



# COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

September 2008

Welcome to Resolution System Institute's September *Court ADR Connection*! This edition features information on court rulings in New York and California addressing confidentiality in mediation, as well as new mediator qualification guidelines recently adopted in New York. Plus, don't miss the introduction to CourtADR.org's uniquely focused resources in the Special Topics Research Guides.

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## RSI Update

### RSI Releases Spring/Summer 2008 Newsletter

The latest edition of RSI's newsletter, *Analyzing the Alternatives*, is now available online. The issue includes a feature on a recent report from the American Bar Association Section of Dispute Resolution's Task Force on Improving Mediation Quality, which identified four essential practices mediators and lawyers could follow to improve the quality of their mediations. The newsletter also includes an update on RSI's Statewide Mediation Access Project, which seeks to improve access to mediation services for poor and low-income disputants in Illinois.

To read the Spring/Summer 2008 edition of *Analyzing the Alternatives*, click [here](#).

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## Court ADR News

### California Court Rules Chart Written in Mediation Not Confidential

*August 21* - A California appellate court ruled that a chart written and signed by parties during mediation constituted a settlement agreement and was eligible for

disclosure, overturning an earlier trial court decision. The chart did not include any language identifying it as a settlement agreement, but the Second Appellate District Court held that the parties and terms of obligation were sufficiently identified in the chart to establish it as an agreement. According to Section 1123 of the California Evidence Code, a settlement agreement reached in mediation is not protected from disclosure if it meets any of four specified conditions, including Subsection (c), which states, "all parties to the agreement expressly agree in writing, or orally ... to its disclosure." The court held that this requirement was satisfied by the confidentiality agreement signed by the parties prior to mediation, which stated that matters discussed in mediation would remain confidential and not be used in litigation "except as may be necessary to enforce any agreements resulting from the meeting."

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



## Top New York Court Upholds Subpoena of Mediator

*August 20* - In a unanimous decision, New York's highest court affirmed an appellate court ruling upholding the subpoena of a mediator to a deposition in a divorce case. Under the statute governing the disclosure of privileged material, Civil Practice Law and Rules §3101(b), only a person "entitled to assert privilege" may object to the disclosure of such material. According to the court's ruling, the mediator did not meet this standard, because both parties had waived mediation confidentiality – one by signing a specific waiver, and the other by seeking disclosure from the mediator. Therefore, the court held that qualified privilege for the mediator did not exist. In its ruling, the court specified that it was not addressing "what, if any, mediation confidentiality exists" under the statute.

For the full opinion, click [here](#). For the appellate court opinion, click [here](#).



## New York Courts Set Neutral Qualification Guidelines

*August 20* - The New York Chief Administrative Judge issued in June the state's first-ever qualification and training guidelines for neutrals involved in court-related ADR programs. The guidelines set prerequisites for appointment to the rosters of neutrals maintained by local district courts. To be eligible to serve as a neutral evaluator, a person must be a lawyer or judge with at least five years of experience in the subject area of the cases that will be referred to them, as well as six hours of training in neutral evaluation procedures and ethics. To serve as a mediator, a person must have 24 hours of training in basic mediation skills and 16 hours of training in the subject area of cases that will be referred to them, as well as recent experience mediating such cases. According to an article on Law.com, neutral qualifications had previously been set by administrative judges in the district courts.

For the full version of the New York guidelines, click [here](#). For the article on Law.com, click [here](#).

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## On CourtADR.org

### Tip of the Month: Special Topics Resource Guides

The Court ADR Resource Center is not just a clearinghouse of court ADR-related

resources, but also features sections designed to help visitors navigate its vast database. One set of navigational tools is the Special Topics Research Guides, which have been carefully crafted to meet the needs of specific actors working in the field. Through the [CourtADR.org homepage](http://CourtADR.org), visitors can access individual guides for judges, lawyers, neutrals, program administrators and the public. Each guide highlights recommended resources addressing the responsibilities and challenges a person in each role may face when working in court ADR. For example, judges will find information on writing court rules, evaluating programs, and incorporating mediation skills into their settlement work. The guide for neutrals features information on qualifications, training and ethics, while the one for the public provides basic ADR information and resources to help guide the selection of a neutral. Each guide also includes suggestions on how visitors can expand their research in other areas of the Resource Center. Using the guides, those working with court ADR can save time and energy, finding relevant resources on a wide variety of essential topics all in one convenient place.

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