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RESOURCES / STUDY / INNOVATION FOR COURT ADR



# COURT ADR CONNECTION

*The eNewsletter of Resolution Systems Institute*

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Welcome to Resolution Systems Institute's Court ADR Connection! Here you can find a collection of the latest research, news and events related to court ADR around the country, brought to you by the only organization dedicated solely to improving the use of ADR by courts.

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## Court ADR News

### Illinois County Arbitration Program Has Successful First Year

*July 29* – One year after the Madison County, Illinois, Circuit Court began its mandatory arbitration program, court administrators there have deemed it a success. All civil cases for monetary claims of \$10,000 to \$50,000 are automatically sent to arbitration. According to an article in the *Belleville News-Democrat*, 741 cases were filed with the program last year, and only 10% remain open. The program enjoys a 26% award rejection rate, as compared to the state average of 54%. Less than 2% of cases went to trial. Associate Judge Ralph Mendelsohn, who supervises the program, said it has helped take pressure off the court system.

To learn more about the Madison County program, visit the Court ADR Resource Center [Illinois Court ADR Sourcebook](#).



### California Supreme Court Overrules Estoppel Exception to Mediation Confidentiality

*July 28* – The California Supreme Court overturned an appellate court ruling that a defendant could not assert mediation confidentiality during trial because she had presented evidence from mediation in pretrial proceedings. In its July 21 opinion, the Supreme Court held that the legislature meant for mediation confidentiality to apply according to specific statutory rules. The state's confidentiality statute requires both parties in mediation to sign a written statement in order to waive confidentiality. Thus, a party's actions during court proceedings cannot be taken to imply a waiver of confidentiality.

To read the full opinion of the case, *Simmons v. Ghaderi*, click [here](#).



### New Hampshire Statute Establishes Business Court Docket with ADR Option

*July 24* – A New Hampshire statute establishing a commercial and business dispute docket in the superior court was signed into law on July 11. The docket, which has jurisdiction over disputes involving corporations and other business entities, was created to resolve such disputes faster and to increase the efficiency of the court system. The statute gives the court the authority to refer cases to alternative dispute resolution. The New Hampshire court system also allows for ADR referrals in domestic relations, probate and small claims cases.

For the full version of the statute, click [here](#). To read a press release about the new court docket from the New Hampshire Governor's Office, click [here](#).



### North Dakota Courts Launch Family Mediation Pilot Programs

*July 16* – Two judicial districts in North Dakota established family mediation pilot programs in early March. Cases involving child custody and visitation disputes are eligible for mediation, and mediations are conducted by court-approved mediators. The North Dakota Supreme Court approved the programs

in the South Central Judicial District and Northeast Central Judicial District on March 1. The court will monitor the programs and determine whether they should be expanded to other judicial districts in 2009.

For the administrative order and protocol establishing the pilot programs, click [here](#).



## California County Court Expands Small Claims Mediation Program

*July 15* – The Santa Cruz County Superior Court expanded its small claims mediation program to a second courthouse location at the end of June. All small claims cases valued below \$7,500 are eligible for mediation. Volunteers from the Conflict Resolution Center, a local mediation services provider, conduct the mediation sessions, which are offered in either English or Spanish.

For more information about the program, visit the Santa Cruz County Superior Court [web site](#). To read an article about the program from the Register-Pajaronian, click [here](#).

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## Research Update

### Study Links Pre-process Preferences to Who Controls Process and Outcome, Ties Preferences to Satisfaction

To date, most research has looked at disputants' preferences for a dispute resolution process after they have participated in it. A recent study of litigants in civil cases filed in Cook County, Illinois, examined their preferences before they entered it and compared those perceptions to their satisfaction with the process they ended up using. The reason behind the study was that by understanding disputants' preferences, courts can improve the provision of services and enhance disputants' experience of justice. The study, "Disputants' Perception of Dispute Resolution Procedures: A Longitudinal Empirical Study," by Jeanne M. Brett and Donna Shestowsky, was published in March as part of the UC Davis Legal Studies Research Paper Series.

The researchers began with the hypothesis that preference would be based upon who had greater control of the process and outcome - a neutral third party or the disputants themselves. Their findings indicated that this indeed was the case. Of a number of tested variables, the only significant factor in determining process preference was who maintained control of the process and outcome.

The results also indicated a correlation between the preference before entering a dispute resolution process and the satisfaction with the process. For example, those who preferred third party control were satisfied with the adjudicative process, while those who preferred disputant control but went through an adjudicative process, were not satisfied. The processes used were almost entirely negotiated settlement or trial, with case dismissal also making up a large percentage of case closures.

Since disputant satisfaction was tied to their pre-process preference, the researchers stated their most significant finding was that the litigants' pre-process preference did not predict which process they used. This was explained by the possibility that the lawyers drive the decision-making in that area.



## Report Shows Mediator Behavior Determines Party Satisfaction with Mediation

In research based upon a survey of parties in small claims mediations in New Mexico, satisfaction was found to be related to process factors that are tied to mediator behaviors and skills. Structural factors, such as gender, ethnicity, or attorney presence did not affect party satisfaction. The conclusion the researchers, Mary Beth Howe and Robert Fiala, drew from this is that party satisfaction with mediation is in the hands of the mediators. Their report, "Process Matters: Disputant Satisfaction in Mediated Civil Cases," was published this year in Justice System Journal, Vol. 29(1).

For the study, the researchers examined the responses to a survey of parties in 281 cases randomly assigned to mediation in 1990 and 1991. The study found a significant association between party satisfaction with mediation and their sense that the mediator appeared neutral, was in control of the mediation, and allowed them to tell their views. Parties also indicated higher satisfaction when they were more integrated into the process, when they felt they had power in mediation, and there was less anger and hostility in the discussion.

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## On CourtADR.org

### Tip of the Month: Going Beyond the Keyword Search

When you just need to find general resources on mediation, doing a simple keyword search on the [Research Library Database](#) at CourtADR.org will give you what you need. But what about when you're looking for articles about civil mediation programs in Florida? Or court rules about child custody mediation programs in California? In these instances, you can find the resources you need quickly and easily by narrowing your search. By clicking on "Additional Options" on the database search page, you can access search fields that will let you specify the type of resource, court case and ADR process you are looking for. You can also narrow your search to specific court types or geographic areas. These options allow you to design highly detailed searches, saving you time and providing you with only the most relevant and useful resources to fit your needs.

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