

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 2006

FEATURE ARTICLE



Photo by John Hayes

NEW CUSTODY RULE ON TAP

Child custody cases in Illinois will soon be governed by a new set of rules. Article IX of the Illinois Supreme Court Rules, most of which goes into effect July 1, 2006, seeks to expedite the progress of cases affecting the custody of a child and to provide better coordination of child custody proceedings filed under various statutes. The Article (found at www.state.il.us/court/SupremeCourt/Rules/default.asp) also seeks to maintain focus on the best interests of the child without violating the rights of other parties involved in the cases. The Article has a broad scope, spanning almost all cases involving custody and visitation issues, including divorce, paternity, probate, and child protection and dependency. Adoption cases are excepted.

Mediation Provisions

One way the court is looking to expedite cases is through the use of mediation. Rule 905 calls for referral to mediation in all cases covered under Article IX involving custody and visitation issues, with excuse from mediation when the court determines an impediment exists (see accompanying box, page 4). Under this rule, each circuit is required to adopt rules to govern mediation for these cases, which must address mandatory training for mediators, mandatory qualifications for mediators, and standards to determine which child custody and visitation issues should be referred to mediation and the time for referral. The Supreme Court has extended the effective date of this particular rule to January 1, 2007.

CONTINUES ON PAGE 04

A PEOPLE-FOCUSED LIFE

JUDGE ALLEN S. GOLDBERG



the Domestic Relations Division, handling divorce cases. In 2000, he entered the Law Division, where he continues to have an individual commercial calendar. Judge Goldberg enjoys the dynamic nature of his current role. Although the cases he handles fit into standard categories, such as breach of contract, consumer fraud, retaliatory discharge, and defamation, he finds that most cases are unique, call for various methods of dispute resolution, and constantly offer the opportunity to learn something new.

Outside the courtroom, Judge Goldberg has engaged with people on a different level - through mediation. As a judge in domestic relations, he saw that people were walking away from mediations involving contentious custody and visitation issues with a greater amount of peace than people who go through the traditional litigation process. Seeing this, he gained an enormous respect for both the mediators and the process. His completion of two 40-hour training programs at the National Judicial College, first in divorce mediation and then in civil matters, has given him the opportunity to affect parties in the same way. Since his training, Judge Goldberg has used a mediation approach in divorce and commercial disputes, seeing for himself that the body language in mediation participants tends to reflect a greater sense of satisfaction with the process and outcome than is shown during traditional methods of resolving disputes.

Judge Goldberg has also had a leadership role in the growth of mediation in Illinois. He was appointed by Presiding Judge William D. Maddux of the Cook County Law Division to lead the development of a mediation program to resolve major civil cases, which was

CONTINUES ON PAGE 9

Judge Allen S. Goldberg decided early on that his career was going to be people-centered. His studies in accounting as an undergraduate student made it abundantly clear to him that his interest was not in numbers. Coming from a background in which being a professional is important, he entered law. It was at this point - particularly his experience in the courtroom - that he realized he liked working with people. His love of working with people later led him to become a judge and then to incorporate mediation into his work.

After law school, Judge Goldberg worked in the Cook County Public Defender's Office for more than 20 years. He served as a trial lawyer and chief administrator for the defense side of felony cases. He enjoyed investigating the cases and interviewing people, as well as the drama and performance aspects of doing jury trials.

In 1992, Judge Goldberg was elected Circuit Judge of Cook County. He spent many years in

ILLINOIS EQUAL JUSTICE FOUNDATION GRANT

CAADRS has received a grant from the Illinois Equal Justice Foundation to conduct an analysis of how mediation can best be utilized to improve access to justice for poor and low income residents of Illinois. The Foundation distributes appropriations from the state legislature to legal services providers under the Illinois Equal Justice Act. Part of its mandate is to support mediation services along with more traditional legal services.

This project will have three intertwining aspects. The first is gathering, assessing, and synthesizing information about the legal services and mediation landscape in Illinois. The second is developing potential

mediation service delivery models. The third is engaging in face-to-face meetings to develop additional information to see how the first two components can best fit together and to refine the potential service delivery models. The result will be a comprehensive report presenting a blueprint for developing access to justice through mediation for low income residents of Illinois.

