

# ANALYZING THE ALTERNATIVES

ENCOURAGING THE EFFECTIVE USE OF COURT-RELATED ADR IN ILLINOIS

A PUBLICATION OF THE CENTER FOR ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS ☞ FALL/WINTER 2004

## FEATURE ARTICLE



## NEW RESOURCE FOR COURTS

Not long ago, the information available on court ADR was so limited it was easy to track. This is no longer the case. As the field of court ADR grows, matures, and specializes, it is increasingly difficult to keep up with all the resources that are available and to identify those of greatest quality, even as it is ever more necessary that those who work in court ADR have access to the most timely, reliable, and complete resources. A new resource now addresses this need.

In partnership with the Conflict Resolution Information Source (CRInfo), CAADRS has compiled a collection of the best resources on court ADR. The collection will soon be available on CRInfo.org, the web site for which CRInfo is best

known. The final product contains more than 200 articles, studies, books, web sites, standards, and organizations that were identified through a year-long process as providing the best information on a variety of court ADR topics.

### The Resources

To be able to identify the best resources, the first step was the expansion and improvement of the overall resource database at CRInfo. CAADRS formed a new database of more than 2,500 resources by merging information from the CAADRS and CRInfo databases, and adding newly identified sources.

Then the work of organizing the best resources began. To make these resources readily acces-

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# INNOVATION AND INSIGHT

DEAN JAMES J. ALFINI



In 1991, Dean Alfini moved back north to take on the responsibilities of Dean of Northern Illinois University College of Law, where he stayed until 2003. It was during this time that he became instrumental in the creation of CAADRS, offering advice and input into its structure and activities as a member of CAADRS' Advisory Board. CAADRS then invited Dean Alfini to join its Executive Committee. CAADRS is extremely grateful that he continues to serve on the Executive Committee even after taking the position of President and Dean of South Texas College of Law in Houston last year.

Beyond these accomplishments, Dean Alfini has been the Chair of the American Bar Association Section of Dispute Resolution, the Chair of the Association of American Law Schools Alternative Dispute Resolution Section, a Delegate to the American Bar Association House of Delegates, a member of the Joint Committee on Mediator Standards of Conduct, and a Certified Court Mediator, among many other roles.

But most of all, Dean Alfini sees himself as a student of ADR, interested in dealing with and trying to explain the apparent contradictions involved in mediation, such as the inherent consensual nature of the process and his own favoring of mandated mediation. He is also intrigued by the evolution of mediation as it is integrated into the court system, pondering such questions as: What will be the effect of integrating a problem solving process into an adversarial system? Will mediation remain true to its core values and maintain its essential character?

These are the questions Dean Alfini thinks of as well when asked where the future of court ADR

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# MEDIATION EXPANDS IN ILLINOIS

## Appellate Mediation

On July 22, 2004, Illinois Governor Rod Blagojevich signed into law a bill authorizing the creation of a Reviewing Court Dispute Resolution Fund for Appellate Districts wishing to establish a mediation program. The legislation, currently labeled as Public Act 093-0801, can be found on the Illinois General Assembly's web site at [www.legis.state.il.us](http://www.legis.state.il.us).

This statute establishes the Reviewing Court Alternative Dispute Resolution Fund, set up in the State Treasury. The Illinois Supreme Court is authorized to designate a filing fee to be collected by the clerks of the Appellate Court to fund alternative dispute resolution programs in the reviewing courts. The Appellate Districts are free to decide whether to establish such a program. The statute also makes inapplicable the Uniform Mediation Act and the Uniform Arbitration Act to any ADR program in the reviewing courts, except as provided by Supreme Court Rule.

The Illinois Supreme Court followed this up on October 29, when it issued Administrative Order MR19788 establishing a pilot mediation program in the First Appellate District. The Order raises the filing fee from \$25 to \$100 and requires \$75 of that fee to be remitted to the Reviewing Court Alternative Dispute Resolution Fund. Additionally, the appearance fee is to be increased from \$15 to \$50, of which \$35 will be remitted to the same fund.

Only some civil appeals are eligible for the program. Excluded from the program are all

criminal proceedings. Civil cases that are ineligible as well are juvenile court proceedings, adoption and paternity cases, custody issues, cases in which the mental capacity of a party is at issue, contempt proceedings, workers' compensation appeals, and election contests.

