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COURT ADR CONNECTION

The eNewsletter of **Resolution Systems Institute**

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Court ADR News

Illinois Issues New Foreclosure Mediation Rule

The Supreme Court of Illinois has enacted **Rule 99.1,** which explains the requirements for judicial districts that enact mortgage foreclosure mediation programs. The rule expands on **Rule 99,** a description of the local rule requirements to enact all mediation programs. It went into effect on March 1, 2013.

Because the needs of foreclosure mediation programs vary widely across the state, the new rule blends required elements with some flexibility to accommodate different conditions. Illinois circuits proposing new programs must demonstrate their plan's feasibility and sustainability. All program proposals must address homeowner access to HUD-certified housing counseling and pro bono legal representation, although programs with constraints on these resources may still be approved.

Southern District of Ohio Adopts ADR Rule Supplement

The US District Court for the Southern District of Ohio has adopted **Supplemental Procedures for Alternative Dispute Resolution,** effective February

21, 2013. The supplement enacts district-wide rules for many ADR processes including attorney-based mediation, judicial-based mediation, Settlement Week and summary jury trials. While the two Divisions of the District had specific program rules, the supplement greatly expands the former scope of ADR rules for the entire Southern District.

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National Association for Community Mediation (NAFCM) Seeks Executive Director

NAFCM, a nonprofit professional association that supports community-based mediation and offers services such as a large clearinghouse of mediation resources, has announced a search for an Executive Director. The telecommuting position, which may be filled by one full-time or two part-time candidates, involves fundraising, implementing member programming, developing partnerships across the field, and day-to-day operations. To apply, please email a resume and cover letter to ExecSearch@NAFCM.org by March 8, 2013.

New Research

Professional Rules of Conduct Provide the Necessary Framework for Lawyer Conflict in Mediation

Professional rules of conduct for lawyers aren't directly applied to mediation in the US, Australia or the UK. Instead they have been extended to mediation without specific provisions for attorney conduct in the process. In "An evaluation of the rules of conduct governing legal representatives in mediation: Challenges for rule drafters and a response to Jim Mason" (January 6, 2013), Bobbette Wolski looks at the rules of conduct governing lawyers in the three countries with an eye to whether they are sufficient for the purpose of governing lawyer behavior in mediation. She concludes that they are and argues that developing rules specific to mediation would create too rigid a framework for lawyers to make appropriate decisions.

Wolski notes that the rules create separate duties to the court, the lawyers' clients and to third parties, such as opposing parties. The first question when looking at the three classes of responsibility is, according to her, whether mediators are considered to be the court (i.e., as a judge) or a third party. Her examination of the ABA Model Rules of Professional Conduct leads her to conclude that in the US, the mediator is considered to be a third party who is owed honesty, courtesy and fairness, but not candor. Further, honesty is limited to questions of material law or fact. This has led to calls to change the duties lawyers owe mediators and opposing parties in mediation, including requiring good faith participation and greater honesty and candor in mediation. She advises against this, stating that although minor tweaks may be necessary, lawyers' ethical decisions in mediation must necessarily be placed within the context of the specific case and mediation. Therefore, creating a rigid framework would make it difficult for them to make those decisions. The current rules provide adequate obligations for lawyer conduct without endangering the integrity of the mediation process.

From *Just Court ADR* Blog

A Court Clash on Confidentiality and Mediation Policy

"The Indiana Supreme Court recently declared that the state's judicial policy supports "robust confidentiality" in mediation. In doing so, the court vacated a Court of Appeals ruling that would have expanded the circumstances in which confidentiality could be broken to obtain evidence. The two rulings reflect a strong contrast in interpretations of ADR rules and judicial policy toward mediation." Read the rest of this post by Mary Novak >>

What Does the Loss of Court ADR Mean for Access to Justice?

"In the past few years, we've seen court ADR programs being cut around the country as courts and legislatures balance their dwindling budgets....[T]he closures throughout the country, combined with cuts to other court services (as they would be in Los Angeles County), bring up two causes of concern: privatization of justice and access to justice." Read the rest of this post by Jennifer Shack >>

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