Part of this project involves researching innovative models of cooperation between legal services and mediation providers across the country. Anyone with information about such models is invited to contact CAADRS either at caadrs@caadrs.org or 312-922-6475, ext 924.

THANKS TO THE BOSKEY FOUNDATION!

CAADRS is pleased to report that we have received a grant from the James B. Boskey Memorial Foundation to support part of the cost of the complete renovation of our web site. The grant is helping us engage in a total remake of the site's content, organization, appearance and technical underpinnings. This remake will make it much easier for visitors to access the thousands of resources available or summarized on our site.

We are especially grateful for this support because we appreciate the tremendous contribution Jim Boskey made during his lifetime to identifying and interpreting the resources available in the ADR field and we are proud to carry on that tradition. Be sure to look for an announcement of the new and improved CAADRS web site in the future!

CUSTODY RULE CONTINUED FROM PAGE 1

Article IX also addresses how mediation fits into the litigation process. In an effort to maintain timely progress in these cases, the Supreme Court adopted Rule 923, which requires that an initial case management conference in dissolution of marriage and paternity cases involving custody issues take place within 90 days of service of the petition or complaint. If at the time of this conference, the parents have not agreed on custody or a parenting plan, the case is scheduled for mediation. A full case management conference is then to be held no later than 30 days after the last mediation session.

Within the broad parameters outlined above, each circuit is free to write its own rules. This

allows the circuits the latitude needed to address their unique situations in this demographically diverse state, and flexibility to the eleven circuits that have already instituted custody and visitation mediation programs. This is the same approach taken by the Supreme Court in past rules governing mediation and arbitration in the circuits. (See Rule 99, which authorizes the circuits to establish mediation programs, and Rule 86, which does the same for arbitration programs.)

Judicial Training Recommended

Article IX recommends the training of all judges who hear custody cases. Rule 908 states that judges should have training or experience in a number of issues, including

CONTINUES ON PAGE 8

ARTICLE IX, RULE 905. MEDIATION

(a) Each judicial circuit shall establish a program to provide mediation for cases involving the custody of a child or visitation issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in child custody and visitation cases shall address: (i) mandatory training for mediators; (ii) limitation of the mediation program to child custody and visitation issues; (iii) (unless otherwise provided for in this article) standards to determine which child custody and visitation issues should be referred to mediation and the time for referral, and (iv) excuse from referral to mediation if the court determines an impediment to mediation exists. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody and visitation matters.

(b) Each judicial circuit shall establish a program to provide mediation for dissolution of

marriage and paternity cases involving the custody of a child or visitation issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in dissolution of marriage and paternity cases shall address: (i) mandatory expertise requirements of a mediator; (ii) mandatory training for mediators; (iii) limitation of the mediation program to child custody and visitation issues; and (iv) referral of child custody and visitation issues to mediation, pursuant to Rule 923(a)(3), unless the court determines an impediment to mediation exists. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody and visitation matters.

(c) In addition to meeting the requirements of Rule 905(a) and (b), local circuit rules may also impose other requirements as deemed necessary by the individual circuits.

ILLINOIS ADR PIONEER HONORED

The CAADRS Service to the Community Award is given when the Executive Committee identifies an individual whose efforts clearly meet the criteria of one who "substantially and meaningfully furthered and enhanced court-annexed ADR systems in the State of Illinois." On March 9, CAADRS presented the award to former Cook County Law Division Circuit Judge Jerome Lerner, who is just such an individual.

Judge Lerner was honored for his pioneering work in bringing arbitration and mediation to the courts of Illinois. The text on the award plaque Judge Lerner received that day detailed some of the ways in which he made a difference, from the Supreme Court committees he chaired decades ago to his work today on co-mediation of medical malpractice cases with Rush University Medical Center. The speakers at the award presentation lauded his leadership and his many contributions.

Chief Judge Timothy C. Evans of the Circuit Court of Cook County, a long-time friend and colleague of Judge Lerner, presented the award. He spoke warmly about Judge Lerner's many accomplishments. In accepting the award, Judge Lerner thanked the people with whom he had worked on court-annexed ADR over the years. He mentioned the benefits of ADR, discussing "disputes that could readily have been resolved to the satisfaction of the disputants earlier and at much less cost and tribulation than through trial." Not surprisingly for those who know Judge Lerner, he ended his remarks by urging everyone present to



Cook County Chief Judge Timothy C. Evans (on right) presents the CAADRS Service to the Community Award to Judge Lerner

get involved, to "seek opportunities to make worthy contributions to life and society where there is an ever present need." This is certainly Judge Lerner's legacy.



