

# COURT ADR

the eNewsletter of Resolution Systems Institute

## CONNECTION

## THIS MONTH AT RSI

---

### RSI Gives Thanks for Your Support

As we celebrate Thanksgiving this month, RSI would like to take this opportunity to express our gratitude for your continued support. We appreciate your interest in healthy court ADR and in the life of RSI. If you would like to make a financial contribution to support our work, we would appreciate that, too! You can make a [donation](#) or send your check to RSI, 11 East Adams, Suite 500, Chicago, IL 60603. Thank you and from all of us at RSI, happy Thanksgiving!

### Kane County Child Protection Mediation Rules Approved By Illinois Supreme Court

In January, we [reported](#) that Resolution Systems Institute was working to implement a child protection mediation program in Kane County after receiving a grant from the Illinois Equal Justice Foundation. Child protection mediation is an option for families when there have been allegations of neglect or abuse. The mediation provides parents, families, children and agencies with an opportunity to sit down and create a plan that is in the best interest of the child's safety and well-being.

Throughout 2016, RSI has been developing the program, envisioning how the program will further RSI's mission of strengthening access to justice through court ADR. With this larger mission in mind, we worked with the court to identify and gather stakeholders and then worked with the stakeholders to draft rules for how the program and all of its various components will work. Court rules, far from being a formality, can have tremendous impact in shaping a program. They answer fundamental questions like: What is the process for cases entering the program? What responsibilities do the mediators, program administrator, and judges have? What data is collected, and how is it used to improve the program?

In April, after many months of drafting, Kane County Local Rule 16.03 was born.

On October 13, the Illinois Supreme Court approved Rule 16.03. There are a few provisions of the rule we think are worth

---

## NEWS & UPDATES

### Kane County Child Protection Mediation Program in the News

Recently, the 16th Judicial Circuit Kane County Child Protection Mediation Program, which RSI will be administering, received some local press. The article discussed the goal of the program and highlighted the fact that once launched, it will be only the third Child Protection Mediation Program in Illinois. Read the full story [here](#).

---

## COURT ADR NEWS

### Southern District of NY adopts pilot mandatory program for FLSA cases

The Federal District Court for the Southern District of NY [announced](#) that beginning October 3, 2016, cases filed under the federal Fair Labor Standards Act (FLSA) will be sent directly to mediation. The mediation must take place within 60 days of the referral and before an initial scheduling conference. The program was adopted to curtail the increasing caseload of FLSA cases.

---

## FROM THE BLOG

### [Considering the Role of Ongoing Relationships in Mediation](#)

highlighting.

Under this rule, the Program Administrator has the authority to appoint the qualified mediators with the consent and approval of the Chief Judge of the 16<sup>th</sup> Circuit. The rule requires mediators to have 40 hours of mediation training, as well as knowledge of and/or experience with local child protection and the juvenile court systems. Further, it was important to the court, other stakeholders and RSI that an effort be made to recruit a combination of both attorneys and child/family welfare professionals, and thus the rules were drafted to allow for a broad range of educational and professional backgrounds.

Regarding confidentiality, Rule 16.03 follows the principles of the [Uniform Mediation Act](#). One exception to confidentiality unique to the child protection context, and provided for in Rule 16.03, arises when a new allegation of abuse or neglect is revealed during the mediation process.

Mediators also have a duty to report certain information on the outcome of the mediation to the court. The mediator's report must include: whether any parties failed to appear for their court-mandated mediation session; whether the parties reached a full, partial or no agreement; and, if a scheduled mediation was not held, why it was not held and whether it has been rescheduled. If an agreement was reached, it must be in writing and attached to the mediator's report. It is important to note that all of this information is subject to confidentiality, and mediators must not disclose confidential information in making their reports.

While the mediator's report provides the court with necessary information to resolve individual cases, Rule 16.03 lays out other reporting requirements aimed at improving program administration. On a quarterly basis, the Program Administrator reports the number and types of cases submitted to mediation through the program, the number of cases that have been resolved through the program, as well as the participant's satisfaction rates and survey results, to the Chief Judge. This regular reporting is a critical element of program monitoring, allowing program staff and the court to identify and address issues as they arise.

Rule 16.03 also describes how the mediation program should be structured. Under Rule 16, Kane County's child protection mediation program will follow a facilitative co-mediation model. Under the co-mediation model, the mediation would involve more than one qualified mediator. First, an introduction or "orientation" will be given by one mediator, followed by a brief opening statement by each participant, and then caucuses with select individuals. While the structure of the mediations is specific, mediators are allowed to use their own discretion when it comes to who can be present for the mediation sessions and the length of the sessions. For instance, the mediator can choose to conduct a child interview prior to the session in order to determine whether the child's participation is appropriate. Likewise, the mediators have authority to terminate a session at any time they determine that it should be ended.

Executive Director Susan Yates considers the effect of an existing relationship between parties on striking a deal in this new Just Court ADR blog post.

### [Getting the Story Right with Data to Make the Right Decisions](#)

Director of Research Jennifer Shack addresses the value of tracking data to tell the story of foreclosure mediation.

---

## HOW CAN WE HELP?

---

How Can We Help You? RSI offers a clearinghouse of information on CourtADR.org and also responds to requests for information. Do you have a question about court ADR?

[EMAIL US ▶](#)

## SUPPORT RSI

If you enjoy reading about the monitoring and evaluation efforts in our foreclosure mediation programs, or our monthly research update, please consider making a donation below to support this and the other work RSI is doing to strengthen justice through court ADR.

