



February 2009

This edition of *Court ADR Connection* covers a wide range of topics. First, RSI announces the award of a grant from the James B. Boskey Memorial Foundation to support the publication of this e-newsletter. Court ADR News, below, includes information on a new code of judicial conduct in Minnesota, court cases on the constitutionality of an ADR court fee and the admissibility of a mediator's comments, and an update on Ohio's foreclosure mediation program. A Court ADR Symposium, to be held as part of the ABA Dispute Resolution Section's spring conference in April, is also highlighted. The New Research section reviews a report on developing a survey to measure the quality of ADR outcomes. Finally, the CourtADR.org Tip of the Month features RSI's Recommended Resources research guide.

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RSI Update

[RSI Awarded Boskey Foundation Grant to Support *Court ADR Connection*](#)

RSI is pleased to announce the award of a grant from the James B. Boskey Memorial Foundation to support the continued publication of *Court ADR Connection*. The Boskey Foundation honors the late James Boskey, an active member of the ADR field and creator of *The Alternative Newsletter*. The Boskey

Foundation has funded previous RSI initiatives, and RSI is extremely grateful for its support.

Court ADR News

New Minnesota Judicial Code Allows Retired, Part-time Judges to Serve as Neutrals

The Minnesota Supreme Court adopted a new Code of Judicial Conduct in December that allows retired and part-time judges to serve as private neutrals in limited circumstances. Judges may not act as a mediator or arbitrator during judicial assignments. They also may not serve as a neutral on a case where they previously acted as a judge without the parties' consent. The previous version of the code permitted retired judges to serve as private neutrals, but the new version extends permission to part-time judges. The new code will go into effect July 1, 2009.

To read the Supreme Court order adopting the code, click [here](#).



New Hampshire Supreme Court Upholds ADR Fee

The New Hampshire Supreme Court recently held that a fee for the use of a court's alternative dispute resolution program was constitutional. Under state law, parties to cases that go through the state court's ADR program must each pay a \$50 fee if they choose to use a volunteer mediator, and the court may impose sanctions for failure to pay. The fee was challenged as a violation of a clause in the state constitution guaranteeing the right to "obtain right and justice freely, without being obliged to purchase it." The sanctions were also challenged as a violation of the right to a jury trial. In reversing the trial court's decision, the Supreme Court held that the clause was created to protect against unequal treatment in court and did not apply to fixed administrative fees, such as the ADR fee in question. The court also held that the sanctions for not paying the ADR fee were constitutional. The court argued that because plaintiffs bear the burden of paying to "institute an action," it was reasonable for the court to impose sanctions against them for not paying the fee. In the case of defendants, the court argued that the sanctions were appropriate because a failure to pay the fee does not prevent further litigation, and the sanction against the defendant may not include judgment against the defendant. Therefore, the court held, the sanction does not violate the defendant's right to a jury trial.

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



Federal Appeals Court Rules Mediator Comments Inadmissible as Evidence of Breach of Agreement

In a recent decision, the Seventh Circuit Court of Appeals held that a mediator's comments during mediation did not prove a breach of a mediation agreement in a case where the agreement was clear and unambiguous. In this dispute between the United States Postal Service and an employee, the parties had signed a mediation agreement that set the employee's date of retirement. During mediation, the mediator had calculated the expected amount of the employee's retirement benefits, but these terms were not included in the written agreement. After the mediation, the Postal Service discovered that the employee had made an

earlier withdrawal from his retirement fund, which changed the amount of his benefits. The employee argued that he had signed the agreement based on the mediator's calculations, and the change constituted a violation of the intent of the agreement. The court held that the language in the agreement was unambiguous, and because it did not mention the employee's retirement benefits, the agreement was not breached.

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



Court ADR Symposium Set for April 15 in New York City

The American Bar Association Dispute Resolution Section Court Annexed Programs Committee is holding a Court ADR Symposium as part of the section's annual spring conference in April. The symposium will feature seminars on evaluating court ADR programs and using technology to improve programs. There will also be a roundtable discussion for participants to share information about their programs. The conference will take place April 15-18 in New York City, and the symposium will be held the first day of the conference. The registration fee for the symposium is \$100.

For more information about the symposium and the conference, click [here](#).



Mortgage Foreclosure Mediation Available in Every Ohio County

Every county in Ohio has established a mortgage foreclosure court mediation program, according to a January press release from the Supreme Court. The programs are based on a model developed by the Supreme Court last year. The court has helped counties implement the model and train mediators. The Supreme Court reports that more than 500 people have participated in its foreclosure mediation training program. According to *The Crescent-News*, requests for foreclosure mediation also have increased in five counties over the past year.

To read the Supreme Court press release, click [here](#). For the article from *The Crescent-News*, click [here](#). For more information about the Ohio foreclosure mediation model, click [here](#).

New Research

Measuring Access to Justice: The Quality of Outcomes

Theories of justice, such as distributive, restorative and retributive, all have input into what makes an outcome of a dispute resolution process just. For example, some distributive justice theories view achievement of equity or equality as determining whether an outcome is just. Restorative justice theories see desired outcomes as reparation of harm, reintegration of the offender into society, and greater compliance with the law, among others. In *Measuring Access to Justice: The Quality of Outcomes*, Verdonschot, et al., use these theories to derive a short list of criteria that can be used to gauge the quality of justice as perceived by the participants in the process, and create matching questions that can be asked in surveys. They also provide recommendations on how to use the questions and discuss issues in evaluating outcomes that have yet to be resolved. The criteria

and questions are useful guides to those interested in adapting them for an evaluation of any form of ADR and for any case type.

On CourtADR.org

Tip of the Month: RSI Recommended Resources

The [Recommended Resources section](#) of CourtADR.org is one of many research guides RSI has developed to help visitors navigate its extensive database. The resources listed here represent the best thinking on issues related to court ADR. The list features articles, statutes, court rules and other types of resources, and covers many of the core issues in court ADR, including the impact of ADR, program development and management, and translating ADR theory into practice. This section may not include every excellent resource in court ADR, but it does connect visitors with high-quality information they need to develop a core understanding of the field.

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