proposed amendment to Part 1215 of the Joint Rules of the Appellate Division

Dear Mr. McConnell:

I am writing to express my support for an amendment to Part 1215 of the Joint Rules of the Appellate Division, which would require written letters of engagement to advise clients about ADR options and programs available on the UCS web site. In addition, I would also recommend that the UCS web site be updated to include other low-cost providers of ADR services, including but not limited to the ADR Tribunals of the Nassau County Bar Association.

In the interest of full disclosure, I am a member of the NCBA, on its ADR Tribunal mediation panel, and am current chair of the NCBA ADR Committee. I am writing, however, in my individual capacity as an attorney who is most interested in promoting alternative dispute resolution among the community, the bench and the bar.

Sincerely,
Elizabeth P. Donlon

--
Elizabeth Pollina Donlon
Attorney at Law
99 Tulip Avenue, Ste. 404
Floral Park, NY 11001
Tel. 516-216-5466

[redacted]

From: Lisa Renee Pomerantz <lisa@lisapom.com>
Sent: Monday, September 08, 2014 11:01 AM
To: rulecomments
Subject: Proposal to Amend 22 NYCRR Part 1215

While the proposal is a commendable step in the right direction, it does not go far enough to guarantee that attorneys will fulfill their duties to "reasonably consult with the client about the means by which the client's objectives are to be accomplished" under Rule 1.4(a)(2) and their duties under Rule 1.4(b) to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." To address these deficiencies, I suggest that the proposal be revised as follows:

1) There should be a duty not only to inform clients of ADR alternatives but to provide advice and recommendations thereon.

2) The duty to inform clients of ADR alternatives should extend to transactional and other attorneys who must advise clients regarding contractual dispute resolution provisions and options.

3) The ADR alternatives about which clients should be notified should not be limited to those listed on the OCA website but should extend to those which are applicable or potentially applicable to the matter. In many instances, such as federal court matters, agency proceedings, Sandy insurance mediations, or many online disputes, the options on the OCA website are not appropriate or applicable. For transactional attorneys, there are a variety of public and private ADR providers, many with specialized panels which may be appropriate for the dispute.

--

Lisa Renee Pomerantz
Attorney at Law
80 Orville Drive
Suite 100
Bohemia, NY 11716
Tel: 631-244-1482 Fax: 631-567-0611
lisa@lisapom.com
http://www.lisapom.com

The attorney you need to help you succeed!

Legal, Training, Mediation and Arbitration Services

Co-Chair, Commercial Section, Association for Conflict Resolution
Director, New York State Dispute Resolution Association