[DONATE NOW](#)

[!\[\]\(f1c5da15572e3e09d343161be98f508d\_img.jpg\) RSI Site](#)

[!\[\]\(235bfe13ebf007ce2eea9e689707fac7\_img.jpg\) CourtADR.org](#)

[!\[\]\(eabd9f9ababee93effadc3b380fe65fd\_img.jpg\) LinkedIn](#)

[!\[\]\(83bbbd261710c59db0214aa27b2edc0d\_img.jpg\) Facebook](#)

---

RSI believes Rule 16.03 to be a rock-solid foundation that will allow the program to hit the ground running in February, when we expect to take our first case. In order to get there, however, RSI now has to recruit a cadre of experienced and dedicated volunteer mediators. If you're interested in becoming a mediator for the program, we encourage you to apply by [clicking here](#), or contacting Kevin Malone at [kmalone@aboutrsi.org](mailto:kmalone@aboutrsi.org).

## RESEARCH

---

### **Settlement in Family Mediation Tied to Type of Abusive Behavior**

*by Jennifer Shack, Director of Research*

New research suggests that the low probability of settlement makes mediation unsuitable for couples with a history of physical violence or threats of violence. Certain limitations in the study mean it is too soon to make specific recommendations to practitioners about how to change their decisions about when mediation is appropriate, but the findings indicate that intimate partner violence (IPV) screening should include questions about specific behaviors. The research, conducted by Susan Raines, Yeju Choi, Joshua Johnson, and Katrina Coker, looks at the intersection between type of abusive behavior, the parties' sense of security in mediation, and settlement. Raines, et al found that although most parties whose relationship involved IPV felt safe in mediation, those with a history of physical violence or threats of violence were significantly less likely to reach settlement. They conclude that due to this low settlement rate, mediation is of limited value to parties with a history of physical violence, making the risk greater than the benefit for those couples, in light of the 26% of parties who were mildly afraid to terrified of their partner.

As described in "Safety, Satisfaction, and Settlement in Domestic Relations Mediations: New Findings" (*Family Court Review*, October 2016), the researchers surveyed 54 mediation participants in northern Georgia about whether they experienced particular abusive behaviors by the other party and whether they felt safe in the mediation. They then compared the sense of security before, during and after mediation of those who experienced IPV with those who did not. They found no significant difference in overall sense of security between those who reported they experienced IPV and those who did not. However, 22% of those who reported abusive behaviors said they were mildly afraid of the other party during the mediation and 4% were terrified. In comparison, only 4% who reported no abusive behaviors were mildly afraid of the other party.

When it came to settlement, cases in which a party reported experiencing any type of abusive behavior were less likely to settle than those in which none was reported. The largest decline in probability of settlement was found in those cases in which the relationship between the parties included either physical violence or threats of violence.

Raines, et al also explored how fear of violence might lead parties

who had experienced IPV to enter into an agreement they did not want. They found that there was no difference in the percentage of participants who felt they had been coerced, either by the mediator or the other party, between those with a history of IPV and those without one. However, fewer participants who had experienced IPV said they were fully able to say no in the mediation. Parents who reached agreement were as likely to believe the agreement was in the best interests of the children and to be fair to them if their relationship included IPV as if it did not.

All of this means, according to the researchers, that mediation can be safe and satisfying even for parties whose relationship involved IPV, but that violent behaviors make mediation less effective, and are tied to the level of fear that makes the parties feel unsafe in the mediation. They think it is possible to develop a short screening tool that would predict the usefulness and safety of mediation.

The use of such a tool could be an important advancement in the field. A tangential finding of the Raines study is that despite screening for IPV being mandatory, more than half of the respondents said they had not been asked about the existence of IPV in their relationship. Further, screening protocols varied significantly when they were used. A simple screening tool could be easy to implement and therefore more likely to be universally adopted than a more extensive screening tool. If this screening tool focuses on specific behaviors, as was done in this study, **it will likely be effective in uncovering the existence of IPV.**

The research findings should be considered preliminary, as the study has some significant weaknesses. It suffers from a small sample and a low response rate (22%). Further research with a larger sample is necessary, as is research that includes other methods to confirm the validity of the survey responses, including observations and interviews. In the meantime, family mediation programs and mediators may want to adopt a screening tool that identifies specific behaviors, and to track resolution and safety concerns based on type of IPV reported.



**RSI Board Of Directors**  
Terry Moritz, *President*

**RSI Staff**

Prof. James J. Alfini

Susan M. Yates, *Exec. Director*

Marc Becker

Brittany Bartholomew

Hon. Morton Denlow (ret.)

Bridget Crawford

J. Timothy Eaton

Matthew Flores

J. Bradley Fewell

Mariah Heinz

Mitchell Marinello

Olga Kordonskaya

Raven Moore

Kevin Malone

Hon. Stephen Pacey (ret.)

Ashlee Patterson, *Editor*

Brian Roche

Jennifer Shack

Hon. James Sullivan (ret.)

Eric Slepak

RSI thanks JAMS and the JAMS Foundation for their support of this publication.

*Copyright © 2016 Resolution Systems Institute, All rights reserved.*

**Our mailing address:**

11 E. Adams, Suite 500  
Chicago, IL 60603

[unsubscribe from this list](#)

[update subscription preferences](#)

[view this email in your browser](#)

Not a subscriber yet?

[Subscribe here.](#)

This email was sent to <<EMAIL ADDRESS>>

[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)

Resolution Systems Institute · 11 E. Adams, Suite 500 · Chicago, IL 60603 · USA

MailChimp