

ANALYZING THE ALTERNATIVES

ENCOURAGING THE EFFECTIVE USE OF COURT-RELATED ADR IN ILLINOIS

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FEATURE ARTICLE



ACCESSING JUSTICE THROUGH MEDIATION: PATHWAYS FOR POOR AND LOW-INCOME DISPUTANTS

Illinois is now poised to evolve from its current circuit-by-circuit, county-by-county approach to mediation into a systematic approach in which mediation is a widely available tool for the types of disputes experienced by poor and low-income disputants and others throughout the state. This is the central finding of a new study, *Accessing Justice through Mediation: Pathways for Poor and Low-Income Disputants*, that has recently been released by CAADR.

Accessing Justice, which was supported by a generous grant from the Illinois Equal Justice Foundation, examines the potential for mediation to enhance access to justice

for poor and low-income disputants outside of Cook County and posits a vision that every circuit in Illinois will provide accessible mediation services to poor and low-income disputants to assist in meeting their most pressing legal needs in a form that is useful to them. There are still significant obstacles to developing this vision, but they are not insurmountable.

Barriers to Mediation

In examining the possibility of creating such a system, the study found five main barriers, most of which involved the absence of resources for mediation programs. Of these, the lack of funding was identified as a

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VISIONARY LEADERSHIP

SUSAN M. YATES



This year, CAADRS lifts its glass to Susan M. Yates as she marks her tenth year as Executive Director. Over the past ten years, Ms. Yates has led CAADRS to prominence in the field of court ADR both in Illinois and nationally. Her tenure is exemplary of a career dedicated to helping to improve the lives of others and an expression of deeply held values. But perhaps most of all, her time at CAADRS epitomizes her ability to visualize a different world and to lead the way to realize that vision.

Ms. Yates' vision is one in which those in conflict work together with the aid of others to come to their own, more satisfying resolutions. At CAADRS, she is working toward realizing that vision in the court system. She sees a future in which the courts and mediation practitioners embrace each other and work together along with those providing social, legal and mental health services to create a justice system that is at once more compassionate, more effective, and more efficient. When people from different realms of

expertise work in concert, they can create systemic change that is beneficial to those they serve.

This vision is the product of more than two decades of experience in ADR. This experience began in college, where Ms. Yates first found she had an affinity for alternative dispute resolution. Upon being introduced to community mediation, she was drawn to the concept of people sitting down together to work out their differences. Giving people the power to make decisions about their disputes spoke to her values and the efficiency of the mediation process attracted her pragmatic side.

The chance to bring some peace into a world of conflict also had its appeal to Ms. Yates, which led her to be trained as a volunteer mediator at the Center for Conflict Resolution in Chicago about 25 years ago - a decision that led to her being asked to be CCR's Executive Director. During her four years as CCR Executive Director, Ms. Yates worked to get the Not-for-Profit Dispute Resolution Center Act passed. This law provides for a filing fee to be used in Cook County to support community mediation centers. Other jurisdictions may elect to use this mechanism to fund community mediation centers as well. Also at this time, she succeeded in moving CCR services on-site in the Cook County courthouses to provide mediation of small claims and eviction cases.

After leaving her position as Executive Director, Ms. Yates never lost her dedication to mediation and conflict resolution. She continued to volunteer as mediator and trainer and to consult and teach on the topic, including with CAADRS, where she was a consultant on standards of practice for mediators. It was natural, then, for the Executive Committee to invite her to become CAADRS' first full-time Executive Director in 1997.

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ACCESSING JUSTICE CONTINUED FROM PAGE 01

"superbarrier." This is because with funding, other barriers - the need for more technical support for the development of mediation services, staff for mediation in judicial circuits, and education and training programs for every type of participant in the mediation endeavor - could all be overcome. The final barrier involves a lack of coordination between legal services and mediation services. Overcoming this obstacle will require not only funding, but also leadership and creative program development.

The statutes currently governing mediation in Illinois were also identified as a partial barrier, because while they encourage mediation they also limit the types of mediation programs eligible for state funding. The Illinois Equal Justice Act (IEJA, 30 ILCS 765) states that mediation is an efficient way to resolve disputes and provides financial support for mediation programs involving poor and low-income residents. However, in order to receive that support, programs must meet the requirements of the Illinois Not-for-Profit Dispute Resolution Center Act (DRCA, 710 ILCS 20) as incorporated in the IEJA. (See p. 5 for the text of the DRCA.)

