



June 2009

Court ADR News touches on a wide variety of topics this month. First, budget constraints in Kansas City, Missouri, led city officials to eliminate its mediation and dispute resolution services program. The program provided free mediation services for hundreds of disputes each year, including cases referred by the local court.

Elsewhere, new ADR programs were announced. In Pennsylvania, the Luzerne County Court of Common Pleas started an ADR program in partnership with a private mediation firm, and the Marquette University Law School is preparing to start a court-based mortgage foreclosure mediation program in July. Finally, in legislative news, Massachusetts legislators are considering a bill to a statewide foreclosure mediation program.

The New Research section this month reviews a new book by Tamara Relis, *Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs, and Gendered Parties*. Through interviews of lawyers, parties and mediators involved in medical malpractice mediation cases, Relis examines the different perceptions of mediation held by lawyers and parties, and how those perceptions affect the mediation process.

In this issue...

Court ADR News

- » [Kansas City, Missouri, Eliminates Mediation and Dispute Resolution Services](#)
- » [Pennsylvania County Court Launches ADR Program with Private Firm](#)
- » [Massachusetts Legislature Considering Foreclosure Mediation Bill](#)
- » [Marquette University Law School Plans Mortgage Foreclosure Mediation Program](#)

New Research

- » [*Perceptions in Litigation and Mediation: New Insights Inform Current Debate*](#)

Court ADR News

Kansas City, Missouri, Eliminates Mediation and Dispute Resolution Services

Kansas City, Missouri, officials recently ended the city's Mediation and Dispute Resolution Services program due to budget constraints. According to *Missouri Lawyers Weekly*, the program mediated cases for free and handled up to 800 disputes each year, including cases referred by the local courts. In the *Missouri Lawyers Weekly* article, other mediation service providers in Kansas City predicted that the loss of the program would increase demand for their services,

which are already at capacity.

To access the *Missouri Lawyers Weekly* click [here](#) (subscription required). For more information about the Kansas City program, click [here](#). Read the city's press release about the cancellation of the program [here](#).



Pennsylvania County Court Launches ADR Program with Private Firm

Faced with a backlog of cases after two judges pled guilty to federal corruption charges, the Luzerne County Court of Common Pleas partnered with a local mediation firm in April to launch an alternative dispute resolution program. According to *The Citizens' Voice*, a local newspaper, members of the firm, ADR Options Inc., will conduct settlement and conciliation conferences for civil cases and may also serve as special trial masters or judges pro tempore. The program will be managed by the deputy court administrator.

To read *The Citizens' Voice* article about the program, click [here](#).



Massachusetts Legislature Considering Foreclosure Mediation Bill

The Massachusetts legislature is considering a bill that would establish a statewide mortgage foreclosure mediation program. Under the proposed legislation, courts would be required to inform borrowers about the program. When a borrower requests mediation, the lender is required to participate. Cases would be mediated by court employees who are trained in mediation and "relevant aspects of the law," and are familiar with community resources and assistance programs in the state. The foreclosure process would be suspended during mediation, which would begin no more than 10 days after a borrower's request and last no longer than 35 days.

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



Marquette University Law School Plans Mortgage Foreclosure Mediation Program

The Marquette University Law School will begin offering mortgage foreclosure mediation services at the Milwaukee County Courthouse in July, according to *The Business Journal of Milwaukee*. The Milwaukee Foreclosure Mediation Program will be offered to homeowners and lenders involved in foreclosures of owner-occupied properties and will be voluntary. The majority of the funding for the program, more than \$300,000, is coming from a successful lawsuit that the Wisconsin Attorney General's Office brought against Countrywide Financial Corporation, accusing them of misrepresenting the benefits of their products and services. As part of the settlement, Countrywide agreed to pay \$1.6 million for "foreclosure relief benefits."

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

New Research

Perceptions in Litigation and Mediation: New Insights Inform Current Debate

When someone brings a dispute to a lawyer, that dispute is transformed into a legal claim narrowly focused on outcomes available within the legal system. Generally, these involve only monetary compensation. One of mediation's roles is to reopen the dispute to deal with and resolve issues the legal system cannot, such as a person's need for their story and emotions to be acknowledged by the other side. This is not what happens, argues Tamara Relis in *Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs, and Gendered Parties* (Cambridge University Press, 2009). Instead, the lawyers maintain control of the mediation, keeping it focused on tactical issues and negotiation of monetary settlement, to the detriment of the parties. This central finding of the study provides ample support to the argument that lawyer control of the mediation process erodes both procedural justice and many of the benefits of mediation.

Relis followed 64 medical malpractice cases that entered mandatory or voluntary mediation in Ontario, interviewing the lawyers and parties before and after mediation about plaintiff and lawyer goals for litigation and mediation, hopes for mediation, and thoughts about the mediation. Mediators were interviewed as well. Through those interviews, she concludes that lawyers and parties inhabit "parallel worlds," with the lawyers' needs and perspectives of the dispute being very different from those of the parties. These parallel worlds survive despite mediation, with lawyers viewing the mediation from a tactical legal perspective, and the parties maintaining their perspective of it in "extralegal" terms (such as the need for admission of fault, for more information, and for the other side to see the human face behind the dispute).

Relis draws two other conclusions from her research that pose caveats to her parallel worlds theory. One is that exposure to mediation leads lawyers to somewhat reconceptualize the dispute, incorporating extralegal concepts, or at least extralegal language, into their perspective of the mediation and the plaintiffs' needs. The other is that gender plays a role in how the various actors approach and experience mediation, with women being more influenced by and aware of extralegal aspects of the mediation, particularly the emotions involved. The evidence for these two conclusions is not as strong as for the parallel worlds theory, however.

To read further, click [here](#).

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