

[Click here](#) to view this newsletter on the RSI web site.

RESOURCES / STUDY / INNOVATION FOR COURT ADR



COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

July 2009

Court ADR Connection covers a range of topics in Court ADR News this month. The U.S. Court of Appeals for the 7th Circuit recently issued an opinion stating that a judge's negative assessment of the merits of a case during a judicial settlement conference was not coercive and did not void the resulting settlement agreement. Also at the federal level, the U.S. District Court for the Northern District of Illinois launched an early settlement conference program in May.

In other news, the Center for American Progress, a think-tank in Washington, D.C., published a report in June highlighting best practices for foreclosure mediation programs and calling on the federal government to encourage mandatory foreclosure mediation throughout the country. The news section also provides updates on recently proposed foreclosure mediation legislation in Connecticut, Florida, Indiana, Maine, Minnesota, Nevada and New Mexico.

The Research You Might Have Missed section features an evaluation conducted last year of a pilot program for court-connected online mediation of small claims cases. In participant surveys, both mediators and parties expressed frustration with the process, and parties expressed relatively low levels of satisfaction. Finally, the CourtADR.org Tip of the Month highlights the advanced search features in the Court ADR Research Library Database.

Support RSI

This edition marks the one-year anniversary of *Court ADR Connection*. For the past year, RSI has been bringing its subscribers monthly updates on the latest court ADR news and research from across the country. The JAMS Foundation generously provided a grant to get this publication going, but that grant has come to an end. If you enjoy staying up-to-date on court ADR through *Court ADR Connection*, please consider making a donation to support RSI. Through its mission of strengthening justice by enhancing court ADR, RSI provides a combination of expertise in program development, study and resources that is unmatched in the field. As a non-profit, RSI relies on donations to provide high-quality services like *Court ADR Connection*.

Click [here](#) to donate. We appreciate your support.

In this issue...

Court ADR News

- » [U.S. Appeals Court Rules Judge's Comments during Settlement Conference Do Not Amount to Coercion](#)
- » [Illinois Federal District Court Launches Early Settlement Conference Program](#)
- » [Center for American Progress Calls on Federal Government to Support](#)

- » [Mandatory Foreclosure Mediation](#)
- » [Foreclosure Mediation Legislative Review](#)

Research You Might Have Missed

- » [Evaluation of the Small Claims Online Dispute Resolution Pilot](#)

On CourtADR.org

- » [Tip of the Month: Beyond the Keyword Search](#)
-

Court ADR News

U.S. Appeals Court Rules Judge's Comments during Settlement Conference Do Not Amount to Coercion

In a recent decision, the U.S. Court of Appeals for the 7th Circuit ruled that a judge's alleged analysis of a plaintiff's case as "meritless" during a judicial settlement conference did not amount to coercion to settle on the part of the judge. In the case, *Gevas v. Ghosh* (08-1538), the plaintiff argued that the settlement agreement should be voided because of the judge's comments. The court argued that coercion only occurs when "a judge threatens to penalize a party that refuses to settle;" judges are not prohibited from expressing their opinion about the merits of a case. The plaintiff also argued that he should not be held to the settlement agreement because he never formally agreed to its terms. Because no formal record was taken of the settlement conference or the terms of the agreement, the court also rejected this argument, stating that since neither party requested an official record be kept of the proceedings, they must rely on the recollection of the judge facilitating the settlement conference.

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



Illinois Federal District Court Launches Early Settlement Conference Program

The U.S. District Court for the Northern District of Illinois recently launched an early settlement conference program. Through the program, counsel for both parties request a pre-trial settlement conference after conferring with each other about settlement. The presiding judge may also direct plaintiff's counsel to confer with defense counsel to determine if a settlement conference would aid settlement. Conferences will be held with the assigned district or magistrate judge. The court has conducted a judicial settlement conference program since 1991; this new program is different in that it specifically encourages parties to participate in a settlement conference early in the litigation process.

To read a press release from the court about the program, click [here](#). [Magistrate Judge Morton Denlow](#), identified in the press release as one of the judges involved in the development of the program, is a member of the RSI Executive Committee.



Center for American Progress Calls on Federal Government to Support Mandatory Foreclosure Mediation

The Center for American Progress (CAP) released a report in June calling for the federal government to play an active role in promoting mandatory foreclosure mediation programs across the country. In the report, *It's Time We Talked*:

Mandatory Mediation in the Foreclosure Process, CAP reviews the foreclosure mediation programs currently in place in Connecticut, Pennsylvania, Florida and California. Based on its analysis of these programs, CAP then offers a list of best practices for foreclosure mediation. CAP encourages the federal government to direct more funding toward mandatory mediation programs at the state and local levels, and to require mediation for all federally-backed mortgages facing foreclosure, among other suggestions. CAP is a liberal think-tank in Washington, D.C.

Click [here](#) to access the full report.