The DRCA was enacted primarily to fund the Center for Conflict Resolution in Chicago and is difficult to apply elsewhere. The Act's structural requirements, especially those that say a program must be a 501(c)(3) and use only volunteers, put rather serious limitations on the types of programs that can be developed with IEJA funding. Funding under the DRCA is also limiting. Community mediation centers under this program are funded through a one-dollar filing fee. This funding is insufficient for supporting mediation in circuits outside of Cook County because the number of cases on which this fee would be assessed is so small.

Supports for Mediation

Despite these limited resources and statutory requirements, *Accessing Justice* also uncovered strong supports for developing mediation for poor and low-income disputants in Illinois. There is an overlap between the greatest legal needs of poor and low-income disputants and the types of cases that are most amenable to mediation, and Illinois Supreme Court Rules provide the structural support to create mediation programs addressing those needs. There is also a high level of interest in and awareness of mediation among legal service providers.

Focus on Three Case Types

Although the possibilities for mediation run across many types of cases, *Accessing Justice* recommends that three - family, housing and consumer - should be the focus of mediation efforts. Poor and low-income disputants in Illinois are most likely to face these types of cases, which are also among the most amenable to mediation. Surveyed legal service providers, judges, attorneys and mediators also agreed such disputants are most likely to be well-served by mediation when disputes arise in these three areas.

Court Rules Support Mediation

The Illinois Supreme Court authorizes the creation of court-related mediation programs that are not subject to the requirements outlined in the funding statutes. Supreme Court Rule 99 gives judicial circuits the authority to establish mediation programs, subject to approval by the Supreme Court, and Supreme Court Rule 905 mandates mediation of all contested custody and visitation issues in the state.

The Supreme Court's approach to mediation means that in all areas but custody and visitation, the individual circuits are free to decide

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whether to create programs and to some extent how those programs are structured. The benefit of this, according to the study, is that programs can be adapted to local needs. The downside, however, is that there has been little to no court funding available for mediation. Funding is not a part of either rule, nor do they indicate how services will be provided to poor and low-income parents, which has led to uneven provision of mediation services to poor and low-income disputants.

Attitudes toward Mediation

The study collected opinions about mediation through a survey of legal services providers at Prairie State Legal Services and Land of Lincoln Legal Assistance Foundation and through gatherings with those involved in the legal and mediation communities in Carbondale, Bloomington and Rockford. The strongest finding from the survey was the respondents said lack of money or free services stopped them from using mediation with their clients. Participants at the gatherings expressed a definite need for expert, regular technical support around the state to develop programs, as well as staff infrastructure on the county or circuit level to support ADR programs. There was enthusiasm in every group about working to create or expand mediation services in each area to serve the needs of poor and low-income disputants.

Development of Mediation Programs

Accessing Justice identified at least two dozen mediation models that can serve the most pressing needs of poor and low-income disputants. With so many models available, the question is which one is best in any given setting.

The Stepping Stones Model

One of the keys to success in this endeavor is the relationship between the mediation community and the legal services community. To effectively meet the needs of poor and low-income dis-

putants, the worlds of mediation and legal services must be integrated into a joint system. This will involve each developing an understanding of the needs and interests of the other, building bridges between the two communities, and then constructing processes that address those differing perspectives.

The Stepping Stones Model is proposed in the study as one way of integrating legal services and mediation. In this model, disputants would receive a variety of services by stepping from one service to another as their needs required. For example, disputants might receive legal advice or information prior to mediation. In mediation, disputants would have a voluntary, confidential, informal process with a neutral third party - the mediator - who would assist them in discussing the issues in conflict, in reflecting on their relative interests and positions, and in creating resolutions. Depending on the program, disputants might work with pro bono lawyers to write up agreements after mediations are completed.

Supportive Activities

Accessing Justice notes that supportive activities are also needed to reinforce the provision of mediation services. These fall into the following categories: structural and administrative supports (e.g., staffing at the state and local levels); training and party education (e.g., teaching all the participants in mediation about how to make the best use of mediation); and advocacy in mediation programs (e.g., training lawyers how to make better use of mediation for their clients).

Monitoring and Evaluation

A final key element of the statewide mediation system envisioned by the study is monitoring and evaluation. By coordinating evaluation and monitoring on a statewide basis, comparable information can be collected across the state so that ele-

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In accepting this offer, Ms. Yates recognized an opportunity to change how people experience the justice system and to provide courts with a mechanism to make that experience better. In driving toward that goal, she has led CAADRS in expanding its efforts to assist courts in Illinois in developing and evaluating mediation programs and in creating a nationally recognized on-line database of resources on court ADR. She has also been instrumental in raising the national stature of CAADRS while also expanding CAADRS' activities.