The First Appellate District's pilot program is slated to begin on January 1, 2005, and to conclude December 31, 2006.

## Child Custody and Visitation Mediation

The Special Supreme Court Committee on Child Custody Issues has issued proposed rules pertaining to all child custody proceedings, divorce and paternity cases, and non-delinquency cases. Among these is Proposed Rule 905, which calls for each judicial circuit to establish a mediation program for dissolution of marriage and paternity cases involving the custody of a child or visitation issues. Mediation would be mandatory for these cases, except in cases in which good cause to be excused is shown.

The proposed rule is posted on the Supreme Court web site at [www.state.il.us/court](http://www.state.il.us/court). Once at the web site, select "Supreme Court of Illinois", then select "Supreme Court Committees/Commissions". The rule is under the subsection titled "Public Hearings", under "September 10, 2004" and then "Proposal 04-16". Alternatively, the rules can be reached through CAADRS' web site by going to [www.caadrs.org/whatsnew](http://www.caadrs.org/whatsnew), then clicking on the link from that page. Once on the Supreme Court's web site, click on "Proposal 04-16".



HOT OFF THE PRESSES. . .

## ADR HANDBOOK FOR JUDGES

The *ADR Handbook for Judges*, published by the American Bar Association Section of Dispute Resolution, is now available. The book was co-edited by Donna Stienstra of the Federal Judicial Center and CAADRS' own Executive Director, Susan Yates. It is designed to give judges, court administrators, neutrals, lawyers, and others interested in court ADR a step-by-step guide to program design, implementation, and evaluation.

Twelve chapters on the use of ADR in various court settings, all written by experts in their areas, comprise the heart of the book. The topics covered in these chapters are civil law (civil cases generally, class actions, and small claims); family law; dependency; adult guardianship; probate; criminal, juvenile, and victim-offender cases; and community mediation. There are chapters as well on the use of ADR in bankruptcy and state appellate courts. The book also features a thoughtful article about the status and future of court-related ADR, as well as more than 150 pages of resource lists and appendices, including

sample forms, rules, statutes, and other useful materials. The resource lists are based on work originally done by CAADRS Director of Research Jennifer Shack for the Illinois Institute for Continuing Legal Education *ADR Handbook*.

The chapters cover how to recruit and train neutrals, how to fund and maintain programs, how to obtain support from the bench and bar, and ethical issues encountered in assorted program applications. Authors also discuss the pros and cons of various choices during program design. Each chapter can be read as a freestanding unit, allowing readers to use one or two chapters for particular applications. The reader who tackles multiple chapters will find that authors make many similar recommendations, including early outreach to establish broad-based commitment, and on-going evaluation to assess program effectiveness. There is also a healthy variety of voices giving expert advice for specific areas and approaches.



CAADRS Executive Director Susan Yates shows the draft of the *ADR Handbook for Judges* to Executive Committee Chair Harris H. Agnew.

Weighing in at about 500 pages, the book costs \$48 for the general public, \$38 for ABA Dispute Resolution Section members, or only \$25 for court personnel. To order a copy, contact the ABA Section of Dispute Resolution by mail at 740 15th St., NW, Washington, D.C. 20005-1009; by telephone at (202) 662-1680; by fax at (202) 662-1683; by email at [dispute@abanet.org](mailto:dispute@abanet.org); or on the Internet at [www.abanet.org/dispute](http://www.abanet.org/dispute).

## FEDERAL JUDGES RECOGNIZED FOR PILOT PROGRAM

This year, CAADRS' Service to Community Award was presented jointly to the judges of the U.S. District Court for the Northern District of Illinois, Western Division. District Judge Philip G. Reinhard and Magistrate Judge P. Michael Mahoney were honored for their work in developing the first comprehensive mediation program in the federal courts in Illinois. The award reads:



Executive Committee member Justice John L. Nickels (ret.), on left, is pictured with CAADRS Service to the Community Award co-recipient Judge P. Michael Mahoney.

"Through their leadership and vision, District Court Judge Philip G. Reinhard and Magistrate Judge P. Michael Mahoney have provided the citizens of northern Illinois with an alternative method for resolving their disputes.