From left: Attorney Geoffrey L. Gifford, Hon. William D. Maddux (Presiding Judge of Cook County's Law Division), Hon. Jerome Lerner, CAADRS Executive Director Susan M. Yates

CAADRS' 2005 ANNUAL REPORT:

CAADRS marked its ten-year anniversary in 2005 with a celebration of growth and success in the Spring/Summer issue of *Analyzing the Alternatives*. Throughout the year, CAADRS continued to build on those ten years of growth by providing more assistance to courts in program development, monitoring, and evaluation and working to gather, revise, expand, and disseminate reliable information on court ADR. Important new strides also were made in obtaining financial support for CAADRS' efforts - another cause for celebration!

PROGRAM DEVELOPMENT

CAADRS continued to assist circuits that have recently developed mediation programs, as well as one circuit that has had a long-standing mediation program. In 2005, CAADRS' assistance included:

- ♦ Continuing to work with the 17th Circuit (based in Rockford) to create their small claims mediation program, which included help with rules and identifying mediation skills training for attorneys. CAADRS also consulted on the creation of a monitoring and evaluation system, and worked on its development. The program launched on January 6 of this year.
- ♦ Creating and installing monitoring and evaluation software for the major civil case mediation program in the 1st Circuit (in far southern Illinois).
- ♦ Creating and installing monitoring and evaluation software for the major civil case mediation program in the 20th Circuit (outside St. Louis).
- ♦ Working with the 17th Circuit to explore

ways to increase the information available on its major civil case mediation program.

PROGRAM EVALUATION

CAADRS continued its work on two evaluation projects in 2005. The Cook County Circuit Court had provided CAADRS with a grant the previous year to evaluate its mediation program for child protection division cases. In 2005, CAADRS made significant progress on the project, including working with the court to create a database to track case data, interviewing attorneys and participants, and completing an interim report, which included initial findings and recommendations based upon interviews with judges, hearing officers, attorneys, caseworkers, natural parents, and foster parents. CAADRS also completed 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

CAADRS was hard at work in 2005 to fulfill its mission of encouraging effective and efficient use of court-related ADR through its outreach activities, Resource Center, and web site.

Outreach

In addition to its focus on program development and evaluation in Illinois, CAADRS was involved in many projects and events on a national level. Executive Committee member Presiding Magistrate Judge Morton Denlow and Executive Director Susan M. Yates were invited to attend a national conference on

BUILDING BLOCKS OF GROWTH

court ADR research. Supported by gifts from the JAMS Foundation and the William and Flora Hewlett Foundation, the conference was a collaborative effort of The Ohio State University Moritz College of Law and the Federal Judicial Center. Judge Denlow gave a presentation on the importance of including judicial settlement conferences and judicial mediation on the national research agenda for court ADR.

Ms. Yates' three years of work as one of two delegates from the American Bar Association Section of Dispute Resolution to the Joint Committee revising the Model Standards of Conduct for Mediators culminated with approval of the Standards in 2005. Ms. Yates made presentations about the revisions at the ABA Dispute Resolution Section Annual meeting in Los Angeles and at a DuPage County Bar Association ADR Committee meeting. Other work with the ABA included appointment as Chair of the ABA Section of Dispute Resolution's Standing Committee on Associates Issues.

Resource Center and Web Site

The Resource Center continued to grow in 2005, increasing to more than 2,700 resources. The number of inquiries to the Resource Center totaled 103. In addition to responding to inquiries, CAADRS disseminates information through its web site. Throughout the year, staff continued to work with design consultant Firebelly Design on the extensive project to overhaul the CAADRS web site. The renovated site will improve navigability and will expand the accessibility to resources on developing and improving

court ADR programs. Additionally, the site will include new sections specific to the interests of judges, lawyers, neutrals, and the public.