In addition to all she has done with CAADRS, Ms. Yates has worked extensively with the American Bar Association Section of Dispute Resolution, serving as chair of the Standing Committee on Associate Issues and as one of the ABA's two representatives to the joint committee in charge of revising the Model Standards of Conduct for Mediators. Through these and other efforts, Ms. Yates has raised the national stature of CAADRS as well as promoted the effective use of ADR throughout the country. Her written contributions, espe-

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ILLINOIS NOT-FOR-PROFIT DISPUTE RESOLUTION CENTER ACT (710 ILCS 20/)

Sec. 2. As used in this Act:

(a) "Dispute resolution center" means a not-for-profit organization which is exempt from the payment of federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code and which is organized to provide mediation services, including but not limited to mediation services provided at no charge to disputants in connection with disputes referred from the court system.

Sec. 5. (a) Subject to the supervisory authority of the Supreme Court, the Chief Judge of each judicial circuit in which a dispute resolution fund has been established shall make rules pertaining to the operation and standards to be adhered to by dispute resolution centers in that judicial circuit in order to qualify for funding. Such rules shall provide for the following in connection with mediation of disputes referred from the court system:

(1) Each dispute resolution center applying for funding shall report the number of cases which have been successfully resolved in each of the 3 preceding years.

(2) All mediators shall be trained in conflict resolution techniques for at least 30 hours and shall participate in an ongoing peer review program. Mediators shall perform their duties as volunteers, and shall not receive any compensation for their services.

(3) Mediation shall be scheduled within 30 days of commencement of a case unless good cause exists for not scheduling mediation.

(4) Each dispute resolution center receiving funding under this Act shall maintain records which shall be available for inspection by the office of the Chief Judge of the circuit and which shall demonstrate adherence to applicable requirements.

(5) Prior to mediation, disputants shall be advised of the objectives of mediation, the function of the mediator, and the role of the disputants in the mediation process.

(6) A dispute shall be considered to be successfully resolved when a written agreement which sets forth the obligations and responsibilities of the disputants is signed by the disputants.

CAADRS ANNUAL REPORT:

In 2006, CAADRS continued to trek Illinois terrain, providing assistance to courts in ADR program development, monitoring, and evaluation. CAADRS also explored new ground in the state by studying in what way or ways mediation can be an effective path to justice for poor and low-income disputants in Illinois. Although CAADRS remains firmly rooted in Illinois, it is branching out nationally to a much greater extent than ever before.

ILLINOIS-BASED EFFORTS

Reflecting its mission to assist courts in Illinois in making the most effective and efficient use of ADR systems, CAADRS continued to direct its efforts toward its three staple programs: ADR program development, monitoring and evaluation, and information dissemination.

Program Development

Two CAADRS Executive Committee members, Hon. Allen S. Goldberg and Hon. Janet Clark Holmgren, assisted in the drafting of a model rule that judicial circuits can use as a guide when writing their own rules in accordance with Illinois Supreme Court Rule 905, which mandates that each circuit establish a mediation program for child custody and visitation disputes. CAADRS staff provided information to assist in the development of the model qualification standards.

In January, CAADRS Executive Director, Susan M. Yates, along with Center for Conflict Resolution Executive Director Marilyn Smith, spent a day in Lake County discussing with judges and court administrators ways to improve systems for handling *pro se* domestic relations cases in the 19th Circuit. The two also visited Kankakee to meet with local judges to discuss how they

might expand mediation services in their circuit. They were joined by a staff leader from the Kankakee Center for Conflict Resolution.

Research

Throughout the year, with a grant from the Illinois Equal Justice Foundation, CAADRS researched how mediation might help meet the legal needs of poor and low-income residents of Illinois. The project researched the current state of mediation in Illinois, surveyed legal and mediation professionals for their attitudes and thoughts on using mediation to enhance access to justice, and examined possible models for providing mediation services. It culminated in a written study, available online at www.caadrs.org/studies/AccessingJustice.htm, which includes a blueprint for developing a statewide program.

Program Monitoring and Evaluation

One of CAADRS' long-term projects involves tracking the effectiveness of major civil case mediation programs in Illinois, and a basic question regarding effectiveness is how many cases are being mediated. In 2006, CAADRS focused on the 17th Circuit (Rockford). To gather data on how cases that are not being tried are being closed, and in particular if they are being mediated, CAADRS helped the court survey lawyers who had entered a stipulated order of settlement as well as mediators on the court roster. A report on the survey will be available later in 2007.

