



COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

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Welcome to Resolution Systems Institute's October *Court ADR Connection*! This edition provides an overview of two recently published surveys on parenting coordination and cooperative practice, as well as the Minnesota Court of Appeals' new family mediation pilot program. The edition also highlights resource guides on CourtADR.org that explain the "nuts and bolts" of creating rules and forms for court ADR programs.

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Court ADR News

Minnesota Court of Appeals Launches Family Mediation Pilot Program

The Minnesota Court of Appeals began a pilot mediation program for family law appeals this month. According to an article about the program in *Minnesota Lawyer*, all family law appeals will be sent to mediation, and mediation costs will be paid by the parties. In its August 29 order establishing the program, the Supreme Court explained that the goal of the project is to "facilitate an efficient, amicable, and cost-effective model for resolving family law appeals."

To read the Supreme Court's order, click [here](#).

Research Update

Surveys Address Parenting Coordination, Cooperative Practice

Parenting coordination and cooperative practice are two relatively recent additions to the ADR landscape that have been little researched. Each has been the subject of newly published surveys of practitioners.

The results of the survey of parenting coordinators (PCs) was published in the latest edition of *Family Court Review*. In "Parenting Coordination (PC) Practice:

A Survey of Experienced Professionals" by Kyle Kirkland and Matthew Sullivan, 54 of 100 PCs responded to a questionnaire about their practice. The PCs were either members of the Association of Family and Conciliation Courts or attended the AFCC conference in 2006. They represented a variety of professional backgrounds, including psychologists, social workers, licensed professional counselors, and attorneys. Six were bachelor's level professionals.

The survey found that almost all respondents do PC work only through a court order. Further, almost all had the parents sign a specific PC agreement outlining the role and authority of the PC, among other items. PCs do not as a rule use psychological assessments, seeing their role as implementing a parenting agreement, not evaluating the parents. The PCs note that there are some couples for which PC is not appropriate. These generally are those who have a cycle of violence and conflict and do not have an interest in improving their parenting relationship. Perhaps because the practice is still young, Kirkland and Sullivan hypothesize, only six respondents had formal complaints filed against them. The authors end by recommending research on the effectiveness of PC.

In a similar survey, members of the Divorce Cooperation Institute (DCI) in Wisconsin responded to questions either in semi-structured interviews or in on-line questionnaires. Three members of the Collaborative Family Law Conference of Wisconsin (CFLCW) were also interviewed. In "[Practical Insights from an Empirical Study of Cooperative Lawyers in Wisconsin](#)," published in the 2008 edition of the *Journal of Dispute Resolution*, John Lande outlines the results of the survey and offers recommendations to policy leaders for improving the practice.

The survey covered a wide range of topics, including the appropriateness of Cooperative Practice for particular cases, the use of written participation agreements, the duty to disclose information, and differences between litigation, Collaborative Practice, and Cooperative Practice. (Definitions of Collaborative Law and Cooperative Practice are available [here](#).)

One of the main points taken from the survey was that written participation agreements were seldom used. Although respondents liked the flexibility of the Cooperative process, they felt the use of participation agreements would clarify the goals, expectations, and consequences for both parties and attorneys. Lande suggests the use of common standard phrasing as well to help to keep the practice and expectations more consistent across practitioners and cases.

Further clarification also is needed on the duty to disclose information to the other party, says Lande. In response to a series of questions, respondents showed little consensus as to whether there was a duty to disclose in all but one scenario presented. Lande suggests Cooperative practitioners "develop at least some general norms about expectations of disclosure of information" to create a consensus.

Lande also has feedback and recommendations for policy makers in the area of Collaborative Law. Some Cooperative practitioners found fault in Collaborative Law in that the disqualification agreement causes undue pressure to settle, while also leading to the lawyers "abandoning" their clients if agreement is not reached. Collaborative Law was also seen as being too formalized and too cumbersome. As the National Conference of Commissioners of Uniform State Laws (NCCUSL) works to draft a Uniform Collaborative Law Act, it should consider "including special provisions regarding parties' informed consent considering the foreseeable risks of the disqualification agreement."

On CourtADR.org

Tip of the Month: The Nuts and Bolts of Court ADR Rules and Forms

Two of the key resource guides in CourtADR.org's [Instruction Manual](#) are [Court Rule Nuts & Bolts](#) and [Court Form Nuts & Bolts](#). These sections provide valuable guidance for those involved in designing or improving court ADR programs, with detailed descriptions of what topics should be covered in court rules and forms, along with examples of good rules and forms currently in use. The Court Rule Nuts & Bolts section was developed through a survey of over 1,000 court rules from around the country. RSI identified 16 rules to serve as models for various types of court ADR, including civil and family mediation. The Court Forms Nuts & Bolts section includes forms for every step in the mediation process, with examples for both state and federal courts. Both the rules and the forms sections discuss the pros and cons of particular phrases and clauses in the examples presented. Creating a court ADR program can be a daunting task; together, these two sections offer a comprehensive guide to ensuring that the foundation of the program is strong.

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