

ANALYZING THE ALTERNATIVES

ENCOURAGING THE EFFECTIVE USE OF COURT-RELATED ADR IN ILLINOIS

A PUBLICATION OF THE CENTER FOR ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS ☞ SPRING/SUMMER 2005

CAADRS' TENTH ANNIVERSARY EDITION



10 YEARS OF ADR IN THE COURTS

Over the past decade, the ADR landscape in Illinois has changed dramatically. In 1995, when CAADRS was founded, court ADR in Illinois was just finding its feet. On the civil side, arbitration was becoming well-established, but mediation of large civil cases was still being piloted in a single county. Custody and visitation mediation had begun long before in a few counties, but had yet to be a reality in most of the state. Mediation of small claims cases was barely available outside Cook County. Mediation of juvenile delinquency was similarly rare outside Chicago. Indeed, mediation was so rare in 1995 that CAADRS' primary purpose of evaluating programs in order to ensure the quality of court ADR could not be fully undertaken for lack of programs to evaluate.

Ten years later, ADR has become a much larger part of the court system in the state. Most circuits

have adopted some form of ADR and a greater diversity of programs is available. Lately, a good amount of the impetus for this has come from the Illinois Supreme Court, which adopted its first rules on mediation in 2001, and from the Illinois General Assembly, which recently passed the Uniform Mediation Act and enacted legislation authorizing the use of filing fees to pay for appellate mediation. However, most of the growth in ADR has been pushed by greater interest among judges and lawyers as ADR becomes more widely accepted. All this growth has meant that CAADRS has been hard at work assisting courts in monitoring and evaluating their mediation programs.

Statutes and Supreme Court Rules

Mandatory arbitration and community mediation had been the only dispute resolution systems the General Assembly addressed before 1995. Since then, it has passed a number of acts

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Dear Friend of CAADRS,

It is with joy and a certain sense of amazement that we write to you on CAADRS' tenth anniversary. Since our humble beginnings in 1995 with a small Executive Committee, no staff, and a mission to help courts in their efforts to introduce and enhance ADR programs, CAADRS has grown to...

- ◆ Help develop eleven new court ADR programs
- ◆ Conduct comprehensive studies of four mediation programs and of court rules for custody and visitation mediation in the state
- ◆ Partner in the editing of two books on ADR
- ◆ Develop and maintain a website nationally-recognized for being *the* resource for information on court ADR.
- ◆ Create a database of resources for court-related ADR in Illinois and make it available in a searchable format on-line
- ◆ Develop software to track the work of ten state court civil and family mediation programs and one federal court civil case mediation program
- ◆ Establish and maintain a database of successful settlement conference statistics for use by magistrate judges in a federal district court
- ◆ Organize fourteen trainings for mediators and judges
- ◆ Present the CAADRS Service to the Community Award six times - to mediators, state and federal judges, and former Illinois Supreme Court Justices
- ◆ Make countless presentations on issues of importance to the court ADR community

As court ADR grows in the future, CAADRS plans to do even more - give more assistance to courts developing ADR programs, create more software programs to track court ADR efforts, provide more useful information, conduct and publish more studies of court ADR programs, recognize more leaders in Illinois' court ADR community... And it will be done with the support and encouragement of leaders in the courts, ADR, and the law across the state. It will be done with your help.

On behalf of the Center for Analysis of Alternative Dispute Resolution Systems, we thank you for your support of court ADR in Illinois. Please join us in celebrating our first ten years and moving into the next decade of service.

Sincerely,



Harris H. Agnew
Chair
CAADRS Executive Committee



Susan M. Yates
Executive Director
CAADRS

ANNUAL REPORT 2004:

TEN YEARS OF GROWTH AT CAADRS

In 1995, CAADRS was a fledgling organization whose assistance to the courts was limited to assisting one major civil case mediation program. In 2004, the diversity of CAADRS' activities was greater than ever before. Throughout the year, CAADRS staff was involved in program development, mediator training, program monitoring system development, program evaluation, and the creation and enhancement of information sources.

