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# COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

December 2008

Welcome to Resolution Systems Institute's December *Court ADR Connection!* This edition covers a wide range of topics, including a new property value reassessment mediation program in Pennsylvania and court rulings concerning mediation in Colorado and Alabama. A recent report on the effectiveness of restorative justice programs is also highlighted. In addition, be sure to check out CourtADR.org's guide to monitoring and evaluating court ADR programs.

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## Court ADR News

### Pennsylvania County Court Adds Mediation to Reassessment Process

Judges in Luzerne County, Pennsylvania, voted in November to add mandatory mediation to the process of appealing reassessed property values. Homeowners appealing their reassessments after formal and informal hearings will be referred to mediation before their case is sent to an arbitration board. Court employees will serve as mediators between homeowners and the county assessment appeals board, and homeowners will not be charged for mediation.

To read more about the program, click [here](#).



### Colorado Supreme Court Limits Mediation Confidentiality, Upholds Common Law in Contract Disputes

In a recent combined decision, the Colorado Supreme Court held that the Dispute Resolution Act does not abrogate the common law of contracts, and limited

confidentiality to communications "made in the presence of or at the behest of the mediator."

In making its ruling as to whether the Act abrogates the common law of contracts, the court took into consideration two sections of the Act: Section 308, which governs enforceability of the Act, and Section 307, which governs confidentiality. Under Section 308 of the Act, "parties can turn a mediated agreement into an enforceable court order by reducing it to writing, signing it, and submitting it as a stipulation to the court." The ruling held that this simply outlines a means by which a mediated agreement may be enforced as a court order and does not bar enforcement through the common law of contracts.

Section 307 of the Act makes confidential "any mediation communication or any communication provided in confidence to the mediator or a mediation organization." The court interpreted this to mean that any evidence of contract formation in mediation other than a signed written agreement is inadmissible. However, evidence of contract formation can be brought before the court if the communication were not made "in the process of" or "pursuant to" mediation proceedings.

The October 20 decision combined two cases, *Yaekle v. Andrews* and *Chotvacs v. Lish*, with the Supreme Court affirming the appellate court rulings for both. Click [here](#) to read the full opinion. For an article from the National Arbitration Forum, click [here](#).



## Alabama Supreme Court: Mediation Mandatory Upon Request of Party

The Alabama Supreme Court ruled in October that state courts must compel mediation when it is requested by any party in a dispute. In the case, *Ex parte Morgan County Commission*, the trial court denied a motion by Morgan County requesting mediation, determining that it was too early in process for a mediation referral. The Supreme Court held that the trial court had exceeded its authority, citing both a state statute and a state court rule requiring courts to refer disputes to mediation upon the motion of a party.

To read the court opinion, click [here](#). For an article from the National Arbitration Forum, click [here](#).

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## Research You Might Have Missed

### Report Identifies Best Practices for Restorative Justice

In *Restorative Justice: The Evidence*, a report aimed at providing recommendations and best practices for the use of restorative justice (RJ) in Britain, Lawrence Sherman and Heather Strang examined 36 "reasonably unbiased" studies from Australia, Canada, Britain and the United States for circumstances under which RJ was most effective. RJ was broadly defined in this research, and included "victim-offender mediation, indirect communication through third parties, and restitution or reparation payments ordered by courts or referral panels."

The studies showed that RJ is more effective at reducing re-offense for violent crimes than for property offenses (except in the case of burglary), and for those in which there is a personal victim who can be invited to attend a face-to-face

conference of the victim, the offender, and their supporters. There is also consistent evidence that face-to-face conferences help the victims by reducing post-traumatic stress symptoms. Restitution or reparation payments programs showed mixed results in reducing the probability of re-offense. However, there is some evidence that compliance with agreements reached in RJ is greater than court-ordered outcomes.

To read the full report, click [here](#).

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## On CourtADR.org

### Tip of the Month: Monitoring and Evaluation of ADR Programs

Monitoring and evaluation are two essential aspects of any court ADR program. They allow program administrators to identify areas for improvement and to ensure that they are meeting the needs of their participants. The [Monitoring and Evaluation section](#) of CourtADR.org's [Instruction Manual](#) provides a thorough overview of the many considerations that go into these two processes. The section outlines the factors a program might want to track, from the number and types of cases going through the ADR process to participants' perception of the process, and how administrators can collect the data. It also walks through the many steps of evaluating a program, from creating a plan and identifying evaluation goals to designing and conducting the final evaluation. While implementing and maintaining effective monitoring systems or overseeing an effective evaluation process can be challenging for court administrators who are already overburdened, the results can be especially valuable in supporting the need for a court ADR program in the current environment.

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