"Judges Reinhard and Mahoney brought to the United States District Court for the Northern District of Illinois (Western Division) a "pilot civil mediation" program, the first of its kind in the Federal Courts in Illinois. The judges involved the legal community extensively in the

planning and implementation of the program. They have demonstrated commitment to improving the program through the use of an ongoing evaluation system.

"These efforts of Judges Reinhard and Mahoney went above and beyond the immediate requirements of their offices and greatly benefited the public through the enhanced provision of justice by the Federal Court."

## MAJOR CIVIL CASE MEDIATION PROGRAM UPDATES

### 20th Judicial Circuit

Illinois' 20th Judicial Circuit, just outside St. Louis, has joined the ranks of those jurisdictions offering litigants in large civil cases the opportunity to mediate. The circuit's Major Civil Case Mediation Program, which began at the end of October, has seen cases successfully mediated in its first few weeks of implementation.

The new program provides for mediation of contested civil matters, including law, chancery, miscellaneous remedy, probate, and eminent domain cases. The program is primarily voluntary; however, court rules authorize the trial judge to order a case to mediation. Mediation is provided for-fee, with the parties negotiating payment with mediators they select themselves.

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## EXECUTIVE COMMITTEE LOSES OLD

This year has been one of change for CAADRS' Executive Committee, with two members stepping down and four new members generously agreeing to contribute their time and wisdom to help CAADRS achieve its mission of assisting courts in Illinois to make more effective use of alternative dispute resolution systems.

CAADRS has been very fortunate to have had the guidance of former Justice Michael R. Galasso and former Judge Jerome Lerner during their tenure on the Committee. CAADRS is thankful for their significant contributions as Executive Committee members and is looking forward to working with them in their new roles as members of the Advisory Board.

One of CAADRS' greatest strengths as an organization is a working relationship with Illinois' most experienced, respected and thoughtful leaders in the field. CAADRS is continuing that tradition with the addition of Justice Robert E. Byrne, Dr. Bryant Garth, Judge Allen S. Goldberg and Judge Janet R. Holmgren to the Executive Committee.

**Honorable Robert E. Byrne** is currently serving as Justice of the Illinois Appellate Court, Second District, by assignment of the Illinois Supreme Court. From 1986 to 2001 he served in the 18th Judicial Circuit for DuPage County, starting as Associate Judge, and then as a Circuit Judge presiding in the Domestic Relations Division before moving on to work as Probate Judge and Presiding Judge of the Chancery Division for five years. In this latter position, he founded and was

the first Supervising Judge for the DuPage County Court-Annexed Mandatory Arbitration Program. He also established the Court Friends - Guardian Monitor Program serving disabled adults in the Probate Court. Justice Byrne was selected by the Illinois Supreme Court to be Chair of the Alternative Dispute Resolution Coordinating Committee of the Illinois Judicial Conference from 1997 to 2000 and Chair of the Automation and Court Technology Committee in 2003, a position he currently holds. He is a frequent lecturer at DuPage, Chicago and Illinois State Bar Association seminars and a frequent author and lecturer in the United States and Europe on the subjects of court management and alternative dispute resolution.

The Director of the American Bar Foundation from 1990 to 2004, **Bryant G. Garth** is now a senior research fellow there. Prior to coming to the ABF, he was the dean of Indiana University School of Law - Bloomington. Dr. Garth's research focuses on the legal profession, dispute processing, and the internationalization of legal practice. His recent publications include the edited volume *Looking Back at Law's Century* (with R. Kagan and A. Sarat), another edited volume (with P. Barnard) entitled *Dispute Resolution Ethics - A Comprehensive Guide*, and an article entitled, "Tilting the Justice System: From ADR as Idealistic Movement to a Segmented Market in Dispute Resolution". He has also written a book on international commercial arbitration (with Y. Dezalay) entitled *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Additionally, Dr.

## FRIENDS, GAINS NEW MEMBERS

Garth was the chair for the ethics track at the ABA Dispute Resolution Section annual meeting in 2002 and has been co-chair of the Ethics Committee. He is currently a member of that committee.

