STATE OF VERMONT
CHITTENDEN COUNTY, SS.

Bonnie J. Spencer	)	
	)	
	)	
v.	)	Chittenden Superior Court
	)	Docket No. 916-99 CnC
	)	
Justin Scott Mashtaire	)	

MEMORANDUM OF DECISION

The claim in this case is for injuries arising from an automobile accident. Defendant's liability has already been established, and the only remaining issue for resolution is the amount of damages. The attorneys attended a pretrial conference on September 7, 2001, preliminary to a jury trial. At the conference, it was determined that all pretrial discovery and other preparations were complete, except for mediation. Case Flow documents 1 and 2, filed December 13, 1999, and July 26, 2000, respectively, both had established August 15, 2000 as the deadline for completion of mediation. The third and final Case Flow document filed December 5, 2000, stated that mediation was "Past due, Allstate case. No settlement likely."

At the pretrial conference, both attorneys agreed that "mediation," as that term is generally used in the context of Chittenden County litigation practice, would not be appropriate to the case, since the issue is the narrow one of the "value of the case," i.e. the amount of money to be awarded in damages, with each side taking a different view of value. Chittenden Superior Court has had a pretrial mediation requirement in place for jury cases since 1996, and the attorneys are familiar with using mediation as a pretrial process for settling a case or narrowing the issues for trial. They understand the process, and have acquired experience with identifying the types of cases in which it is an effective technique, and those in which it is not useful or cost effective.

While both agreed at the pretrial conference that mediation was not suitable to the case, Plaintiff's attorney requested that the court instead require the parties to attend "non-binding arbitration" in lieu of mediation. During the conference, this was further defined as a process in which an attorney with considerable experience and judgment in this type of case would serve as a neutral to meet with both attorneys and parties, and a representative of the Defendant's insurance company with authority to settle. No evidence would be taken. Rather, each attorney would summarize for the neutral the evidence he expected to be admitted at trial and the witnesses he expected to call, and the outcome he expected to be able to prove or defend. The

neutral would then give an amount or a range signifying the neutral's assessment of the value of the case. This would be advisory only and for the benefit of the parties and attorneys to aid them in their considerations of settlement possibilities. It would provide an independent perspective on the value of the case from a person with knowledge and experience sufficient to provide meaningful information. The neutral would not be expected to conduct mediation or facilitate any settlement discussions. The parties would be free to use the information as they chose, including disregarding it and proceeding to trial. Although labeled "non-binding arbitration," the process is actually more appropriately described as a "neutral evaluation," since no evidence would be presented, and the neutral's opinion of value would be advisory only and inadmissible at trial pursuant to V.R.E. 408. Reporter's Notes, V.R.E. 408 (Cum. Supp. 2001). The court itself has no interest in the opinion of the neutral evaluator, and does not expect any information from the session. The process, like mediation, is for the benefit of the parties and attorneys in addressing settlement possibilities.

The court determined that the cost of the process was to be shared equally by the parties, and that it needed to take place prior to the trial itself, but would not delay the jury draw which was scheduled for September 19, 2001. The attorneys were given the opportunity to select the neutral by agreement, and if they could not agree, they could each propose names to the court, which would hold a conference with the attorneys and choose the "arbitrator."

Attorney Wadhams indicated that the Defendant's insured, Allstate Insurance Company, was not willing to participate because it had made its own determination of the value of the case, and wished to proceed directly to trial without participating in any pretrial ADR. Therefore, on behalf of Allstate, he objected to the court requiring such a procedure. The court heard arguments from both counsel, and after consideration of the arguments of counsel and for the reasons expressed on the record, made a verbal pretrial order requiring participation in "non-binding arbitration" as defined above. Attorney Wadhams requested an opportunity to seek reconsideration in a follow-up memo, which was granted and a due date established.

Thereafter, Attorney Wadhams filed a timely Motion in Opposition to Order for Non-Binding Arbitration and Attorney Crawford filed a Motion in Support of Order for Non-Binding Arbitration. The jury draw went forward on September 19, 2001, after which the court heard further arguments on the motion. Attorney Wadhams claims that this court lacks authority to order the parties to participate in alternative dispute resolution because V.R.C.P. Rule 16.3, which establishes a set of rules for such a process, only has resources for implementation in Bennington, Franklin, and Rutland counties pursuant to Administrative Order 39. Attorney Crawford argues that the court has discretionary authority arising from Rule 16 relating to pretrial procedures and simplification of the issues, which authorizes this court to enter a binding pretrial order on specific enumerated pretrial procedures and "[s]uch other matters as may aid in the disposition of the action."