Program Development

Following up on its work of the last few years, CAADRS continued to be active in assisting courts in developing mediation programs. In 2004, help was provided to:

- ◆ The Cook County Law Division mediation program for large civil cases, for which CAADRS staff sat on committees, including the rules and training committees.
- ◆ The major civil case mediation program in the 1st Circuit (in far southern Illinois), which included help with rules and administrative procedures.
- ◆ The 2nd Circuit (also in southern Illinois) to create their judicial mediation program for contested child custody and visitation disputes, including help with rules and administrative logistics.
- ◆ The 17th Circuit (based in Rockford) to extend their divorce mediation program to include the mediation of financial matters.
- ◆ The 20th Judicial Circuit (outside St. Louis) to create their major civil case mediation program.

Mediator Training

CAADRS continued its long tradition of assisting courts in Illinois with the training of mediators for their programs. In 2004, CAADRS organized training for the major civil

case mediation programs in the 1st and 20th Circuits, and helped to coordinate the training of mediators for the 17th Circuit's pilot program for the mediation of financial issues in divorce cases.

Monitoring System

To enhance the ability of courts in Illinois to monitor the functioning of their mediation programs, CAADRS created its Court Mediation Effectiveness Tracking System in 2003. The system includes customized evaluation and reporting forms for each program and database software to be used by court staff. In 2004, this system was provided to:

- ◆ The 1st Circuit major civil case mediation program
- ◆ The 1st Circuit family mediation program
- ◆ The 2nd Circuit judicial mediation program for custody and visitation cases
- ◆ The 20th Circuit major civil case mediation program
- ◆ The Cook County mediation program for large civil cases.

Program Evaluation

CAADRS was involved in two evaluation projects in 2004. In CAADRS' largest evaluation project to date, staff began the year-long evaluation of the Cook County Child Protection Mediation Program. The court provided CAADRS with a grant to support this project. The other project was an evaluation of the first year of the mediation program in the U.S. District Court for the Northern District of Illinois, Western Division (based in Rockford).

Information

In addition to directly assisting courts in Illinois, CAADRS continued its work through a variety of avenues to increase the knowledge

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KENT LAWRENCE



Kent Lawrence is living proof that a combination of boundless enthusiasm, deep respect for the courts and the rule of law, an almost worshipful attitude toward efficiency, and access to a private foundation can lead to great contributions to society. The Center for Analysis of ADR Systems (CAADRS) is just one example of Kent's contributions.

CAADRS was the brainchild of Kent and a few others in the early 1990s. Gathering together in a hotel lobby after a training of mediators for Illinois' original large civil case mediation program, the idea of an organization that would support and assist the use of ADR by Illinois courts was formulated. Over the years, the mission has been expanded to include federal courts in the state and honed to focus on the collection and dissemination of reliable information about court ADR in Illinois.

While there were several key leaders involved in creating CAADRS, Kent's fingerprints are clearly seen in CAADRS' focus and direction. Perhaps the biggest imprint is a belief that information is power, and a corollary belief that making information widely available increases the courts' ability to function more effectively. This plays out in many of CAADRS' activities, such as the web site (www.caadrs.org), which has become a nationally respected source for information on court ADR. It was Kent who saw the need for a CAADRS web site long before most organizations had a presence on the Internet.

While Kent wears many professional hats - lawyer, mediator, and arbitrator - it also seems that he is carrying out the dreams of his father, a hardworking lawyer who lived in the suburbs, worked in the city, and dreamt of being a farmer and a philanthropist. During his lifetime, Kent's father realized the latter through involvement with the M. R. Bauer Foundation, an affiliation that he passed down to Kent. Today, Kent is the President and Executive Director of the Foundation. Kent seems to have embodied his father's other dream by creating, together with his equally talented wife, Kathy, the Kickapoo Mud Creek Nature Conservancy, which models practical, environmentally-green construction and establishes a land conservancy.

