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RESOURCES / STUDY / INNOVATION FOR COURT ADR



COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

May 2011

This edition highlights the latest edition of RSI's *Analyzing the Alternatives*, court ADR funding in New York and North Carolina, a decision by the Montana Supreme Court regarding mediation in cases involving domestic abuse, pending divorce mediation legislation in Connecticut, and foreclosure mediation news from Illinois, Florida and Nevada. The New Research section includes a new article that applies dispute system design theory to Milwaukee's foreclosure mediation program, as well as a book review of the first stand-alone book on mediation ethics, *Mediation Ethics: Cases and Commentaries*.

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RSI Update

RSI Publishes Winter/Spring 2011 Edition of *Analyzing the Alternatives*

RSI recently published the [Winter/Spring 2011 edition of *Analyzing the Alternatives*](#). This edition [reviews the findings](#) of RSI's evaluation of the Cook County Child Protection Mediation and Facilitation Program. It also [discusses the challenges](#) of balancing requirements to participate in foreclosure mediation in good faith with mediation's core values of confidentiality and voluntariness. In addition, [RSI Executive Committee member Brian Roche](#) is profiled, and [three](#)

[new Executive Committee members](#) are introduced. The edition also includes [RSI's 2010 Annual Report](#).

Court ADR News

Funding Cuts Threaten Court ADR Programs in New York, North Carolina

Court budget cuts in New York and proposed budget cuts in North Carolina are threatening court ADR programs in both states. In New York, the state judiciary's budget was cut \$170 million for the next fiscal year. This is leading to [cuts across the court system](#), including the court's funding of its [Community Dispute Resolution Center Program](#), in which the courts partner with local non-profit organizations to provide mediation and other dispute resolution services. Click [here](#) for more information about the program. For more coverage of the funding cuts, see [The Buffalo News](#), [Mid-Hudson News Network](#), and Binghamton, NY, [News Channel 34](#).

In North Carolina, a [proposed budget](#) being considered by a legislative committee would cut \$230 million from the state's justice and public safety programs, including the elimination of the state court system's [child custody mediation programs](#) and state funding of community dispute resolution centers (see [The News & Observer](#) and the [Salisbury Post](#)). Elimination of these programs would reduce the state's budgeted expenditures by about \$3.7 million. According to the [North Carolina Mediation Network](#), the community dispute resolution centers' services saved the state \$26 million in the 2009-2010 fiscal year.



Montana Supreme Court: Mediation Not Required for Cases Involving Domestic Abuse

The Montana Supreme Court [overturned](#) an appellate court's decision to uphold a parenting plan in a case involving allegations of emotional abuse between the parties because the plan required mediation of further disputes. Montana law allows courts to require parties to participate in mediation for family proceedings in general and, more specifically, to resolve disputes related to parenting plans. The [law](#) authorizing courts to order mediation for parenting plan disputes does not contain an exception for cases involving domestic abuse, but the [law](#) concerning mediation for general family proceedings specifies that cases involving domestic abuse may not go to mediation. The Supreme Court held that the latter law applies to parenting plans, and courts may not require cases involving domestic abuse to participate in mediation.



Connecticut Legislature Considering Bill to Require Divorce Mediation

A [bill](#) before the Connecticut legislature would require divorcing parents to participate in a mediation program before going to litigation. Unless a court waived the requirement, parents who choose not to mediate would not be able to move forward with their court case until six months after the return day of the complaint. The bill is currently being considered by the Joint Select Committee on Children.



Foreclosure Mediation News

Illinois: The Supreme Court formed a committee in March that will investigate the foreclosure process in the state and elsewhere in the country, and recommend statewide mortgage foreclosure rules. The committee isn't specifically tasked with investigating foreclosure mediation. However, the court's [press release](#) announcing the committee did highlight the Chief Justice's role in developing two foreclosure mediation programs in county courts, calling them "important steps forward" in helping homeowners. Also in March, the Supreme Court approved court rules in March for foreclosure mediation programs in [Peoria](#) and [Madison](#) county courts. With these programs, there are four counties in Illinois that offer foreclosure mediation. Read Heather Scheiwe Kulp's [Just Court ADR blog post](#) for more information about these new programs.

Florida: According to a new report by the Office of the State Courts Administrator, 27% of foreclosure mediations in the state between March 2010 and November 2010 ended in a mediated agreement between the lender and borrower. Mediations were conducted for less than 14% of cases referred to mediation. This is the first report with statistics from each of the 20 judicial circuits offering foreclosure mediation programs. Statewide, there were 57,909 referrals to mediation during the time period studied. Of those referrals, only 7,941 mediations were conducted, and 2,162 mediations ended in agreement. The report is not online yet, but its findings were reported by [The Miami Herald](#) and [The Palm Beach Post](#).

