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RESOURCES / STUDY / INNOVATION FOR COURT ADR



COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

May 2009

RSI introduces a valuable new resource guide on foreclosure mediation this month. This new section on CourtADR.org gives an overview of the many variables that need to be taken into account when developing foreclosure mediation programs. It also highlights the most useful resources currently available for this growing movement in the field.

The Court ADR News section includes a California appellate court decision ruling that parties in settlement conferences are not required to participate in good faith. Plans for a foreclosure mediation program in Nevada are also highlighted. The Research You Might Have Missed section features a study of five family courts in Ontario that included a review of how the courts' mediation services are being used

Finally, the best way for Resolution Systems Institute to know *Court ADR Connection* is meeting the needs of its audience is to ask subscribers. Therefore, all subscribers are invited to participate in RSI's Resource Center and Publications Survey this month. It should only take a few minutes to complete, and everyone's feedback will help improve RSI's services. Click [here](#) to take the survey, or see more information about it below.

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RSI Survey

RSI Resource Center and Publications Survey

RSI invites all *Court ADR Connection* subscribers to participate in the [Resource Center and Publications Survey](#) this month. The survey covers RSI's two court ADR newsletters, [Court ADR Connection](#) and [Analyzing the Alternatives](#), and the Court ADR Resource Center, at [CourtADR.org](#). **Subscribers will be asked to**

provide feedback only on the resources they use. Most people should be able to complete the survey in just a few minutes.

RSI will use the feedback and suggestions to enhance services for the court ADR community. For answers to any questions about the survey, please contact RSI at info@aboutrsi.org.

Click [here](#) to access the survey. Everyone's participation is appreciated.

Court ADR News

California Appellate Court Holds Good Faith Not Required at Settlement Conferences

A California Appellate Court overturned sanctions imposed by a trial judge against a defendant's insurance company in a personal injury case. The Los Angeles County Superior Court judge had imposed sanctions against the insurance company, arguing that their representative had not participated in good faith at a settlement conference for the case. The appellate court ruled that, while parties to a settlement conference are required to submit good faith settlement offers prior to the conference, there is no rule or statute requiring them to participate in good faith at the conference. Furthermore, the court also held that existing court rules only allow for sanctions against parties and their counsel, and not insurance representatives.

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



Nevada Chief Justice Reveals Plans for State Foreclosure Mediation Program

Speaking at a legislative committee hearing on proposed legislation to establish a statewide foreclosure mediation program, the Nevada Chief Justice said the program could begin in August, and that over 300 lawyers had already signed up to serve as volunteer mediators. According to the *Las Vegas Review-Journal*, Chief Justice Jim Hardesty said these volunteers could be trained during June and July. He said borrowers would be required to pay a \$50 filing fee to request a mediation hearing, and borrowers and lenders would share the \$340 fee for mediation. He expects as many as 3,000 cases to be mediated each month.

For the *Las Vegas Review-Journal* article, click [here](#). For more information about the Nevada foreclosure mediation bill, click [here](#).

Research You Might Have Missed

Recapturing and Renewing the Vision of the Family Court

Five family courts in Ontario were examined in "[Recapturing and Renewing the Vision of the Family Court](#)," a 2007 study that reviewed the ancillary services of the court (mediation, family law information centers and parenting information sessions) as well as the courts' operations. In these courts, all matters relating to a particular family are heard by the same judge.

Mediation in Ontario family courts is offered both on- and off-site by a contracted service provider, with the option as well for referral to a mediator on the court's roster. Cases are referred to no-fee, on-site mediation for quick resolution of

particular issues at the time the parties are in court. Off-site mediations are longer and deal with multiple or more complex issues. The study found that most off-site mediations were self-referred and occurred before any court action, thus taking place outside the court system. Mediation was used in very few cases that were heard by the court.

Through the online survey, the researchers found that the judges were much more likely to believe mediations were effective and beneficial to the parties than lawyers, counselors or individuals working with children. Some of this difference was thought to be due to counselors and those working with children being less knowledgeable about the services offered by the court, including the existence of a court roster of mediators.

Interview and survey responses indicated that judges and lawyers were supportive of mediation, and that the two-tiered system of on-site and off-site mediation worked well. The responses, however, also demonstrated the need for more discernable and concrete objectives for the mediation services, and for better and more uniform data collection and analysis. Further, there should be more stakeholder input in the selection of the service provider: because stakeholders did not have influence over the selection of service provider and because they perceived a lack of accountability by those service providers, in some courts they were found to have no confidence in the mediation services. The researchers offer a number of recommendations for improvement based on the study.

On CourtADR.org

New: Foreclosure Mediation Special Topics Page

In response to the growing use of mediation to address the nationwide foreclosure crisis, RSI has developed a new resource guide to assist those involved in creating these new programs. The [Foreclosure Mediation Special Topics Page](#) reviews the main questions courts consider when developing programs for foreclosure cases, such as which stakeholders should be involved in the process, how cases should be referred to mediation, and how to educate homeowners facing foreclosure about the program and their options. The resource guide also identifies some of the best resources available on foreclosure mediation and provides information about existing state programs.

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