GRANT PROJECTS

CAADRS received two important new grants in 2005 to support work that will continue into 2006. One from the JAMS Foundation supports CAADRS' work to expand and enhance the national reach and impact of the Resource Center. One of the centerpieces of the program will be a new collection of sample court rules and forms for mediation programs across the country, as well as the development of model court forms. The James B. Boskey Memorial Foundation grant contributed to the renovation of the CAADRS web site, which is described above. Work on an earlier grant project to improve the court ADR section of the Conflict Resolution Information Source's (CRInfo) searchable, on-line database culminated in 2005 with the launch of CRInfo's updated site.

BUILDING BLOCKS

After ten years of establishing a firm foundation, 2005 was a year of laying more building blocks of growth. Many of CAADRS' activities in 2005 were a continuation of large projects begun in the previous year or involved growth in areas of CAADRS' staple programs, while other activities involved laying the bricks for quite large additions in the near future. All this activity has involved the work and dedication of partners throughout the state and across the country. CAADRS is proud to work with them to improve court ADR.

OUT AND ABOUT WITH CAADRS

CAADRS Executive Committee Chair Judge Harris H. Agnew served on a panel for a session of Coming Together for Peace, a Joint ADR conference sponsored by the Association for Conflict Resolution - Chicago Chapter, the Collaborative Law Institute of Illinois, the International Academy of Dispute Resolution, and the Mediation Council of Illinois. The conference took place December 1- 2, 2005, at the Museum of Science and Industry in Chicago.

Continuing her work on the Model Standards of Conduct for Mediators, CAADRS Executive Director Susan Yates made three recent presentations on the Standards - at the DuPage County Bar Association ADR Committee Meeting on December 20, 2005, as a panel member at the Cook County Law Division Brown Bag Seminar Series on February 9, 2006, and at the Chicago Bar Association ADR Committee Meeting on March 17.

CAADRS Executive Committee member Judge Morton Denlow has written an article on what judges should say in opening statements at settlement conferences. It will be published in the Spring 2006 issue of the *Judge's Journal*, a publication of the American Bar Association.

CONTINUED FROM PAGE 4 CUSTODY MEDIATION RULE

alternative dispute resolution strategies. While not explicitly stating that judges must have a set experience or training background before being assigned to hear child custody cases, the rule encourages the Chief Judge to consider such factors when making such an assignment. It also states that judges should attend judicial education opportunities approved by the Supreme Court concerning the matters outlined in the rule (including alternative dispute resolution strategies) at least once every two years, and that Chief Judges should make "reasonable efforts to ensure that judges have the opportunity to attend programs approved for the award of continuing judicial education credit by the Supreme Court" which address the issues outlined in the rule.

Ad Hoc Committee

In an effort to assist circuits to establish the rules and programs called for under Article IX, the Conference of Chief Judges created the Ad Hoc Committee on the New Supreme Court Child Custody Rules. The committee, which is chaired by 11th Circuit Chief Judge Elizabeth Robb, is made up of eleven judges from around the state (including CAADRS Executive Committee members Judge Allen S. Goldberg of Cook County and Judge Janet Holmgren of the 17th Circuit). The committee is working to develop model rules and model qualification standards and training for mediators, which circuits can use as guides when writing their own rules.

Additionally, the committee is working to identify organizations that will train mediators. Training opportunities have been identified thus far in southern Illinois, Bloomington, and Kankakee. The committee is also exploring different program models that will fit the diverse jurisdictions in Illinois. One of the most pressing issues is

CONTINUES ON PAGE 11

CONTINUED FROM PAGE 2 JUDGE GOLDBERG

launched in April 2004. Just recently, Judge Goldberg was invited to serve on the ad hoc committee to review which rules and standards might be appropriate for circuit courts to adopt in light of Illinois Supreme Court Rule 905, which mandates that each circuit establish a mediation program for the resolution of child custody and visitation cases. In line with his concern for the person behind the dispute, Judge Goldberg believes mediation is especially important in family cases because it gives parents tools to use to work together in dealing with issues involving their children well into the future.

When he's not serving as a judge or a mediator or working on court ADR program development, Judge Goldberg engages in other activities that are people-centered. He is very active in the legal community as a teacher and lecturer for lawyers and judges at various conferences and organizations, including the Illinois Judicial Conference, Illinois State Bar Association, Chicago Bar Association, North Suburban Bar Association, and the American Bar Association. Additionally, through an ABA minority program, Judge Goldberg has mentored law school students who serve as judicial interns or externs with the goal of preparing them for good jobs in law firms.

