RESOLUTION SYSTEMS INSTITUTE

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COURT ADR CONNECTION

the eNewsletter of Resolution Systems Institute

THIS MONTH AT RSI

Expanding Impact Through Data

by Director of Research, Jennifer Shack & Director of ADR Programs, Eric Slepak

As part of RSI's grant from the Illinois Attorney General to administer and evaluate foreclosure mediation programs, we examine **data from all the programs around the state on a quarterly basis**. This frequency hits a sweet spot: looking at statistics every three months allows us to collect enough data to make meaningful analysis, while also enabling us to correct course or make improvements in a relatively quick timeframe.

This has clearly made a positive impact for the programs serving the 19th (Lake County, north of Chicago) and 20th (St. Clair County, southeast of St. Louis, Missouri) Circuits. Both of these programs had suffered from low participation. In the 19th Circuit, previous evaluation had revealed a number of barriers to entry: early deadlines, an onerous entry requirement and a lack of outreach had limited the number of people successfully completing the program. Meanwhile, the 20th Circuit experienced high dropout rates as many homeowners began the entry process but were overwhelmed by the extensive financial paperwork they were asked to complete.

Earlier this year, both programs took steps to address these participation issues. In the 19th Circuit, RSI worked with the court to identify changes needed to the program rules and services. The changes included replacing the requirement to attend a group education session in order to participate with a process that allows the homeowner to conduct intake over the phone, and providing housing counseling services in parts of the county hardest hit by foreclosures. The program also increased its outreach, using postcards to inform the homeowners of their opportunity to participate in the program (we are continuing to collect data to evaluate the exact impact the postcards have on program participation). As a result, and despite the number of foreclosures declining on average by 20.1 per month, this translated into a 60% increase in the participation rate, rising from 10% to 16% in just six months!

NEWS & UPDATES

J. Bradley Fewell Joins RSI Board of Directors

On October 3, RSI voted J. Bradley Fewell, Senior Vice President and General Counsel for the Exelon Corporation, onto our Board of Directors. Mr. Fewell has shown a commitment to mediation and ADR throughout his career, and we are honored to have him join our Board. As a former member of the Board of CASA in Kane County, he has a special understanding of the work RSI is doing with child protection mediation programs.

J. Bradley Fewell

Welcome Ashlee Patterson!

RSI is delighted to welcome Ashlee Patterson to our staff as our new Resource Center Director. She is a recent graduate of the John Marshall Law School, and also holds a B.A. from Cornell University and an M.A. from the University of Chicago. In this role, Ms. Patterson will be taking over as editor of the *Court ADR Connection*, among her many other responsibilities. Please join

Similarly, the 20th Circuit program utilized the data RSI had collected to make improvements. The data pointed to a gap between the number who requested mediation or were ordered into the program and the number who fulfilled the requirements for entry. The program staff identified a barrier that was leading to a number of homeowners not following up with their initial request. This barrier was the requirement that the homeowners complete an extensive financial questionnaire in order to enter the program. The apparent difficulty in completing the questionnaire led the program to ask the court to drop this requirement. Since then, participation rose from 11% in 2015 to 19% in 2016. The rise most likely is not due entirely to changing the entry process, as the participation rate was 16% in 2014. However, the percentage of homeowners who entered the program after requesting mediation or being ordered into the program rose from 74% in 2014 to 93% in 2016, which points to the questionnaire as being a significant cause of the low participation rate.

These examples highlight the level of detail necessary in evaluating programs and making improvements to them. We often can be fixated on what happens in the mediation room, but thinking about what it takes to get parties to that room is often just as important. Having the tools to figure out and address specific obstacles in that process can make a huge difference in the program's impact.

COURT ADR NEWS

Ohio Launches Program for Resolving Public Record Disputes

On September 28, the Ohio Court of Claims **launched** a new mediation program which will attempt to resolve citizen complaints regarding denials of public record requests. Ohioans now have the option to file a complaint and enter into mediation with the denying public agency. Staff attorneys employed by the court will mediate the case, and if the parties fail to reach an agreement, the case is then reviewed by a Special Master. Complainants must pay a $25 filing fee, and can access the complaint form and further information **here**.

RESEARCH

From The Archives: Study Finds Nearly One-Third of Lawyers Willing to Lie During Negotiations

The following article first appeared in the September 2011 edition of the Court ADR Connection.

In negotiations, about 30% of lawyers are willing to lie for their clients about a material fact, even though this is prohibited by the Model Rules of Professional Conduct. That is the main finding of an empirical study of lawyer ethics conducted by Art Hinshaw and

us in congratulating Ms. Patterson on her new position!

Ashlee Patterson

Welcome Brittany Bartholomew!

RSI is pleased to welcome our new Administrative Assistant, Brittany Bartholomew. Britt comes to us from the Center For Conflict Resolution, where she continues to work as a Foreclosure Case Manager for the Cook County Foreclosure Mediation Program. We are excited to have Ms. Bartholomew with us! Please join us in congratulating her on her new position!

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.

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Jess K. Alberts, and described in “Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics” (Negotiation Journal, Spring 2011). Hinshaw and Alberts presented 734 lawyers in Arizona and Missouri with a hypothetical scenario that explored their reaction to an improper request from their client and their understanding of their obligations under such circumstances.

In the scenario, their client’s ex-girlfriend has told their client that during their relationship she was positive with DONS, a fatal sexually transmitted disease, and had kept this information from him. Armed with this information, their client took two home tests for the disease that were positive. He then contacted the lawyer in order to pursue damages from his ex-girlfriend. She has suggested that they discuss settlement. Just prior to entering into talks, their client tells them that he had discovered his tests were false positives and he did not have the disease. He still wants to punish his ex-girlfriend, so he asks that the lawyer not disclose this information in the settlement talks.

The lawyers were asked whether they would agree to this request, which had no conditions on it. In all, 19% said they would. The remaining 81% were given the same scenario again, but with a twist: the lawyers were asked not to disclose the information unless directly asked by the other attorney whether their client had the disease. This time, 13% said they would agree to their client’s request. The authors cite a misunderstanding of rule 4.1 of the Model Rules of Professional Conduct as one possible reason why so many said they would act upon their client’s wishes. Rule 4.1 states that “…a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or
(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.”

When asked whether their client’s DONS status was a material fact, 16% said it was not. Further, 36% did not know that nondisclosure of his status was a misrepresentation not allowed by the Model Rules. Those who said they would agree not to disclose their client’s DONS status were given a series of rationales for their decision and asked to rank them in importance to their decision. Two items were rated as most important: that disclosure was prohibited by the Model Rules and that it was prohibited by attorney-client privilege, both of which are false.

Given the possibility that lawyers are lying in mediation, mediators might want to read, “Mediating with Lies in the Room,” by Dwight Golann and Melissa Brodrick, which is a chapter of Mediation Ethics: Cases and Commentaries (Ellen Waldman, ed.) published in 2011.

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