Foreclosure Mediation Legislative Review

Previous editions of *Court ADR Connection* have highlighted proposed legislation to create foreclosure mediation programs in multiple states. Here are updates on those bills, and others:

Connecticut: Starting July 1, the statewide foreclosure mediation [program](#) that began last year will be mandatory for all eligible foreclosure cases. State legislators opted to pass legislation to require mediation when an initial evaluation of the foreclosure mediation program showed that 60% of mediated cases reached settlement, but only 34% of eligible cases went to mediation. According to the [Connecticut Law Tribune](#), this change will require the state court system to double its staff to handle the increased mediation caseload.

Florida: A [bill](#) filed in the state legislature that would have established a statewide mandatory foreclosure mediation program was withdrawn from consideration in early May. However, the [Task Force on Residential Mortgage Foreclosure Cases](#), established by the Supreme Court in March, continues its work to develop recommendations for a statewide, coordinated response to the state's foreclosure crisis. In its [interim report](#), the task force announced that it would design an ADR foreclosure program for consideration by the Supreme Court. The task force's final report is due in August.

Indiana: Recently enacted [legislation](#) gives borrowers facing foreclosure the option of participating in a settlement conference. Lenders are required to notify borrowers about the settlement conference program. If a borrower chooses to participate in the program, both parties must participate in good faith.

Maine: A new [law](#) establishing a statewide foreclosure mediation program passed on June 15, and will apply to all foreclosure cases filed after January 10, 2010. Lenders will be required to notify homeowners of the mediation program. If a homeowner opts for mediation, all parties must participate in good faith. Cases will be mediated by court-assigned mediators who are trained in mediation and are familiar with mortgage assistance programs and other community resources.

Minnesota: Governor Tim Pawlenty vetoed [legislation](#) in May that would have given parties the option of mediating foreclosure cases. The bill required lenders to notify homeowners of their right to mediate. If homeowners requested mediation, lenders would have been required to participate. According to the Minnesota House of Representatives [web site](#), Governor Pawlenty vetoed the bill because it did not incorporate his recommendations on how the program should be administered and funded.

Nevada: [Legislation](#) to create a statewide foreclosure mediation program went into effect July 1. If either the lender or borrower requests mediation,

participation is mandatory for both parties. Cases will be mediated by senior justices, judges or other mediators as determined by the court. A mediation fee of no more than \$400 will be shared by the lender and borrower. For more information about the program, visit the Nevada Supreme Court's [web site](#).

New Mexico: [Proposed legislation](#) that would have authorized courts to order foreclosure cases to ADR died in committee in March.

Research You Might Have Missed

Evaluation of the Small Claims Online Dispute Resolution Pilot

Two courts in England tested online mediation to resolve 25 small claims cases. Those parties who were willing to try mediation were given the option of mediating face-to-face, by telephone, or online. Two mediators were responsible for all online mediations, which were conducted using TheMediationRoom.com. A study of these 25 mediations was undertaken by Marc Mason and Avrom Sherr, the results of which were presented in *Evaluation of the Small Claims Online Dispute Resolution Pilot* (September 2008).

The online mediations resulted in settlement in 48% of the cases, which was similar to the settlement rate for the face-to-face and telephone mediations, but lower than other small claims mediation programs have reported. Mediators and parties were surveyed post-mediation about their experiences with the process. Mediators reported using more than one method of communication – generally email or telephone – to complete the mediation in most cases. The mediators attributed this to difficulties in getting responses from the defendants, as well as to technical difficulties. Because of this and because they lacked the ability to judge non-verbal cues, the mediators said they would have preferred using telephone or email in all but four cases.

The 18 parties who responded to the questionnaire were less frustrated with their experience than the mediators. They expressed fewer issues with the technology, with 47% saying the technology was easy to use. However, they were not overwhelmingly satisfied with the process or the fairness of the outcome. Only 53% were satisfied with their experience and only 23% felt the outcome was fair. Responses to both satisfaction and fairness of outcome were more positive for those who settled their case. The small number of responses limits the reliability of these findings.

Click [here](#) to read the full study.

On CourtADR.org

Tip of the Month: Beyond the Keyword Search

When you just need to find general resources on mediation, doing a simple keyword search on the [Research Library Database](#) at CourtADR.org will give you what you need. But what about when you're looking for articles about civil mediation programs in Florida? Or court rules about child custody mediation programs in California? In these instances, you can find the resources you need quickly and easily by narrowing your search. By clicking on "Additional Options" on the database search page, you can access search fields that will let you specify the type of resource, court case and ADR process you are looking for. You can also narrow your search to specific court types or geographic areas. These

options allow you to design highly detailed searches, saving you time and providing you with only the most relevant and useful resources to fit your needs.

Resolution Systems Institute

11 E Adams Street · Ste 500 · Chicago, IL 60603

P 312.922.6475 · F 312.922.6463

[visit us online](#) | [send us an email](#)

Court ADR Connection made possible by the JAMS Foundation



[Subscribe](#) | [Forward](#) | [Unsubscribe](#)