**Honorable Allen S. Goldberg** was elected Circuit Judge of Cook County, Illinois in 1992. After seven years in the Domestic Relations Division, he transferred into the Law Division, where he now has an individual commercial calendar doing settlement conferences in business and commercial disputes. Prior to moving onto the bench, he worked for more than twenty years as a trial lawyer and chief administrator for defense and felony cases at the Cook County Public Defender Office. Judge Goldberg has been very active in the ADR field since 1998, when he attended mediation training at the National Judicial College and became a family mediator. Since then he has done facilitative mediation in custody disputes and has participated in training programs and conferences. Most recently, he became a mediator for civil cases after completing the mediation training program at the National Judicial College and was in charge of establishing the Law Division Mediation Program.

**Honorable Janet R. Holmgren** was appointed Associate Judge in 1995 and elected Circuit Judge of Illinois' 17th Judicial Circuit in 1998. She is currently serving as Presiding Judge in

the 17th Circuit Family Division, as well as being assigned to a major civil litigation call in Winnebago County. Prior to becoming a judge, she was in private practice for ten years, concentrating in the areas of personal injury and insurance defense. In 1993, Judge Holmgren was selected to be trained as one of the original mediators in the pilot civil mediation program during its development in Winnebago County. In addition, she served as both an arbitrator and a mediator in the court-annexed ADR programs in Winnebago County. Judge Holmgren is currently a member of the Illinois Children's Justice Task Force/Citizen's Review Panel, the Judicial Advisory Committee to the AOIC Court Improvement Project, the Illinois Juvenile Justice Commission, and the Board of Directors of the Winnebago County Bar Foundation.

CAADRS is proud to have these four distinguished and dedicated individuals join the ranks of the Executive Committee.



# OUT AND ABOUT WITH CAADRS

CAADRS Executive Committee member and former Illinois Supreme Court Justice John L. Nickels has been appointed by Illinois State Bar Association President Ole Pace to a blue-ribbon committee set up to monitor statements made by or on behalf of candidates for the Supreme and Appellate Courts in Illinois.

Magistrate Judge Morton Denlow, also on CAADRS' Executive Committee, has been sharing his knowledge with other federal judges. He spoke on settlement conferences at a training provided to judges by the Federal Judicial Center in Redondo Beach, California in May. In July, he spoke on the mediation of complex cases at a Magistrate Judges Conference that was held in Chicago.

CAADRS Executive Committee member Judge Janet R. Holmgren will be attending a mediation training for judges at the National Judicial College in November.

In recognition of their commitment and contribution to the community, CAADRS Executive Director Susan Yates and CAADRS Advisory Board member Kent Lawrence were named two of the 25 most influential people of the Center for Conflict Resolution's 25 years of service. CCR, with which CAADRS is affiliated, is the largest community mediation center in Illinois.

## CONTINUED FROM PAGE 1 NEW COURT RESOURCE

sible, a structure of categorized topics was crafted with insight and input from various leaders in the court ADR field.

The topics include general court ADR; case types, such as civil, small claims, family, probate and adult guardianship, child protection, juvenile, and criminal; process types, including mediation, arbitration, restorative justice, and others; jurisdictions, including state, federal, and appellate courts, as well as community mediation; and program development, management and assessment, which encompasses starting and managing court ADR programs, statutes and rules, funding court ADR programs, assuring mediator quality, ethics, screening and referring cases, the role of judges, monitoring and evaluation, and findings (including statistics and impact).

The resources selected are considered by CAADRS staff (and others who were consulted) to be the most well-written, cogent, up-to-date, and applicable to the topic at hand. Not included are resources that are frequently used in ADR, but are not directly court related. The collection also does not attempt to duplicate information on case law involving court ADR that is available through sophisticated databases already in place.

### Accessing the Resources

The collection will soon be available on the CRInfo.org web site under "Editor's Recommendations", and will be accessible through CAADRS' web site as well ([www.caadrs.org](http://www.caadrs.org)). The American Bar Association Section of Dispute Resolution and the Association for Conflict Resolution Court Section have indicated they plan to link to the web site as well.

**Note:** This project was supported by a mini-grant from CRInfo, which was made possible by a grant to them from the Hewlett Foundation.