Chittenden Superior Court has had a pretrial mediation program for jury cases in place since 1996. It was organized through a collaborative effort by then Presiding Judge Shireen Avis

Fisher, Clerk Diane A. Lavallee, and attorneys of the Chittenden County Bar who participated in discussions with the judge and clerk to design a plan for commencing it, initially on an experimental basis. Attached is a copy of a letter sent to bar members on November 13, 1996. The requirement of mediation as a part of pretrial procedure in jury cases was subsequently institutionalized as part of routine case flow management as reflected in Case Flow Forms 1, 2, and 3 which are completed by attorneys as required by the court throughout the pretrial period and establish deadlines for various pretrial tasks, including mediation. Attorneys have acquired familiarity with the use of mediation as well of a variety of related ADR techniques during the past five years, and the number and quality of mediators, and attorneys with mediation skills, has expanded as well.

Throughout the same period, mandatory mediation has been established and become routine in several other superior courts throughout the state without the establishment of any specific Civil Rule other than Rule 16. Other pretrial mediation and related ADR programs have been established within the Vermont legal community by specific rule, including the mandatory ENE program in the federal trial courts, a program for mandatory participation in some form of ADR in specified Family Courts pursuant to Administrative Order 36 (Vermont Family Court Project), and mandatory participation in ADR using a specified experimental procedure in Bennington, Franklin, and Rutland Superior Courts pursuant to Rule 16.3. In addition, voluntary mediation has been established in Small Claims courts throughout the state. In Chittenden Superior Court and other courts throughout the State, just as attorneys have acquired experience with the use of pretrial ADR tools, judges have acquired a growing body of experience about the types of cases in which mediation and other ADR methods are appropriate and when they are not, and the effectiveness for both the parties and the court in mandating participation, even when the parties are reluctant. As is often the case in the life of the law, experience is a great teacher, and judges are increasing their skills in exercising discretion about whether to require or excuse parties from participation in individual cases.

The situation in Vermont corresponds to developments on the national level. See e.g., S. Gauvey, ADR's Integration in the Federal Court System, 34 Md. B.J. 36 (2001) (tracing the development of ADR in the federal judicial system). There has been continuing development of a variety of different ADR models with features tailored to the specific needs of different categories of cases, a proliferation of training programs for attorneys and judges on effective use of ADR, an expansion of law school curricula on dispute resolution through ADR, an increase in the number of trained and experienced persons to conduct ADR, a growing jurisprudence relating to ADR as a form of dispute resolution, and other related changes in approaches to dispute resolution. All of these developments rest on a common acceptance of the reality that the trial courts do not have the resources to provide a full jury trial in every case that is filed, and on a goal of minimizing litigation expenses as well as a growing realization that ADR processes are, in some cases, able to provide litigants with a higher-quality outcome at lower cost and with a greater level of personal satisfaction than litigation. Through experience, we are continuing to refine our understanding of which cases those are.

This is the context for the case at hand. As a preliminary matter, a change of terminology may be helpful. Although the procedure requested by the Plaintiff and ordered by the court has been referred to up to this point as "non-binding arbitration," hereafter it will be called "neutral evaluation" for the reasons described above. On the subject of terminology, it may also be helpful to clarify the meaning of "mediation." The court is aware that the word is sometimes used in a narrow sense to signify a process whereby parties with equal bargaining power sit down with a trained mediator who assists them in reaching their own agreement with essentially no substantive input from the person serving as mediator. It is also sometimes used in a broad sense to encompass a wide variety of non-litigation dispute resolution models including: mediation, but with the parties in different rooms and the mediator shuttling back and forth; facilitated settlement, in which the facilitator plays a more active role in moving the parties toward an agreement, including "arm-twisting"; neutral evaluation, in which the neutral simply expresses an independent opinion of likely outcomes and may or may not make settlement suggestions; a "weather report" from the decision-maker based on an assessment of preliminary information, and many other variants combining features of these examples and other models. See generally, Elizabeth Plapinger et al., Judge's Deskbook on Court ADR (1994), reprinted in Alternatives to High Cost Litig. 9 (Jan. 1994). Non-binding arbitration is sometimes swept into the use of the term in this broad sense as well, although binding arbitration is usually viewed differently since recourse to a court trial is curtailed. Id. at 11.