As president of the Bauer Foundation, Kent has been able to tap into private resources to assist court ADR that have not been available anywhere else in the country. He has been generous, yet thoughtful and cautious, in providing access to funding for CAADRS and others in the field. Although the Bauer Foundation has recently reached the upper limit of its ability to fund CAADRS' work, leading CAADRS to search for other sources of support, Kent remains committed to CAADRS' mission and to helping however he can.

It is not only CAADRS that appreciates Kent and his contributions to ADR and the courts. In 2003, he was honored for his efforts by the Illinois Supreme Court. In recognizing him, the Chief Justice called his contributions "outstanding" and expressed the Court's gratitude for his work. That sums it up well. Kent is, indeed, outstanding and all who work with ADR in Illinois have good reason to be grateful to him.

If early judicial proponents of ADR - such as Judge Agnew, Judge Lerner and Justice Ryan - are considered the grandfathers of court ADR in

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to facilitate the use of mediation in the courts. It has authorized the use of arbitration funds to pay for mediation programs. It has authorized the use of mediation for custody and visitation disputes in divorce cases, and has mandated the use of ADR for fee disputes between parties and their counsel in divorce cases. Further, the General Assembly has called on the judicial system to provide alternatives to incarceration, including restorative justice processes, to juveniles. In 2003, it tackled the issue of confidentiality in mediation by passing the Uniform Mediation Act, and last year it established funding for appellate mediation.

Similarly, the Illinois Supreme Court, which has had an ADR Committee since 1990, has become more actively involved in ADR in the last decade. In 1994, it enacted rules regarding mandatory arbitration. In 2001, it established a rule that authorized all circuits to provide mediation options to parties, and that set guidelines for the rules for these mediation programs. This year, it adopted a rule regarding the mediation of appellate cases.

Civil Mediation

In 1995, mediation for large civil cases was available only in 17th Judicial Circuit, which was then moving from pilot status to full-fledged program. Ten years later, it is available in 26 counties in twelve circuits. The percent of Illinois residents with the opportunity to mediate their civil dispute through the state courts has risen even more dramatically - from 2.24% to 76%. CAADRS has been integral to this spread of large civil case mediation in the state. Since the year of its founding, it has assisted ten circuits and one federal district in developing these mediation programs. CAADRS assisted in program development, mediator training, and monitoring systems.

Civil Arbitration

The most fully formed ADR process in 1995 was mandatory arbitration, which was then available to 66% of Illinois residents. Arbitration began in

1987 with a pilot program in Winnebago County. By 1995, arbitration had spread to eight counties in six circuits. Since then, three more circuits with seven counties have established programs. Currently, 73% of residents have access to court-mandated arbitration.

Family

Custody and visitation mediation was available to 47% of Illinois' residents in 1995. Ten years later, 75% of residents have access to these programs. In the past decade, the number of counties offering custody and visitation mediation has risen from seven to 35. Additionally, the use of mediation has expanded to disputes other than custody and visitation. Now, mediation of financial issues in divorce is available in the 1st and 17th Circuits, both of which requested CAADRS' assistance in setting up the programs. Further, fee disputes are being mediated in Cook and DuPage Counties. Never-married parents can mediate access issues now as well. Programs to mediate these cases have been established in Cook, DuPage, Kane, McHenry, and Sangamon Counties.

Small Claims

Small Claims mediation was available in three circuits ten years ago. The Center for Conflict Resolution in Chicago had teamed up with the Circuit Court of Cook County years earlier to conduct small claims mediation in the Daley Center. The Kankakee Center for Conflict Resolution was providing similar services, and down in Carbondale the ADR Clinic of Southern Illinois University's Law School was training students to mediate small claims cases for the courts as well. Since then, Springfield and McHenry Counties have begun small claims mediation programs, and Winnebago County is developing a program.

Juvenile

Just as with small claims, it has only been in the last few years that the diversion of juvenile cases to alternative processes, such as victim-offender

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A GLANCE BACK THROUGH

1995

- ◆ CAADRS is established.

1996

- ◆ CAADRS assists in major civil case mediation program development in the 11th, 16th, and 18th Judicial Circuits.
- ◆ CAADRS' first Service to the Community Award is presented to Eugene Brassfield.