## CONTINUED FROM PAGE 2 INNOVATION AND INSIGHT

lies. While he sees court mediation as having a bright future, he does feel that academics like him need to be willing to speak out about the changes being brought about in court mediation, which might be endangering its core values, particularly self-determination. He sees court mediation as moving from a party-centric process to one that is more centered on the lawyers, who have begun to do more of the talking. Direct communication between the parties in joint sessions is being replaced with caucuses conducted with each side individually. It is this trend that led Dean Alfini to write numerous articles, including, "Trashing, Bashing, and Hashing It Out: Is This the End of 'Good Mediation'?" and "Mediating in the Shadow of the Courts: A Survey of the Emerging Case Law".

The hope, Dean Alfini believes, lies in the teaching of mediation in law schools. This will supply a new generation of lawyers that will be more sensitive to mediation's core values and help court mediation maintain its original purpose. This is why he feels his work as a professor is the most influential, and why of all the publications under his belt he is most proud of *Mediation Theory and Practice*, the textbook he wrote with Sharon Press, Jean Sternlight, and Josh Stulberg.

Dean Alfini has often stated that he is proud to be working with CAADRS, but it is definitely CAADRS who has benefited the most from his participation. And not only CAADRS profits from Dean Alfini's work in court mediation; the entire field is extremely fortunate to have someone of such insight and creative thinking working to enhance its practice.

CAADRS Executive Director Susan Yates was a facilitator for the Advanced Mediation and Advocacy Skills Training seminar held in October in Chicago. The seminar was presented by the American Bar Association Section of Dispute Resolution and the ABA Center for Continuing Legal Education and was co-sponsored by CAADRS.

Ms. Yates spoke on the revision of the Model Standards of Conduct for Mediators at the Wisconsin Association of Mediators annual conference, held in Madison, Wisconsin in November. Ms. Yates is one of two American Bar Association delegates to the revision effort, which is being conducted in cooperation with the Association for Conflict Resolution and the American Arbitration Association.

CAADRS Executive Committee Chair Hon. Harris H. Agnew will be presenting on the format of mediation at the Illinois State Bar Association's seminar on mediation in December.

Director of Administration Jennifer Spagnolo is on three months' study leave in Italy. She is researching poverty issues through a program with American University. We're very happy to say she will be returning in December.

CAADRS has added to its staff for the fall. Mariana Olivera, an Argentine attorney and Northwestern University School of Law LL.M. graduate, has been hired as a Research Intern. She has proved invaluable in assisting in a number of CAADRS' projects.



**CAADRS MISSION STATEMENT**

The CAADRS mission is to encourage effective and efficient use of court-related alternative dispute resolution in Illinois. To accomplish this mission, CAADRS provides a range of information-gathering, clearinghouse, evaluation, analysis, and training services.

CAADRS is affiliated with the Center for Conflict Resolution, a not-for-profit corporation.

**CAADRS EXECUTIVE COMMITTEE**

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**MAJOR CIVIL CASE PROGRAMS CONTINUED FROM PAGE 5**

At the request of Chief Judge Jan Fiss, CAADRS has been involved in this effort, organizing and partially underwriting a basic mediation skills training for those who will be placed on the roster of mediators for the program. The training took place October 21-23. It was headed by Aimee Gourlay and Gary Weissman of Hamline University's Mediation Center for Dispute Resolution. Eighteen attorneys participated in the training.

CAADRS is also providing the circuit with customized software and forms that will

enable it to maintain a monitoring and evaluation system for the mediation program.

**Cook County**

In Cook County, the Major Case Court-Annexed Mediation Program that was launched April 5, 2004, has gotten off to a quick start. In the first six months of the program, 240 cases were referred to mediation, with 80 cases being mediated by October 1. Of those, 48 were fully settled at mediation, and 3 were partially settled. This is a very respectable 64% settlement rate.

**DONATE TO CAADRS?**



Have you ever thought of making a financial contribution to CAADRS? It may never have occurred to many of CAADRS' friends, but we're inviting you to consider it now. With demand for our services expanding by leaps and bounds, and our base of support no longer growing, **your contribution would be a great help!** Research, program development, training – your tax-deductible gift will help CAADRS as we assist courts in Illinois in making more effective use of ADR.

Please make your check payable to the *Center for Conflict Resolution*, indicate that the contribution is for CAADRS, and send it to CAADRS c/o Jennifer Spagnolo, Director of Administration, 11 E. Adams St., Suite 500, Chicago, IL 60603. **Thank you!**

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