These examples show that the use of the term "mediation" can encompass a wide, and constantly growing, range of different practices, and the meaning of the word can vary depending on the context in which the word is used. It is my experience that in mediation programs in superior courts in Vermont, the term "mediation" is usually used in a broad sense, leaving the attorneys and court free to select a model from among those available in the community, and to tailor it to the needs of a case. An essential element of mandatory mediation, however, is a requirement that all attorneys and parties and persons with authority to settle a case are involved and participate in some process designed to enhance the opportunities for voluntary settlement. As such, the neutral evaluation process involved in this case is a style of pretrial ADR that falls within the parameters of a broadly defined pretrial mediation program, rather than a wholly separate procedure different from mediation, even though it is probably not the model that most attorneys use most of the time.

The court's authority to require participation in pretrial mediation (broadly defined) in the absence of a specific authorizing rule, derives from both Rule 16 and inherent judicial authority. Of these two sources, inherent judicial authority is the broadest, and is based on the very nature of courts. Useful overviews and descriptions of historical sources of inherent judicial authority are found in D. Meador, Inherent Judicial Authority in the Conduct of Civil Litigation, 73 Tex. L. Rev. 1805 (1995) [hereinafter Inherent Authority] and Eash v. Riggins Trucking Inc., 757 F.2d 557 (3d Cir. 1985). There are three types of power that courts exercise under the overall umbrella of inherent judicial authority. Eash, 757 F.2d at 562. The first is authority that has been called "irreducible inherent authority," encompassing a narrow and limited authority fundamental to the essence of a court. Id. Grounded in the concept of separation of powers, this

power enables a court to act despite contrary legislative direction because to deny the power "and yet to conceive of courts is a self-contradiction." Id. (quoting Frankfurter & Landis, Power of Congress over Procedure in Criminal Contempts in "Inferior" Federal Courts - A Study in Separation of Powers, 37 Harv. L. Rev. 1010, 1023 (1924)). An example might be the authority to render a decision. The second type of inherent judicial power arises from "strict functional necessity" and includes the powers "necessary to the exercise of all others." Eash, 757 F.2d at 562 (quoting Roadway Express Inc. v. Piper, 447 U.S. 752, 764 (1980)). This second category is the most common and the most prominent example is the power to sanction for contempt. Eash, 757 F.2d at 562.

The third form of inherent judicial authority "implicates powers necessary only in the practical sense of being useful." Id. at 563. This includes the authority of courts, if not otherwise limited, to develop "a wide range of tools to promote efficiency in their courtrooms and to achieve justice in their results." Id. at 564. The third category "would appear to include many of the case management types of orders courts currently use." Inherent Authority, supra, at 1817. It is a "control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Eash, 757 F.2d at 564 (quoting Link v. Wabash Railroad Co., 370 U.S. 626, 630-631 (1962)).

The authority at issue in this case–authority to require participation in some form of ADR prior to the commencement of litigation–falls into this third category. Thus, it is the category most susceptible to regulation by rule-making. That does not however, render such authority any weaker than any other type of inherent judicial authority. The exercise of this third type of inherent authority is valid provided it does not conflict with any of the limitations on inherent judicial authority, which include: constitutional provisions, statutory law, any conflicting applicable rules of procedure, and appellate review for abuse of discretion. Inherent Authority, supra, at 1816-20. Professor Meador in part summarizes inherent judicial authority as follows:

> Trial courts have the inherent authority to manage and control the conduct of civil cases within their jurisdiction as follows: 1. To issue orders governing the pretrial process as necessary, in the judgment of the court, to expedite with fairness and at the least possible expense the preparation of cases for trial and the achievement of a settlement by the parties. . . .

Id. at 1820.

The relationship between inherent judicial authority, Rule 16, and Rule 16.3 is at the heart of this case. Professor Meador addresses the general framework surrounding this issue as follows:

> [J]udicial management prior to trial has blossomed greatly in all areas of civil litigation as an effective means of reducing costs and delay. Although in many jurisdictions much of this judicial activity can be

> grounded in written rules of procedure, those rules do not exhaust a trial court's authority . . . . It is generally accepted that, even in the absence of a specific rule, a court has the inherent authority to require a party to attend a pretrial conference, and it has been held that a court can require a representative of a defendant's insurance company to attend with full authority to settle . . . .
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> Written rules and statutes are unlikely as a practical matter to provide for all the many things a trial judge may need to do – or may find it useful to do – in dealing effectively with cases during the pretrial phase. Consider the part the judge plays in the pretrial settlement process, for example. While some role in encouraging or promoting settlement might be pinned to a provision like that in Rule 16, which identifies settlement as an appropriate subject for discussion at a pretrial conference, it would be stretching that provision beyond what its wording can bear to construe it as authorizing all actions that judges consider appropriate. How far a judge should go in pressuring parties or becoming involved with settlement negotiations is, of course, a matter of much debate. That debate, however, centers on sound judicial policy; there is general agreement that a considerable measure of inherent authority is available.