1997

- ◆ CAADRS conducts a Judicial Institute for judges who refer major civil cases to mediation.
- ◆ CAADRS joins with the London-based Academy of Experts to organize a roundtable discussion on the use of mediation in complex commercial and tort litigation.



CAADRS' first Service to the Community Award in 1996 recognized attorney and mediator Eugene Brassfield's contributions to the first major civil case mediation program in Illinois.

2001

- ◆ CAADRS provides a Domestic Relations Conflict Resolution Seminar to judges from the 2nd, 3rd, and 4th Judicial Circuits.
- ◆ CAADRS' Resource Center goes on-line in a searchable and annotated form.



CAADRS Executive Committee members Hon. Harris Agnew, Hon. Carl Henninger, and Hon. Michael Galasso, and CAADRS Executive Director Susan M. Yates look on as fellow member Hon. Morton Denlow navigates CAADRS' newly launched web site in 1998.

1998

- ◆ CAADRS' web site goes on-line.
- ◆ CAADRS assists the 12th Judicial Circuit in developing its major civil case mediation program.

1999

- ◆ CAADRS completes a study of Illinois court rules for the mediation of contested custody and visitation cases.
- ◆ CAADRS creates a Resource Center for court-related ADR.
- ◆ CAADRS conducts an advanced training for mediators in all major civil litigation mediation programs in Illinois.

2000

- ◆ CAADRS completes a study of Lanham Act (trademark) mediation in the U.S. District Court for the Northern District of Illinois.
- ◆ CAADRS assists the 6th Judicial Circuit in developing its major civil case mediation program.

CAADRS HISTORY: 1995-2005

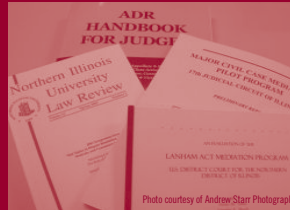


Photo courtesy of Andrew Starn Photography

CAADRS not only collects publications on ADR, but writes them, too. Here is a sample of that work.

2003

- ◆ CAADRS begins evaluating the Cook County Child Protection Mediation Program.

2004

- ◆ CAADRS assists with major civil case mediation program development in Cook County, the 1st, and the 20th Judicial Circuits.
- ◆ The American Bar Association publishes the *ADR Handbook for Judges*, which CAADRS Executive Director Susan M. Yates co-edited.



Aimee Gourlay and Gary Weissman perform a simulated exercise on how to identify needs and interests during a major civil case mediation program mediation skills training. Ms. Gourlay and Mr. Weissman have conducted mediation skills training for CAADRS since 2002.



20th Circuit attorneys celebrate reaching the finish line of Ms. Gourlay and Mr. Weissman's mediation skills training.

- ◆ CAADRS collaborates with the Illinois Institute for Continuing Legal Education to publish *Alternative Dispute Resolution*, a handbook on ADR.

2002

- ◆ CAADRS assists with major civil case mediation program development in both the U.S. District Court for the Northern District of Illinois, Western Division, and the 14th Judicial Circuit.

- ◆ CAADRS helps the 17th Judicial Circuit to develop a pilot program for the mediation of financial issues in divorce cases.
- ◆ CAADRS conducts an evaluation of the mediation program in the U.S. District Court for the Northern District of Illinois, Western Division.

2005

- ◆ CRInfo launches its new web site, for which CAADRS edited the Court ADR page, a compilation of the best resources on a variety of topics related to ADR in the courts.

OUT AND ABOUT WITH CAADRS

CAADRS' Executive Committee will be losing a man of great talent as Committee member Dr. Bryant Garth moves to California to become Dean of the Southwestern University School of Law in July. Even from afar, CAADRS plans to continue to call on his expertise.

Dr. Garth recently returned from the Philippines, where he interviewed those in charge of implementing mandatory court-annexed mediation programs, which is considered one of the possible solutions to the overcrowded, slow, and sometimes corrupt courts.

