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RESOURCES / STUDY / INNOVATION FOR COURT ADR



# COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

December 2013

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## Court ADR News

### Nevada Supreme Court Protects Confidentiality in Foreclosure Mediation

The [Nevada Supreme Court declared](#) that confidential records from mediations in the [Nevada Foreclosure Mediation Program](#) are not accessible to the public under the state's Public Records Act. The non-profit group Civil Rights for Seniors had requested full access to records of foreclosure mediations, including names and contact information for parties. The group argued that the program, which was authorized by the Nevada Supreme Court and managed by the Administrative Office of the Court, was a government entity required to release its records unless they were explicitly protected. The court held that documents and records covered by the confidentiality provisions in the [Foreclosure Mediation Rules](#) were protected from public access. This included all documents and discussions presented during mediation. The court concluded that exposing sensitive personal and financial information to the public could have a chilling effect on the foreclosure mediation process.



### Criminal Mediation in Idaho Gaining Popularity

In Idaho, criminal mediation has been used in a growing number of locally [high-profile cases](#) since its adoption in 2011. In the criminal mediation process,

authorized by [Idaho Criminal Rule 18.1](#), a judge who is not connected to the case mediates between the defendant and the prosecuting attorney. All misdemeanors and felonies may be subject to mediation if the parties agree to participate and the court believes it may be beneficial. In general, the parties do not see each other during mediation, and the neutral shuttles from room to room. Issues discussed may include sentencing, restitution and evidence. While the defendant and the prosecutor are the two official parties, victims are typically involved in the process as well. The intended benefits of the program include saving the time and expense of a trial, as well as providing some victims with a sense of closure.



## Detroit Requests ADR in Suits Against the City

To handle the more than 500 lawsuits currently pending against the city of Detroit, city attorneys have asked to use [mandatory ADR processes](#) including case evaluation and arbitration. As part of Detroit's bankruptcy filing, Judge Steven Rhodes ordered the city to propose a way to clear its backlog of lawsuits. In its proposal, the city asked to begin with settlement discussions in each case. Cases that do not settle would be evaluated, and a panel would issue a value on the claim. If a party rejects an offer, binding arbitration proceedings would take place. The city attorneys argue that this process will be more efficient than traditional litigation.

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## New Research

### New Study Provides Insight on What Parenting Coordinators Believe Works in Parenting Coordination

Parenting coordination is a relatively new addition to the pantheon of ADR processes available to parents in conflict. While it's growing in use, little research has been done regarding effective implementation. A survey of 79 parenting coordinators (PCs) has provided some insight. As outlined by Robin O. Belcher-Timme, et al. in "Exploring Best Practices in Parenting Coordination: A National Survey of Current Practices and Practitioners" (*Family Court Review*, October 2013), the PCs were asked to identify what interventions are more likely to successfully resolve disputes between the parents.

In parenting coordination, a mental health or legal professional who has been trained in the process works with parents on specific conflicts after custody has been decided. Interventions they might use to reduce or defuse conflict include identifying the parenting strengths and weaknesses of each parent, informing the parents of the developmental needs of their children, and interpreting legal documents.

The researchers determined which interventions to include on the survey by looking at seven trainers' training materials. They identified three areas of intervention: assessment and conceptualization, education and information, and case and conflict management. They then asked the PCs to rate their effectiveness on a scale of 1-7.

The researchers included four interventions in the area of assessment and conceptualization: assessing the general co-parenting skills of both parents, assessing the functioning and needs of the children involved, assessing the individual strengths and weaknesses of the parents, and reviewing existing professional evaluations. Of these four, the PCs ranked the first three as equally effective (6.03 – 6.29), while reviewing existing evaluations was ranked lower

(5.27).

Three interventions were included in the area of education and information: providing information on the effects of high parental conflict on children, teaching effective communication skills for parents, and informing parents about the developmental needs of their children. The PCs saw these as equally effective; however, they saw these as less effective than all four of the interventions in the area of assessment and conceptualization. Although these interventions were seen as generally effective (rated 4.77-5.0), the researchers hypothesized that the high-conflict relationship between the parents inhibited their ability to take in information based on logic.

The third area, case and conflict management, included four interventions: facilitating communication as an objective third party; interpreting court orders, custody agreements, and other legal documents; communicating with other professionals; and communicating with other family members/caretakers. Of these, PCs saw facilitating communication as an objective third party as the most effective intervention (6.37). In fact, it rated highest of all the interventions explored in the survey. They ranked the other three interventions: interpreting court orders, etc. (5.69), communicating with other professionals (5.1) and communicating with other family members/caretakers (3.81) as significantly lower in effectiveness.

The mental health and legal professionals in the study ranked the interventions similarly. Additionally, 15% of the PCs didn't know "the type, scope, or specifics of the legislation under which they operated." Belcher-Timme, et al. recommend that those training PCs include an emphasis on working with the parents as an objective third party and that continuing education include instruction that focuses on the local statutory or other legal authority under which the PCs work.

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## From *Just Court ADR* Blog

### In re Lee Part 3: Implications for Stakeholders

"In this final installment of our [series](#) on the Texas family mediation case *In re Lee*, we'll examine the implications of the holding upon parents, judges and mediators." [Read the rest of this post by Mary Novak >>](#)



### What Works in Foreclosure Dispute Resolution?

"With foreclosure dispute resolution programs proliferating around the country, the natural question to ask is, "Do they work?" That's what former RSI staff member Heather Scheiwe Kulp and I set out to determine. The answer, as discussed in our article, "[Foreclosure Dispute Resolution Programs: Do They Work?](#)" (*Probate and Property*, November/December 2013), is that some do and some don't." [Read the rest of this post by Jennifer Shack >>](#)

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