In terms of evaluation projects in 2006, CAADRS produced an evaluation of a relatively new court mediation program. In accordance with the 2nd Circuit court rule for the judicial mediation pilot program, CAADRS conducted an evaluation of the program's progress, which covered the first 15 months of the program.

BEYOND ILLINOIS IN 2006

Outreach

In addition to its efforts towards program development and evaluation in Illinois, CAADRS' outreach efforts in Illinois included:

- ♦ Presenting its Service to the Community Award to Honorable Jerome Lerner, former CAADRS Executive Committee member and currently a member of the CAADRS Advisory Board.
- ♦ Making presentations on various ADR topics at numerous meetings, seminars and trainings.

BEYOND ILLINOIS

While CAADRS has long had a national as well as Illinois focus, its activities in the national arena expanded in 2006, led by projects funded by the JAMS Foundation and the Boskey Foundation.

Resource Center and Web Site

CAADRS organizes and abstracts the information that it gathers related to court ADR in the Resource Center, which has grown to contain almost 2900 resources. Inquiries to the Resource Center in 2006 numbered 111. CAADRS' web site, on which the on-line resource center is housed, received 112,212 visits in 2006.

Sample Court Rules Project

CAADRS was hard at work in 2006 on its project to expand and enhance the national reach and impact of the Resource Center, for which it received a grant from the JAMS Foundation. One of the central components of the project - collecting sample court rules for mediation programs across the country - was completed in 2006. These samples, with accompanying information on them, can be found at www.caadrs.org/SampleRules&Forms/SampleRules.htm.

Web Site Renovation

CAADRS spent the year working to develop a new web site to house its Resource Center. When launched in January 2008, it will be the only site dedicated solely to in-depth information on ADR in state and federal courts throughout the United States. CAADRS' organizational web site will be updated as well.

Outreach

In addition to expanding the content as well as the reach of the CAADRS Resource Center to a more national level, CAADRS' presentations and publications had a national scope as well. In 2006, Ms. Yates continued to present on the revised Model Standards of Conduct for Mediators. She had served as one of two delegates from the American Bar Association Section of Dispute Resolution to the joint committee revising the Standards. Additionally, Ms. Yates co-authored an article with fellow joint committee member R. Wayne Thorpe that appeared in the Winter 2006 issue of *Dispute Resolution Magazine*.

Ms. Yates continued her involvement with the ABA Section of Dispute Resolution in 2006. As a member of the Section's Mediation Quality Task Force, she worked with focus groups of lawyers in several cities who use mediation. She also continued to Chair the Associates' Committee of the Section and presented at the Section's annual conference.

Additionally, CAADRS Director of Research Jennifer Shack's article, "Mediation Can Bring Gains, But Under What Conditions?", which originally was published in *Dispute Resolution Magazine*, was reprinted in *Mediation Theory and Practice*, a textbook co-edited by Executive Committee member Dean James J. Alfini.

OUT AND ABOUT WITH CAADRS

Congratulations to Executive Committee member Judge Janet R. Holmgren, who was elected Chief Judge of the 17th Judicial Circuit in May.

Chief Judge Holmgren and Executive Committee Chair, Hon. Harris H. Agnew (ret.), appeared in an article in the July/August 2007 edition of *Rockford Women*, which is a magazine published by the Rockford Register Star. The article highlights the accomplishments of Chief Judge Holmgren, Judge Kathryn Zenoff and Judge Rosemary Collins, all of whom name Judge Agnew as a mentor.

Executive Director Susan M. Yates was profiled in the American Bar Association Section of Dispute Resolution e-newsletter as Chair of the Standing Committee on Associate Issues. The profile can be found at www.abanet.org/dch/committee.cfm?com=DR012000#yates.

Executive Committee member Hon. Allen S. Goldberg appeared on cable television with two former judges to discuss various aspects of mediation. Judge Goldberg was also on the faculty for the mediation skills training provided to 36 Cook County Judges in August.

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ments that lead to success and those that do not can be identified and improvements made.

Blueprint for Mediation Programs

Taking all of these factors into consideration, *Accessing Justice* proposes a two-tiered statewide system to provide mediation services to poor and low-income disputants outside of Cook County, which already has a well-established mediation program and an array of legal services as compared to the rest of the state. It imagines coordinating leadership teams on the local and state level, utilizing their own expertise, knowledge, flexibility, insights and connections to create, develop and monitor programs.

