RESOURCES / STUDY / INNOVATION FOR COURT ADR

COURT ADR CONNECTION

The eNewsletter of ***Resolution Systems Institute***

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This month the Court ADR News section reports on a new law in Connecticut that requires mediation for all medical malpractice cases. The section also includes a mid-year report from a Hawaii circuit court's foreclosure mediation pilot program.

The New Research section this month highlights a conference held by Hofstra University School of Law's Center for Children, Families and the Law on the Uniform Collaborative Law Act. The final report from that conference reviews the top issues currently facing the collaborative law field.

The Recommended Resources in the On CourtADR.org section include an article about mediator complaint systems, an arbitration guide for attorneys, and an article aimed at helping judges create appropriate ADR programs for their courts. Finally, the From *Just Court ADR* section highlights the two latest posts on RSI's blog: one discusses RSI's lessons learned from a failure in setting up a monitoring and evaluation system with a court, and another that that that asks whether courts need to rethink their approach to ADR as their needs evolve.

In this issue...

Court ADR News

Connecticut Law Mandates Mediation for Medical Malpractice Claims

A new Connecticut law that went into effect July 1 requires mediation for all medical malpractice lawsuits. During the first mediation session, cases will be mediated by the presiding judge. If a settlement isn't reached at the first session

and the parties agree to continue mediation, the presiding judge will appoint a new mediator, who must have been a member of the state bar for five years and have experience in medical malpractice litigation. Parties will share the costs of mediation.

To read the full law, click here.

Hawaii Foreclosure Mediation Pilot Program Reports Mid-Year Results

The Third Circuit Court of Hawaii reported mid-year statistics for its foreclosure mediation pilot program in the summer newsletter of the Hawaii Center for Alternative Dispute Resolution. The program was launched in November 2009, and is set to run until the end of October. Homeowners may request mediation through the program. When a request is submitted to the court, the case is scheduled for a judicial conference in which the judge determines whether to order mediation. As of June 30, the program had received 27 requests for mediation, and 18 judicial conferences had been held. Of those cases, 12 were ordered to mediation. Seven mediations had been held, with four cases reaching settlement.

Click here for more information about the program.

New Research

A Vision for Collaborative Practice: The Final Report of the Hofstra Collaborative Law Conference

In 2009, the National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Collaborative Law Act (UCLA). In response, Hofstra University School of Law's Center for Children, Families and the Law hosted a conference in conjunction with the Uniform Law Commission, the Association of Family and Conciliation Courts, the International Academy of Collaborative Professionals, and the American Bar Association Section of Dispute Resolution. The goal of the conference was to examine the "legal and practical issues" central to collaborative law in light of the UCLA. In "A Vision for Collaborative Practice: The Final Report of the Hofstra Collaborative Law Conference" (Hofstra Law Review, Vol 39, p 101, 2010), J. Herbie DiFonzo summarizes the findings of the conference.

During the conference, the participants identified the eight most important issues in the field:

- The first issue is the great responsibility collaborative lawyers have to ensure informed consent by their clients.
- Also important is an understanding of the circumstances under which a collaborative lawyer must withdraw from representation and how that withdrawal should be done.
- Disclosure of information is necessary to the process. The report lays out the disclosure requirements as well as the duty to maintain confidentiality unless the client gives consent.

- Collaborative law relies more on professionals in other areas than do other methods of dispute resolution. These other professionals should be treated as partners. The interdisciplinary aspect of the process also can give rise to ethical conflicts as those in one profession clash with those of another. This has yet to be worked out.

- The UCLA requires attorneys to screen their clients for domestic violence. It also precludes an attorney from going forward with the process if such screening demonstrates that his or her client has been abusive to the other party, unless certain conditions are met.

- The working group noted that the use of collaborative law is spreading to non-family disputes, although slowly. They discussed measures that could make the process more appealing to those involved in other types of civil disputes.

- Collaborative law is generally an expensive process, not open to those of limited means. This needs to be addressed. Several proposals were made to do so.

- The working group recognized the lack of training for law students and recent graduates and discussed ways in which this could be rectified.

On CourtADR.org

Recommended Resources

- Take It or Leave It. Lump It or Grieve It: Designing Mediator Complaint Systems that Protect Mediators, Unhappy Parties, Attorneys, Courts, the Process, and the Field
  This article by Paula Young reviews existing grievance systems for mediation programs and outlines the necessary components for such systems.

- Best and Worst Practices in Arbitration Advocacy: Tapping into the Differences between Litigation and Arbitration
  This article is a useful guide for attorneys as they move through the arbitration process.

- The ABCs of ADR: Making ADR Work in Your Court System
  The objective of this article is to provide judges interested in developing an ADR program with sufficient information for them to determine the most appropriate ADR program for their court system. It includes discussion on what has worked and what hasn't, as well as practical advice on what to consider when designing a program.

From *Just Court ADR*

Overcoming Fear of Failure

"FAILFaire is a gathering of technology non-profits to share stories of failure and give an award to the worst one. The purpose is to learn from each other's failures and not replicate them. According to a New York Times article on FAILFaire,

non-profits are leery of revealing failures because it may turn off donors and thus harm those they are trying to help. This type of thinking has led many not to examine the reasons behind failures, instead focusing on what has worked rather than what has not. There is a school of thought that says we can learn more from our – and others'– mistakes than we can from our successes. So, in the interest of improving monitoring and evaluation practices, I'm going to share RSI's worst failure." Click here to read the rest of this post by Jennifer Shack.

Do Courts Need to Rethink Their Approach to ADR?

"In my last post, I gave two examples in which mediators were being called upon to act outside of their accepted roles in order to obtain fairer outcomes. One side of the coin was asking that mediators recommend sanctions against parties who fail to negotiate in good faith. The other side wanted mediators to obtain the same outcomes for cases with the same set of facts. The latter, in particular, stretches the concept of mediation beyond its defined borders because it requires mediators to insert themselves into the decision-making process in order to get the same results with different parties." Click here to read the rest of this post by Jennifer Shack.

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