Executive Committee Chair and Director of Mediation Services Hon. Harris Agnew and Executive Director Susan Yates have been working closely with Judge Rosemary Collins, Winnebago County Bar Association Past President Donald Moore, and a committee of the bar association to develop a small claims mediation program in which bar association members would be trained as volunteer mediators.

CAADRS was a cooperating organization for the National Conference on Court ADR, which immediately preceded the American Bar Association Section of Dispute Resolution's annual conference in April.

CONTINUED FROM PAGE 3 ANNUAL REPORT

base of all those involved in court ADR. At the heart of this effort were CAADRS' Resource Center and web site.

Resource Center

CAADRS' Resource Center was launched in 1999, and made public on the web site in 2000. Since its launching, more than 2,700 resources have been added to the Resource Center. Part of the function of the Resource Center is to respond to inquiries. These have increased from 70 to 119 per year.

Web Site

CAADRS' web site was launched in July 1998. Then, less than 200 people visited the site each week. Last year, there were 87,155 visits to CAADRS' site, for an average of 1,675 per week. In 2003, CAADRS began the long process of completely overhauling its web site to better serve the increasing number of people using CAADRS' resources. The improved site will be easier to navigate and will be expanded to provide more information to courts interested in developing or improving their mediation programs. Included as well will be sections specific to the interests of judges, lawyers, neutrals, and the public. This project is scheduled to be completed within a year.

CRInfo Project

Much of CAADRS' effort in 2004 was directed toward completing a grant project for CRInfo, an organization dedicated to the dissemination of information on conflict resolution, to improve and expand the court ADR section of their web site (www.crinfo.org). This project entailed identifying the best court ADR resources in each of several topics related to court ADR, merging CAADRS' on-line database with CRInfo's, and identifying other possible resources for both databases. The final product is a significant contribution to the field.

Publications

In 2004, CAADRS added to the list of staff-published works. A major contribution to the information on mediation available to judges was made by the publication of the *ADR Handbook for Judges* by the American Bar Association. Executive Director Susan Yates devoted countless hours to this project as co-editor of the book. Her equally hard-working co-editor was Donna Stienstra, Senior Researcher for the Federal Judicial Center.

Executive Committee member Hon. Morton Denlow and CAADRS Director of Research Jennifer Shack teamed up to write, "Judicial Settlement Databases: Development and Uses," which was published in the Winter 2004 edition of *The Judges Journal*, a publication of the Judicial Division of the American Bar Association.

Presentations

In addition to the many other activities undertaken by CAADRS staff, Susan Yates was a panel member for the Advanced Mediation and Advocacy Skills Training seminar presented by the American Bar Association Section of Dispute Resolution and the ABA Center for Continuing Legal Education and co-sponsored by CAADRS. She also presented on the revision of the Model Standards for Mediators (on which she has been working as a member of the revision Task Force) at the annual conferences of the ABA Section of Dispute Resolution and of the Wisconsin Association of Mediators.

Past and Future

The growth in CAADRS' activities has been driven by the growth in ADR use by courts in Illinois. As the courts continue to add ADR programs to their array of services, CAADRS foresees even greater demands for its services as the courts increase their requests for assistance.

CAADRS was active in the American Bar Association Section of Dispute Resolution Annual Conference, which took place April 14-16, 2005 in Los Angeles. Executive Committee member Jim Alfini spoke about coercion in mediation and Susan Yates presented at a session on the revision of the Model Standards of Conduct for Mediators.

Executive Committee Member Hon. Morton Denlow has been busy with speaking engagements this year. In January, he spoke on "Winning Your Mediation" at the Chicago Bar Association's Federal Civil Practice Committee. In March, the CBA's Women in the Law Committee asked him to speak on civility and professionalism for young attorneys. April saw him in Washington, DC, where he spoke about preliminary injunction practice in intellectual property cases at the American Bar Association's annual Intellectual Property Law Conference.

Hon. Harris H. Agnew traveled to the University of Illinois at Springfield in early March to serve as a judge for the Illinois State Bar Association Mock Trial Program. Teams from several high schools statewide competed in mock trials by assuming the roles of attorneys and witnesses to gain practical experience and greater appreciation for the American court system.