Inherent Authority, supra, at 1809 (citations omitted).[1]

Professor Meador also notes that "[t]he relationship between written procedural rules and inherent judicial authority is perhaps the most vexing question today concerning the limits on a court's inherent authority to manage civil litigation. It has become increasingly problematic as procedural rules have proliferated in the late twentieth century." Id. at 1816. In general, a court cannot exercise inherent judicial authority in violation of a specific rule, as the adoption of a rule of limitation operates to narrow the exercise of inherent judicial authority. Clearly where a rule specifically authorizes a particular action, there is no problem, as the rule defines, and may enlarge, the manner in which judicial authority is to be exercised with respect to its subject matter. However, case law shows that

> the mere fact that a written rule of procedure addresses a certain matter does not necessarily mean that a court is thereby deprived of

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[1] Professor Meador's mention of Rule 16, refers to Federal Rule 16. The Vermont Rules of Civil Procedure were adopted in 1971 based on the Federal Rules of Civil Procedure. See Reporter's Notes, V.R.C.P. 16. The Vermont Rule has been supplemented since 1971, although the current texts are not identical, by additions which incorporate many of the amendments made to Federal Rule 16. Nothing in the Reporter's Notes suggest a deliberate attempt to adopt a substantively different rule than the Federal Rule 16. Certainly, if anything, the evolution of the Vermont rule has paralleled the development of the Federal Rule.

> its inherent power to deal with that matter. Preexisting inherent authority can remain available to supplement the rules if the rules are interpreted . . . not to prohibit the particular exercise of inherent authority.

Id. at 1817 (citations omitted).

The extent to which inherent judicial authority can be exercised, if not otherwise prohibited by rule, varies to some degree based on the category of inherent authority being invoked, the judge being granted the greatest deference in the first category and subject to the greatest scrutiny within the third category. Where the third category of inherent judicial power is involved (as in this case), and where there has been some legislative involvement in the rule-making process, see e.g. 12 V.S.A. § 1, a ruling of an individual trial judge should conform to the balance that has been struck by both the judicial and legislative branches between the needs of efficiency in litigation and the rights of the parties. Inherent Authority, supra, at 1817; see also e.g. Strandell v. Jackson County, 838 F.2d 884 (7th Cir. 1987) (refusing to uphold trial court order requiring a party submit to a non-binding summary jury trial because even though nothing in the rule prohibited the practice, the order was out of balance with the applicable rule); Repp v. Horton, 335 N.E.2d 722 (Ohio Ct. App. 1974) (validating the trial court's authority to order pre-trial appearance at a settlement conference of an insurance company official possessing full authority to negotiate and settle the claim because such an order was in harmony with the goal of the rule on pretrial procedure).

The inquiry, then, is whether the procedure proposed in this case, a neutral evaluation prior to a two-day jury trial on damages only, is in conformity with the balance reflected in Vermont Rules between the needs of efficiency in litigation and the rights of the parties. Vermont Rule 16 by itself neither authorizes nor prohibits a superior court judge from implementing a mandatory pretrial ADR procedure in jury cases, so the inquiry is whether such an exercise of inherent judicial authority is consistent with the terms and guidelines of the existing written rules. The rules themselves provide abundant reasons to conclude that such a practice is consistent with the provisions and purposes of those rules, and no information exists to conclude that such a practice conflicts with those rules.

Before focusing on Rule 16, it is worth noting that Rule 1, amended in 1996 to conform with the 1993 amendment to Federal Rule 1, now states that the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." V.R.C.P. 1. The Reporter's Notes point out that the new words "and administered" "emphasize the duty of the court to apply the rules in the interest of not only the fair, but the efficient, administration of justice." Reporter's Notes, V.R.C.P. 1. As noted by Professor Meador, the last twenty years have seen a development of the expectation that a judge is actively involved in pretrial case flow management in order to reduce costs and avoid delays and thereby promote efficiency in the resolution of claims. Inherent Authority, supra, at 1808-10.

