



COURT ADR

the eNewsletter of **Resolution Systems Institute**

CONNECTION

COURT ADR NEWS

California Commission Addresses Controversial Confidentiality Revision

In August, the California Law Revision Commission proposed drafting legislation to carve out an exception to mediation confidentiality that addresses attorney misconduct during mediation sessions. Under Section 1119 of the [California Evidence Code](#), no admissions or writings made during or in connection to the mediation process are admissible or subject to discovery, and any settlement communications are deemed confidential. The Commission's proposal put forth several tentative changes to this code — available in the Exhibit attached to the [Commission's October 2 memorandum](#) — to address impropriety that they say “may on occasion impede the pursuit of justice in a particular case.” A significant contingent of commentators, led by the [California Dispute Resolution Council](#), submitted their concerns that any modification to the confidentiality statute could undermine the mediation process, dissuade potential participants from engaging in ADR and lead to an increase in litigation. As of the publication date of this article, the [Commission's Chief Deputy Counsel Barbara Gaal](#) is soliciting comments to address the ongoing issues detailed in the October 2 memorandum.

Apple, Samsung Agree to Court-Supervised Mediation of Patent Dispute

[Apple and Samsung are turning to court-supervised mediation](#) in an effort to settle their longstanding and high-profile patent dispute. The tech giants submitted a joint ADR statement with the [United States District Court for the Northern District of California](#), and will attempt to resolve their dispute by November 15, with Magistrate Judge Joseph Spero acting as their neutral. While the suit has been ongoing since 2012, and has already seen two failed attempts at mediation, this effort marks the first [since the two companies agreed last summer to end all their patent disputes outside the US](#).

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RSI is a non-profit organization that strengthens justice by enhancing court ADR systems through expertise in program development, research and resources.

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NEWS & UPDATES

RSI's Lake County Foreclosure Mediation Program Continues to Make Headlines

News of the RSI-administered Lake County Residential Real Estate Mortgage Foreclosure Mediation Program's impact continues to spread. Recently, the 19th Judicial Circuit Court of Illinois program was the subject of a [news release by the Court](#), as well as an article in Chicagoland publication [Daily Herald](#).

FROM OUR BLOG

[What Is Court ADR? Clearing Up Some Misconceptions](#)

Shanghai Launches Online Dispute Resolution

On September 8, a Shanghai district court became the **first in China's largest city to utilize online dispute resolution**, or ODR. The platform was built in response to a rise in civil litigation involving foreign parties, which made timely resolution of cases increasingly difficult. Officials hope the new system will allow parties to submit evidence and materials easily and to participate fully in the legal system without having to make an in-person appearance. The People's Court of Shanghai Pudong New District will now employ ODR in matters "with clear facts, where the rights and obligations of the parties involved are unambiguous and in cases that do not include a lot of evidence, such as disputes over loans or labor contract." In one of the first ODR utilizations, a divorced couple was able to participate in a video conference and resolve a custody dispute over their child.

Hawaii Attorney General Rejects Protestors' Request for Ho'oponopono

As originally reported in the **August 2015 edition of Court ADR Connection**, prosecutors had expressed support for a proposal to employ a traditional Hawaiian conflict resolution method in resolving charges pressed against a group of protestors who had halted construction of a telescope atop Mauna Kea, a mountain sacred to native Hawaiians. That option, however, has been taken off the table as **state officials announced they have decided not to participate**, citing concerns about the complexity of the case. "There are now cases related to Mauna Kea pending in multiple courts in multiple jurisdictions, enforcement actions have been taken and challenged, and additional individuals and groups with no connection to the defendants who first requested [Ho'oponopono] have asked to engage in a dialogue regarding stewardship of the mountain," a spokesperson for the Hawaii Attorney General wrote in a recent email. "In light of these continuing changes, proceeding with [Ho'oponopono] for these individuals no longer seemed like a constructive option." The parties plan to continue exploring settlement options in advance of a December 3 court date.

Florida Amends Policy for Bankruptcy Mediation

In an effort to standardize procedures across all its divisions, the U.S. Bankruptcy Court for the Middle District of Florida, comprising Orlando, Tampa, Jacksonville and Fort Myers, has **adopted new procedures which will impact their mortgage modification mediation program**. Effective as of September 2015, **Administrative Order FLMB-2015-7** makes changes to post-mediation procedures to enhance efficiency and make bankruptcy practice more manageable for creditors and practitioners with cases throughout the District.

RSI Director of Research Jennifer Shack combats misinformation about what court ADR actually looks like.

QUICK TIPS

Get LinkedIn with RSI

Our LinkedIn Group is always playing host to great discussions and informative resources, and now has over 800 members, comprising court professionals, neutrals, attorneys and other ADR-minded individuals. Are you one of them? **Join today** to engage colleagues across the country and around the world about pressing issues in ADR.

HOW CAN WE HELP?

How Can We Help You? RSI offers a clearinghouse of information on CourtADR.org and also responds to requests for information. Do you have a question about court ADR?

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THIS MONTH AT RSI

The Changing Color of Foreclosure Mediation

With the fall season upon us, RSI is embracing the autumnal spirit and focusing on turning a new leaf—or three! In particular, as we prepare to enter another year of administering our foreclosure mediation programs, we've begun to think about some of the takeaways from our work and what lessons we can offer to court ADR programs throughout the country. To understand the work we've been doing in collecting data for and evaluating these programs, our recently published [Statistical Report](#), covering the period January 1, 2015 through June 30, 2015, is an excellent place to start, as is our [Six Programs, Six Models](#) study.

The research we've done has been instrumental for the six programs funded by the Office of the Illinois Attorney General. It has provided insights that have helped us to modify court rules to address specific issues, such as refining the entry process to encourage participation, or changing timelines to give parties enough time to submit paperwork. Our goal now is to translate this work into guidance you can use to improve the courts in which you operate.

We'll be tackling this information in a number of ways. Our Foreclosure Mediations Specials Topics page will soon be receiving a substantial overhaul that will showcase some new resources for program development and management. Our [Director of Research Jennifer Shack](#) and [Director of Foreclosure Mediation Programs Hanna Kaufman](#) are collaborating on a series of "Lessons Learned" articles aimed at providing insights to a number of different stakeholders. And RSI is continuously exploring how we can get involved with other programs to implement the principles of system design and evaluation we have advocated for since our inception. If you have a program that can use our services, [we'd love to hear from you!](#)

RESEARCH

Settlement More Likely if Mediation is Earlier

by Jennifer Shack, Director of Research

Mediation early in a case is more likely to lead to settlement before the first court session than mediation later on, according to research of court mediation in Slovenia. In their paper, "Litigation and the Timing of Settlement: Evidence from Commercial Disputes," researchers Peter Grajzl and Katarina Zajc examine 662 tort and contract cases using survival analysis and Cox regression to determine what factors lead to settlement.

In their version of survival analysis, Grajzl and Zajc look at whether cases settle between mediation/no mediation and the next court session. Mediation in Slovenia is voluntary and takes place prior to the first court session. The timing of first sessions varied widely, with 29% occurring within 300 days of filing and 10% occurring 900 days or more after filing. Of the 662 cases examined, 80 were mediated.

Grajzl and Zajc found that when mediation took place at 300 days from filing, the case had a 170% greater chance of settlement before the first court session than cases that didn't mediate, while a case mediated at 536 days from filing had a 70% greater chance of settlement. On the other hand, if the mediation took place at 800 days or more from filing, the probability of settlement was lower than if the parties did not participate in mediation.



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