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RESOURCES / STUDY / INNOVATION FOR COURT ADR



COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

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Court ADR News covers a variety of topics this month. In North Carolina, the state bar association has proposed an amendment to the state's rules of professional conduct for lawyers that would exempt lawyer-mediators from reporting another lawyer's unethical behavior during mediation. A California appellate court recently ruled that the state's mediation confidentiality law does not apply to conversations between a lawyer and his or her client. Finally, the Connecticut Judicial Branch reported a 75% settlement rate for its statewide foreclosure mediation program.

The New Research section highlights two new journal articles this month. One study examines the suitability of mediation in child support cases, finding that those who participated in mediation were far more satisfied with the outcome than those who participated in litigation. The second article reviews sources of power in mediation, discussing how mediators can use them, as well as what the ethical limits on the use of power might be.

Finally, RSI Updates features two pieces of RSI news. First, members of LinkedIn and Facebook can now connect with RSI through these sites. See the links below to join the RSI groups and stay up-to-date on court ADR and RSI news. Lastly, RSI was recently awarded a JAMS Foundation grant to significantly expand CourtADR.org, with a new online guide to court ADR systems across the country. RSI is grateful for the foundation's support.

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RSI Updates

Connect with RSI on LinkedIn and Facebook

Members of LinkedIn and Facebook can now follow news and updates from RSI on these platforms. Join the RSI group on either site to stay up-to-date on the latest news and upcoming events in court ADR, connect with other court ADR professionals, and be alerted about new RSI publications and services.

Click the following links to connect with RSI on [LinkedIn](#) and [Facebook](#).



RSI Awarded JAMS Foundation Grant to Expand CourtADR.org

RSI is pleased to announce the award of a grant from the JAMS Foundation to support the creation of an online guide to court ADR systems nationwide. “Court ADR Across the U.S.” will be a new section of CourtADR.org featuring information about ADR programs in the state and federal courts in every state. This unique resource will allow CourtADR.org visitors to quickly and easily research and compare how ADR is being used in court systems throughout the country. The JAMS Foundation has funded CourtADR.org and other RSI services in the past, and RSI appreciates the foundation’s continued support.

Court ADR News

North Carolina Bar Proposes Change in Lawyer-Mediator Reporting Requirements

A proposed amendment to the North Carolina Rules of Professional Conduct would exempt lawyers serving as mediators from reporting another lawyer’s unethical behavior during mediation. The current rules would require a lawyer-mediator to report unethical behavior. This is at odds with the requirement set by the state’s Standards of Professional Conduct for Mediators that mediators maintain the confidentiality of mediation proceedings. According to *North Carolina Lawyers Weekly*, the North Carolina Dispute Resolution Commission favors the amendment because it would help to ensure mediation confidentiality. Others, including the state bar’s family law section, oppose the change, arguing that it could allow unethical behavior to go uncorrected and allow for unfair mediation settlements. The state bar voted in October to publish the amendment in the next state bar journal for comments.

Click [here](#) to read the full article from *North Carolina Lawyers Weekly*.



California Court: Lawyer Conversations with Client Not Protected by Mediation Confidentiality

A California appellate court recently reversed a trial court decision that found that communications between a mediation participant and his lawyers were protected under the state’s mediation confidentiality law. The participant filed suit against his lawyers following mediation. The lawyers moved to exclude from evidence communications made between them and their client regarding the mediation, but which occurred prior to the mediation itself. The lawyers argued the communication was protected by mediation confidentiality. The law states that all communications made by or between mediation participants are confidential; the lawyers argued they were participants in the mediation, and

therefore should be protected. The appellate court rejected this argument, noting that the confidentiality law exists to facilitate open communication between opposing parties, not to “protect a lawyers from his client.” The court held that lawyers and their clients “operate as a single participant,” and therefore communication that occurs solely between lawyers and their clients and does not involve details about the mediation proceedings is not confidential.

To read the full opinion of the case, *Cassel v. Superior Court*, click [here](#).



Connecticut Foreclosure Mediation Program Achieves 75% Settlement Rate

Connecticut’s statewide foreclosure mediation program settled 75% of cases from its launch in July 2008 through October of this year. According to a press release from the governor’s office, the program handled 4,448 cases during that time. More than 3,300 cases settled, with 2,721 agreements allowing borrowers to stay in their homes and 611 resulting in short sales, extensions of the sale date or other arrangements. The program was voluntary when it was originally launched, but a new state law mandated mediation for all foreclosure proceedings as of July.

To read the full press release, published in *The Ridgefield Press*, click [here](#).

New Research

Testing the Suitability of Mediation of Child Support Orders

State child support enforcement agencies under federal Title IV-D typically turn to litigation to establish or modify child support orders. In 2006, Scot Schraufnagel and Quan Li conducted a study to examine whether mediation provided greater value than litigation through higher levels of satisfaction and compliance. The study involved 77 mediated cases in Florida, some in which the parents were randomly asked whether they would like to mediate their case, and some which were randomly ordered to mediation. Another 77 cases were randomly selected to go through litigation. They describe the results of the study in “Testing the Suitability of Mediation of Child Support Orders in Title IV-D Cases,” published in the June 12, 2009, edition of *Research on Social Work Practice*.

For the study, the participants completed post-process questionnaires to gauge their satisfaction. Schraufnagel and Li found that mediation participants were significantly more satisfied with their experience than those who went through litigation. Further analysis revealed that satisfaction was correlated with mediator experience.

Compliance was tested for the 34 mediated cases in which support was agreed upon. The same number of litigated cases was randomly selected to test compliance. Schraufnagel and Li found no significant difference in the level of compliance between mediated and litigated cases. There was a significant difference in compliance between mediated cases, with lower compliance in cases in which the mediator was inexperienced and in those cases ordered to mediation by the court.

Schraufnagel and Li also looked at factors that might increase the probability of settlement in mediation. Their analysis showed that settlement was more likely when the person asking for support was the biological mother, when the mediator

was experienced, and when mediation was voluntary. Settlement was less likely when there were other children living at home and when the custodial parent was poor.



Exploring the Concept of Power in Mediation

Two social psychologists, John R. P. French and Bertram H. Raven, have defined six bases of power in social interactions: coercion, reward, legitimacy, referent, expertise, and information. Omer Shapiro uses these as the basis for his examination of mediators' sources of power in their interactions with parties and their counsel in mediation. In "Exploring the Concept of Power in Mediation: Mediators' Sources of Power and Influence Tactics" (*Ohio State Journal on Dispute Resolution*, Vol. 24:3, 2009), he defines each source of power and gives examples of how mediators use them. He then discusses the complexity of power interactions, as parties and attorneys wield their own power in relation to the mediator, and different situations affect the level of power a mediator has. By defining the sources of power, the article provides a useful foundation for discussion on the ethical limits to mediators' use of power. Mediators should also find much to think about in terms of how they can best use this information to help parties resolve their issues.

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