CAADRS MISSION STATEMENT

The CAADRS mission is to encourage effective and efficient use of court-related alternative dispute resolution in Illinois. To accomplish this mission, CAADRS provides a range of information-gathering, clearinghouse, evaluation, analysis, and training services.

CAADRS is affiliated with the Center for Conflict Resolution, a not-for-profit corporation.

CAADRS EXECUTIVE COMMITTEE

HONORABLE HARRIS H. AGNEW, *Chair*
Chief Judge, 17th Judicial Circuit, *retired*

DEAN JAMES J. ALFINI
President and Dean, South Texas College of Law

HONORABLE ROBERT E. BYRNE
Justice, Second Appellate District of Illinois

HONORABLE MORTON DENLOW
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Justice, Illinois Supreme Court, *retired*

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IN APPRECIATION. . .

CAADRS extends its gratitude to Brinks Hofer Gilson & Lione for offering to renew the trademark of CAADRS' name and acronym on a pro bono basis. CAADRS Executive Director, Susan M. Yates, attributes this generous undertaking to the firm's long-standing relationship to the Center for Conflict Resolution, with which CAADRS is affiliated.

CAADRS would also like to acknowledge Patrick Kinnally of Kinnally, Krentz, Loran, Hodge, & Herman, P.C. for his contribution in support of CAADRS' efforts. His donation is tremendously appreciated.

KENT LAWRENCE CONTINUED FROM PAGE 4

Illinois, then perhaps Kent Lawrence should be called the midwife. He has been involved in the healthy development and birth of many programs across the state and in their ongoing

support and assessment. Without Kent Lawrence, CAADRS would not be in existence today, and we can only assume that court ADR in Illinois would not be as successful as it is.

TEN YEARS OF COURT ADR CONTINUED FROM PAGE 5

mediation or family group conferencing, has grown well beyond the few mediation opportunities available in 1995, when programs in Cook, Champaign, Kankakee, and Woodford Counties were in place. In the past decade, due in large part to the impetus of the Juvenile Justice Reform Act of 1999, many more programs have gotten under way. The 5th Circuit started a family group conferencing program in 1999, and helped the 1st Circuit to put one in place in 2002. Sangamon County established a victim-offender mediation program in 2002.

In Cook County, opportunities have extended beyond the victim-offender mediation program instituted by the Center for Conflict Resolution to include other programs. These include Bloom Township's victim-offender mediation program, the Community Panels for Youth program run through Northwestern University, and a peer jury program set up by the court.

Mediation has become a significant part of the child protection division in Cook County as well. There, a program was put in place in 2001.

Adult Criminal

In 1995, the same programs available to juvenile offenders and victims also served adults who committed misdemeanors. Since then, no new growth has occurred in this area.

Appellate

This year marks the first for appellate mediation in the Illinois state courts. After passage of the

Reviewing Court Funding Act in 2004, the 1st Appellate District put in place a mediation program in which former judges receive payment from the court to mediate eligible cases. In the federal courts, an appellate mediation program was established in the 7th Circuit Court of Appeals in 1994.

Federal

One program - mediation in the 7th Circuit Court of Appeals - was in place in the federal courts in Illinois before 1995. Since then, the U.S. District Court for the Northern District of Illinois has set up a program for the mediation of Lanham Act cases, which CAADRS evaluated, and the Western Division of that court has established a mediation program for all civil cases, with a few exceptions. CAADRS assisted in the development of this program and conducted an evaluation of its first year.

Where It All Goes from Here...

The incorporation of ADR into the courts in Illinois is well on its way through much of the state, and much more is in the offing. CAADRS will continue to be available to assist courts in designing the most effective approaches for each jurisdiction. As this is occurring, CAADRS is working even harder to provide the courts with the tools they need to monitor their ADR programs and evaluate their impact on the courts and litigants. As CAADRS helps ADR become a greater part of the judicial system in the state, more monitoring and evaluation processes will be put in place to ensure that this growing dimension of justice is providing quality services to the public.

CENTER FOR ANALYSIS OF



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