Rule 16 on Pretrial Procedures has been in place since the Rules were adopted in 1971,

and has been supplemented from time to time to facilitate the growth and development of pretrial management techniques. Rule 16.1 on Complex Actions was added in 1977. Rule 16.2 on Scheduling Orders was added in 1982 to provide a procedure for pretrial scheduling control of cases by the court. The addition followed proposed amendments to Federal Rule 16 "to encourage pretrial management that meets the needs of modern litigation." Reporter's Notes, V.R.C.P. 16.2 (citation omitted).

As noted above, superior courts throughout the state began to develop pretrial mediation programs in the nineties as an extension of pretrial caseflow management and in conjunction with the proliferation of alternative dispute resolution practices and resources. Both the Vermont Supreme Court as the administrative authority for the trial courts and the Legislature as a body with a role in rulemaking did not seek in any way to check this development, thereby implicitly recognizing the trial courts' inherent power to exercise authority in this area. The Civil Rules Committee spent significant time addressing how best to use rulemaking in conjunction with these developments. When it eventually settled on the adoption of Rule 16.3 on Alternative Dispute Resolution, which was originally promulgated in 1998 but its adoption was delayed and its effective date was December 31, 1999, it chose not to preempt all other activities and experiments throughout the state, but rather to focus on a limited experiment with uniformity. The first statement of the Reporter's Notes is: "Rule 16.3 is an experimental rule adopted to facilitate the development of a *uniform* procedure for the use of court-connected alternative dispute resolution (ADR) in the superior court." Reporter's Notes, V.R.C.P. 16.3 (emphasis added).

Although Rule 16.3 by its own terms does not appear to be limited geographically, and could be construed to be effective in all counties, it calls for an extremely detailed experimental procedure requiring for its implementation resources made available only in Bennington, Franklin, and Rutland Counties through separate Administrative Order, A.O. 39. If the Supreme Court and Legislature had wanted to preclude superior courts throughout the State from all other efforts in the realm of pretrial ADR, they could have done so, but they chose not to limit such efforts. This makes sense because the Rules Committee and the Supreme Court were well aware that other programs, such as the one in Chittenden County, used procedures different from those in the experimental rule.[2] The procedures used in different courts throughout the state would provide a comparative basis for assessing the pros and cons of Rule 16.3. Rule 16.3 was specifically adopted for an experimental period of two years, and the Reporter's Notes describe that the experiment is to monitored by the Rules Committee, which is to make future recommendation "as to whether its operation should be continued or expanded." Reporter's Notes, V.R.C.P. 16.3. The book has not been closed on what courts can and cannot do with respect to pretrial ADR practices in superior courts. We are in a period of experimentation and information-gathering, but no attempt has been made to curtail the many creative efforts

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[2] The undersigned was one of many lawyers and judges who appeared before the Rules Committee to provide information about the programs in place in superior courts throughout the state and to identify the protocols used including the mandatory nature of participation.

throughout the state to find workable pretrial ADR practices that are just, speedy, and inexpensive, and the authority for all of these efforts is found in the concentric circles of authority defined by inherent judicial authority, Rule 1, and Rule 16.

While the foregoing analysis shows that superior courts throughout the state are free to engage in their own experiments with pretrial ADR using practices different than those contained in Rule 16.3, that does not mean that the exercise of inherent judicial authority remains unchecked. It is always subject to the limitation that a trial judge has abused discretion in the exercise of such authority, which is a control exercised by the Supreme Court in its role as an appellate court. Inherent Authority, supra, at 1816-20.

Nonetheless, the procedure ordered in this case is very much in conformity with the experimental provisions of Rule 16.3. If Rule 16.3 were applicable to the case, ADR would be mandatory pursuant to Rule 16.3(a)(2)(B). Attendance by all attorneys and parties and persons with authority to settle, including a liability insurer defending an action, would be mandatory under Rule 16.3(c)(5). The parties would have the opportunity to select their own ADR process and their own neutral, with the court making the choice in the event they cannot agree. V.R.C.P. 16.3(d).