Nevada: The Supreme Court is in the process of forming a [State of Nevada Foreclosure Mediation Program Advisory Committee](#). The Committee will be responsible for evaluating the "effectiveness, operation, policies and practices" of the state's foreclosure mediation program. The Committee will be made up of program mediators, attorneys who have represented clients in the program, homeowners and lenders who have participated in the program, and other representatives of the state's real estate industry.

New Research

Applying Dispute System Design Theory to Create a Foreclosure Mediation System

Foreclosure mediation programs have taken many forms as jurisdictions throughout the US have turned to mediation to help solve the foreclosure crisis. Milwaukee's model is unique in that the program is run by a law school. In ["There's No Place Like Home: Applying Dispute System Design Theory to Create a Foreclosure Mediation System,"](#) soon to be published by the *Nevada Law Journal*, Andrea Kupfer Schneider and Natalie Fleury examine the success of this model through the lens of dispute system design theory (DSD). The theory cites three general characteristics of an effective dispute system: the inclusion of stakeholders in the system design, fluidity and flexibility, and transparency and accountability.

Schneider and Fleury discuss the program in light of these characteristics. They note that transparency and accountability require that the system be evaluated for its effectiveness and efficiency. In light of this, they offer analysis of the outcomes from the program's first year. The program received 1,127 applications for mediation in that time, of which 677, or 65%, were accepted into mediation and 210 (19%) had been mediated. Mediation resulted in retention in 42% of

cases, while in 6% of the cases, the borrowers agreed to an early exit from their homes. In 14% of the cases, financial information needed to be updated and the lenders did not agree to a second mediation session.

Almost all participants (94.9%) were satisfied with their experience in mediation, and virtually all (99.5%) would recommend it to others. Interestingly, 100% of lenders' attorneys were satisfied, but they were less likely to recommend it to others (96.6%) than borrowers and their attorneys (100%). More than 90% also stated that mediation increased their understanding of the other party's views, that the mediator was neutral, and that they would recommend their mediator. Borrowers were less likely to believe the outcome was fair - only 83.8% said so, as compared to 98.2% of lenders' attorneys.



Book Review: *Mediation Ethics: Cases and Commentaries*

By Alyson Carrel, [Center for Conflict Resolution](#)

Mediators have a new one-stop shop to explore the nebulous nature of ethics - *Mediation Ethics: Cases and Commentaries*, edited by Ellen Waldman. While the number of resources on the topic of mediation ethics is growing, this is the first book to focus exclusively on this topic and present it in a comprehensive medium. Other resources tend to be short articles or blogs on a narrow ethical topic, or online resources that are so expansive they aren't meant to be absorbed in their entirety. For students, texts such as Carrie Menkel-Meadow's *Mediation: Practice, Policy, and Ethics*, provide some insight into mediation ethics, but by design are not meant to be comprehensive on the topic. *Mediation Ethics* stands out as a unique text by providing the reader one place to review a variety of hypothetical scenarios analyzed from a variety of perspectives. Practitioners can use this as a guide for handling situations as they arise. Professors can assign the book to explore the myriad issues that can come up in mediation. It is a resource that is expansive but also easy to absorb. [Click to read further.](#)

From *Just Court ADR* Blog

Foreclosure Mediation Comes to Bankruptcy Court?

"The end of March marked the end of two madnesses: [Connecticut's](#) journey to the championship and a foreclosure mitigation bill's journey through the Senate Judiciary Committee. But the journey is over in only one court. ... The federal [Limiting Investor and Homeowner Loss in Foreclosure Act](#) (S. 222) is modeled after the [Rhode Island](#) loss mitigation program (the subject of the aforementioned legal battle) and a similar [New York](#) mediation program. S. 222 permits bankruptcy courts to create loss mitigation programs for debtors and debt holders to discuss foreclosure alternatives. After [heated discussion](#), and in the messy foreclosure milieu that includes the House [ending](#) the Home Affordable Modification Program ([HAMP](#)), the bill passed out of the Committee by a vote of 10-8. The [blogosphere](#) sent up a [cheer](#): the feds were finally supporting foreclosure mediation! But is this really what they think it is?" [Click to read the rest of this post by Heather Scheiwe Kulp.](#)



In Illinois, Two New Foreclosure Mediation Programs

"Proof that foreclosure mediation can be applied in a variety of settings: the Illinois Supreme Court recently approved local court rules for foreclosure

mediation programs to begin in [Peoria County, Illinois](#), and [Madison County, Illinois](#)." [Click to read the rest of this post by Heather Scheiwe Kulp](#).

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