



October 2010

This edition opens with RSI's announcement of the recipient of its 2010 Service to the Community Award: Judge Patricia Martin, the presiding judge of the Cook County Circuit Court Child Protection Division. RSI recognizes Judge Martin this year for her work with the division's mediation program. She launched the program in 2001, and has been dedicated to improving and expanding it since then.

This month's Court ADR News section reports on the recent release by the Association for Conflict Resolution of a discussion draft of model standards for mediator certification. The section also covers a Pennsylvania summit on foreclosure mediation being planned by the state's Supreme Court Chief Justice to encourage county courts to establish more foreclosure mediation programs.

The New Research section features a working paper on how the probability of settlement correlates with a plaintiff's perception of the mediation and his or her representation by an attorney. The researchers found that settlement was more likely when the plaintiff felt that he or she had an opportunity to express opinions and that the mediator was neutral and helped clarify needs. The probability of settlement increased substantially when the plaintiff had legal representation.

The Recommended Resources for this month include court rules from the **Court Rule Nuts & Bolts** section of the **CourtADR.org Instruction Manual**. Maryland's ADR rule, North Carolina's uniform rule on child custody mediation and Alabama's rules on appellate mediation are highlighted. Finally, the From *Just Court ADR* section includes blog posts on recent media coverage of the Nevada foreclosure mediation program, as well as one reflecting on the ACR and ABA Section of Dispute Resolution national conferences.

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RSI Update

RSI Honors Founder of Cook County Child Protection Mediation Program

RSI is proud to award its 2010 Service to the Community Award to Cook County Circuit Court Child Protection Division Presiding Judge Patricia Martin. RSI presents this award to individuals who have substantially and meaningfully furthered and enhanced court-annexed ADR systems in Illinois. Judge Martin has earned this distinction by establishing and supporting the only child protection mediation program in the state. She began the program as a six-month pilot in 2001 and has worked to expand it ever since. A recent RSI evaluation of the program, requested by Judge Martin and the program's director, showed that mediation was beneficial to families. Judge Martin continued to build on the success of the program this year by making mediation mandatory for every case in which a child is taken into protective custody. Between January and August of this year, 420 families participated in the program.

Click [here](#) to read RSI's press release about the award. Click [here](#) for a list of past award recipients.

Court ADR News

Association for Conflict Resolution Releases Draft Model Standards for Mediator Certification

The Association for Conflict Resolution released a discussion draft in September of model standards for mediator certification. The draft standards were developed by ACR's Certification Committee, and they provide basic guidelines for performance-based certification of mediators. The standards discuss the criteria performance-based assessment processes should meet, such as transparency, freedom from conflict of interest, and respect for different approaches to mediation. They also review training and degree requirements for certification candidates, as well as processes for maintaining and revoking certification.

In an interview with *Court ADR Connection*, ACR President Lou Gieszl said that ACR is trying to collect as much feedback about the draft standards as possible. He said the Certification Committee would gather comments through November and then determine the next step in the development process. Depending on the comments, the committee may simply revise the standards, or could call for another process for collecting feedback. "We really want to be sure this is something that reflects everybody's best thinking," he said.

Click [here](#) to read the full discussion draft.



Pennsylvania Chief Justice Plans Summit on Foreclosure Mediation

At the beginning of September, the Chief Justice of the Pennsylvania Supreme Court announced plans for a state summit on foreclosure mediation programs. According to the *Pennsylvania Independent*, eight county courts in the state currently offer foreclosure mediation, and Chief Justice Ronald D. Castille encouraged other courts to develop programs as well. He called on all County Courts of Common Pleas to send a representative to the summit, which will be held in Harrisburg, Pennsylvania, on October 14. The event will cover current foreclosure rates in the state and review the existing foreclosure mediation programs.

See the full [*Pennsylvania Independent* article](#) for more information.

New Research

Party Perception Asymmetry at Mediation and Its Influence on Settlement

A study of workplace discrimination mediations has found that the plaintiff's (charging party's) perception of the mediation and representation by an attorney are highly correlated with the probability of settlement. "[**Party Perception Asymmetry at Mediation and Its Influence on Settlement**](#)," a working paper by E. Patrick McDermott and Ruth Obar (2010), looked at responses to post-mediation questionnaires of 1,683 plaintiffs and 1,572 respondents in EEOC cases.

Regression analysis showed that the likelihood of settlement increased 37% when the plaintiff more strongly agreed that he or she had "full opportunity to express views." The likelihood of settlement was 38% higher when the plaintiff more strongly agreed that "the mediator helped clarify needs." An even greater effect was seen when the plaintiff more strongly agreed that the "mediator was neutral at the beginning." This was correlated with a 44% increase in the likelihood of settlement. When the plaintiff was represented by an attorney, the likelihood of settlement increased 92%.

McDermott and Obar see these findings as supporting Alan Lind's fairness heuristic theory. This theory contains two elements: the "fair process effect," in which one's perception of fairness of the process affects one's perception of distributive justice, and the "social context effect," in which one's perception of justice is affected by the social context in which outcomes are decided.

On CourtADR.org

Recommended Resources

» [Maryland Title 17](#)

This general ADR rule has a very strong mediator quality component. It is flexible in who can become a certified mediator, but has training and experience requirements that promote quality mediation. Further, it calls for mediators to be monitored periodically to ensure that they continue to be skilled in the process. Mediators must also abide by standards of conduct.

» [Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program](#)

Under this rule, parents must attend a pre-mediation orientation. Mediators are monitored periodically, and mediator trainers have strict qualifications.

» The rules also have strong ethical guidelines for mediators.

» **Alabama Rules of Appellate Mediation**

This rule calls for an experienced administrator to screen appropriate cases into the mediation program. Also important is that mediators in this program must adhere to a set of ethical guidelines.

From *Just Court ADR*

Two Views on Nevada Foreclosure Mediation Media Coverage

» **Good Faith, Revisited**

“An [article](#) in Sunday’s *New York Times* examined the shortcomings some see in Nevada’s foreclosure mediation program. The article focuses in part on complaints that the lenders are not participating in good faith. Mediators who have recommended sanctions against the lenders say they have been removed from the program’s roster. They state that they are bound by statute to make the recommendation. The court rule makes no mention of good faith participation, and the Court appears to be relying on the rule in its decision to bar the mediators from the roster. Leaving aside the question of which authority prevails, I’d like to examine the wisdom of requiring mediators to recommend sanctions against a party.” Click [here](#) to read the rest of this post by Jennifer Shack.

» **Learning from the Gamble on Foreclosure Mediation in Nevada**

“An [article](#) in Sunday’s *New York Times* purported to examine Nevada’s foreclosure mediation program, especially its shortcomings. The article, combined with a reading of the court rules for the program, points out continuing misunderstandings about mediation, such as what mediators do, the purpose of mediation, and how mediation functions. It also points up a glaring deficiency in many court mediation programs: not tracking the actual results of mediations.” Click [here](#) to read the rest of this post by Susan Yates.



ADR National Conference Reflections

“It has been a few years since I attended an Association for Conflict Resolution (ACR) national conference. With a limited budget, I have chosen to attend the ABA Dispute Resolution Section annual conference instead because there is more of a court ADR focus and I am much more involved with the ABA DR Section. But last week the ACR national conference was held in Chicago and I could afford to attend. Here are a few thoughts about the two conferences.” Click [here](#) to read the rest of this post by Susan Yates.

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