The type of process ordered by the court in this case is within the range of choices set forth in Rule 16.3(c)(2)(A). The only difference between this court's order and the Rule 16.3 program is that the ADR is occurring late in the life of the case rather than early, which, incidentally, is one of the fundamental differences between Rule 16.3 and most of the programs in place throughout the state. The court in this case has given the attorneys the opportunity to seek to be excused from participation, which is a protection provided for in Rule 16.3(f). The court has stated that the communications during the procedure would be confidential and inadmissible, which tracks the provisions of Rule 16.3(g): "Confidentiality. . . [C]ommunications made in connection with or during an alternative dispute resolution proceeding conducted under this rule, other than binding arbitration, are confidential and are inadmissible pursuant to Vermont Rule of Evidence 408." V.R.C.P. 16.3(g). The court has indicated that sanctions would be appropriate for lack of compliance, and the court hereby informs the parties that any sanctions will be consistent with the provisions of Rule 16.3(h). Those provisions, and the explanation in the Reporter's Notes, show that the court has the discretion to impose a variety of sanctions as appropriate to the case. Reporter's Notes, V.R.C.P. 16.3. The court's authority in this case is subject to normal appellate review for abuse of discretion. In short, the procedure ordered by the court in this case is very much in accordance with the "balance" worked out in the Rules Committee and approved by the Vermont Supreme Court and Legislature in their efforts to define principles and guidelines for exercise of judicial authority with respect to pretrial ADR.

Based on the foregoing analysis, the court concludes that it has the authority to mandate a pretrial ADR procedure in the absence of specific implementation of Rule 16.3 in Chittenden County, as long as the court does not abuse its exercise of discretion, taking into account the terms and principles of existing rules and all circumstances pertaining to the case.

The specific form of ADR in this case was requested by the Plaintiff and is based upon consideration of the representations of both attorneys that the usual type of pretrial mediation would not be cost effective in this case, and that the neutral evaluation model is much better suited to the facts and circumstances of this case. The process will entail limited reasonable expense for the parties, since it involves the attorneys giving summary information to the neutral, a procedure that takes significantly less time than the mediation process that is the norm. This minimal expense is reasonable in the context of overall pretrial costs related to discovery, motions practice, and other pretrial processes called for under Rule 16 to narrow and frame trial issues. It is also reasonable when compared to the costs to the parties and to the community of a two-day jury trial. While such costs may become necessary, modern case management principles call for less costly alternatives to be exhausted first. The procedure does not prejudice either party, and there is no delay, as the court permitted the parties to proceed to draw a jury, which has been done. There is sufficient time remaining prior to the certain dates of trial in which the procedure can be accomplished. The resources for it are available, as there are a number of experienced attorneys in the community who can serve as the neutral. The confidentiality of the neutral's opinion of value has been established so that neither party's trial rights are compromised.

For the foregoing reasons,

1. Defendant's Motion in Opposition to Order for Non-Binding Arbitration is *denied.*

2. Plaintiff's Motion in Support of Order for Non-Binding Arbitration is *granted.*

3. The verbal order of September 7, 2001 is confirmed. The parties and attorneys and a representative of Defendant's insurer with authority to settle are required to be present at the ADR procedure described herein, which shall take place no later than October 24, 2001, one week prior to the commencement of the scheduled trial. If no agreement has been reached on the selection of a neutral "arbitrator" by October 9, 2001, the attorneys shall file with the court the names of any proposed persons to serve in that capacity, together with information about their availability, and either attorney may request a status conference with the court to review the proposals.

So Ordered.

Dated at Burlington this 3rd of October, 2001.

CHITTENDEN SUPERIOR COURT

Mary Miles Teachout

Hon. Mary Miles Teachout
Superior Judge, presiding

November 13, 1996

Dear Chittenden County Bar Members:

Brown bag lunch #2 is scheduled for **THURSDAY, DECEMBER 5, 1996.** We will be discussing some new initiatives that we will be implementing and we welcome your additional ideas.

Since our last brown bag lunch, we have met with various county attorneys from the ad hoc committees formed at that time. We have had the benefit of many useful suggestions. Some of those suggestions will be implemented immediately on a trial basis. They include:

1) Use of Acting Judges in jury trials for cases trial ready within 9 months of filing, upon agreement of the parties;

2) Mandatory mediation for all cases filed after September 1, 1996, at a time not later than 2/3 of the way between filing and the trial readiness date;

3) Ninety day notice of jury drawings with a cutoff time for continuances 30 days from notice, conditioned on completion of mediation by jury draw date.

We are also discussing more far reaching changes similar to the federal rules. Please join us. We want your input.

Sincerely,

Shireen Avis Fisher
Presiding Judge

Diane A. Lavallee
Superior Court Clerk