While Judge Goldberg happily spends the majority of his day working with people, he does take the time to cycle. Whether biking along Lake Shore Drive or along paths as close as across the street from his home to as far as Quebec City, he uses the time to unwind and to enjoy being outdoors. It's hard to believe that Judge Goldberg would have time for anything else, so you can imagine how grateful CAADRS is to have him on the Executive Committee. At the Committee table, Judge Goldberg is at his best, working with the other members and staff to move forward effective and efficient ADR in the courts.

Ms. Yates was very involved with the national conference of the American Bar Association Dispute Resolution Section again this year. She served on the national planning committee for the conference, was the Track Chair for the Ethics Track, coordinated and presented in a session called "Data, Data, Data: What Does a Court Mediation Program Need to Collect and How Does It Collect It?", conducted the meeting of the Committee on Associates Issues as its Chair, participated as a member of the Task Force on Improving Mediation Quality at its meeting, and attended the National Court ADR Conference.

CAADRS Executive Committee member Judge Allen S. Goldberg and Ms. Yates presented together on the Institutionalization of court ADR at the Chicago Bar Association's ADR State of the Union seminar on May 25, 2006. The seminar was moderated by CAADRS Advisory Board member Kent Lawrence.

CAADRS Executive Committee members Judge Allen S. Goldberg and Judge Janet R. Holmgren are serving on the Conference of Chief Judges Ad Hoc Committee on the New Supreme Court Child Custody Rules, which was set up to assist circuits to establish the rules and programs called for under the newly adopted Article IX.





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.

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CUSTODY RULE CONTINUED FROM PAGE 8

figuring out how to provide mediation to poor and low income parties. Program models that are receiving some interest are the judicial mediation program in the 2nd Judicial Circuit (see the Fall/Winter 2005 issue of *Analyzing the Alternatives* for an interview with the mediating judge in that program), and partnership with a local university to provide internship opportunities to master's candidates to mediate custody cases involving indigent parties.

Proven Effectiveness

Article IX is a far-reaching, comprehensive

effort to improve the lives of children who are the subject of custody litigation. The inclusion of mandatory mediation is one example of the possibilities this rule holds. Studies of jurisdictions across the country in which custody and visitation issues are mediated have found the process to be beneficial in expediting cases and reducing conflict between those disputing custody. The challenge for each judicial circuit in Illinois will be to provide accessible, quality mediation services for parents so that those benefits are available to families throughout the state.

STATEWIDE TOUR OF COURT ADR UPDATES

Small Claims in Winnebago County

Winnebago County's new *pro se* small claims mediation program in Rockford has gotten off to a rip-roaring start. In its first thirteen weeks, 23 cases were mediated, with an amazing 21 resulting in settlement. The program, which was launched on January 6, relies on volunteer mediators who have received 32 hours of mediation training. All volunteers are members of the Winnebago County Bar Association. The mediations are conducted in the courthouse the first time both parties appear.

Judicial Mediation Pilot Successful

At the other end of the state, the 2nd Circuit's Judicial Mediation program is also enjoying initial success. In this pilot program, a sitting judge travels to six counties to conduct mediation for custody and visitation issues. CAADRS conducted an evaluation of the first 15 months of the program. Over that period, the judge mediated 19 cases, of which 10 were partially to fully settled. Most of the parents who participated in mediation were satisfied

with their experience and would consider using mediation again. They were overwhelmingly happy with the judge-mediator. The full study is available on-line at www.caadrs.org/studies/2ndCirEval.htm. The program is going to be expanded to all counties in the 2nd Circuit, with five more judges being trained to mediate.

Cook County Law Division

Cook County continues to have success with its Law Division mediation program, which is available for all civil cases valued at more than \$50,000. In 2005, 243 cases were referred to the program, of which 214 were mediated. This brought the total number of cases referred since the beginning of the program (April 2004) to 545, and the total number of cases mediated to 491. The settlement rate for these cases is 60%.

The Law Division mediation program offers an ongoing series of continuing education seminars. For more information on these seminars, see <http://www.caadrs.org/downloads/CookCoSeminars.pdf>.

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