- ♦ On a local basis, each of the 22 judicial circuits outside of the Circuit Court of Cook County would establish a leadership team responsible for the planning, promotion, implementation, monitoring and evaluation of its mediation programs.
- ♦ On a statewide basis, there would be a leadership team responsible for the vision of this effort, for coordinating and supporting the local programs, and for bringing together the evaluations of the mediation activities of all the circuit programs into one statewide evaluation.

Together, these teams would coordinate the development of mediation services for poor and low-income disputants. The teams also would determine which kinds of supportive activities would be most useful in their local areas.

To support this work, new staff positions in the state are also proposed:

- ♦ **Court ADR Program Manager** to work with the local leadership team to manage and develop all of a circuit's ADR programs, including maintaining quality, collecting statistical information, and developing networks of supporters and regular participants.

- ♦ **Statewide Mediation Program Coordinator** to work with the statewide leadership team to provide expert technical assistance and aid circuits in developing, monitoring and assessing mediation programs. The coordinator would also develop relationships with judges, lawyers and mediators and coordinate the development of a supportive network among programs around the state.
- ♦ **Statewide Mediation Data Monitor** to collect and disseminate reliable information about the performance of mediation programs by developing, installing and helping to implement a statewide statistical monitoring system.

Conclusion

While some mediation is being provided in Illinois, much work needs to be done if the vision of poor and low-income disputants accessing mediation as part of a comprehensive approach to resolving disputes is to be accomplished. It will require more programs, staff, training, marketing, expert guidance, and a smooth interplay between legal services and mediation. All of this needs to be professionally monitored and evaluated so that it is clear what works and what does not. And of course, none of this will happen without the funding to make it happen.

Importantly, this is the time for this effort. Participants around the state are as ready as they can be without the additional training and outreach the programs will provide. The match between legal services and mediation services may be an arranged one, but it has all the hallmarks of a long and fruitful union.

CAADRS is extremely grateful to the Illinois Equal Justice Foundation for its support of Accessing Justice, without which the study would not have been possible. The study is available on-line at www.caadrs.org/studies/accessingjustice.htm.

An article based on the settlement conference results database created by Executive Committee member Hon. Morton Denlow and developed by Research Director Jennifer Shack was published in the Winter 2007 edition of *Washington and Lee Law Review*. The article, "Outing Outcomes: An Empirical Study of Confidential Employment Discrimination Settlements," was written by Brooklyn Law School Professor Minna J. Kotkin.

Ms. Shack presented on the basics of program evaluation at the Association for Family and Conciliation Courts annual conference in Washington, DC, in May.

Also in May, Ms. Yates discussed the effectiveness of appellate mediation at the Wisconsin Bar Association's annual conference and presented on the future of ADR to the Winnebago County Bar Association in Rockford.

Executive Committee member Dean James J. Alfini taught a mediation course in the South Texas College of Law summer program in Prague.

Ms. Yates was busy at the annual conference of the American Bar Association Section of Dispute Resolution in April. She participated in a Summit on Court ADR and the Section Council meeting, and was a panel member for sessions on research and ethics.



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.

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VISIONARY LEADERSHIP CONTINUED FROM PAGE 05

cially the *ADR Handbook for Judges*, which she co-edited, have had a wide impact on the field in general.

To quote Executive Committee Chair Hon. Harris H. Agnew, "Susan has taken CAADRS to a whole new level of service." She has been the cornerstone for all the growth that CAADRS has seen in the past 10 years. Beyond that, she has contributed to the growth and quality of ADR as a field. CAADRS is forever fortunate that she has taken up the banner of ADR once again under its name. With Ms. Yates at the helm, CAADRS is assured of a promising future of growth and change.

ACCESSING JUSTICE: THE FINDINGS

FINDING 1

Mediation provides many viable paths to justice for poor and low-income residents in Illinois.

FINDING 2

Provision of mediation services to poor and low-income disputants across Illinois is uneven.

FINDING 3

Mediation participants who are poor and low-income have particular needs, and programs for them must be developed with those needs in mind.

FINDING 4

There are many service delivery models that can address the needs of poor and low-income residents in Illinois. The question is which is best in any given setting.

FINDING 5

The provision of mediation services for poor and low-income residents relies in large part on the overall availability of mediation services. Developing a healthy mediation culture overall helps to develop opportunities for poor and low-income people to mediate their cases.

FINDING 6

Most mediation programs for poor and low-income disputants should be focused on family, housing and consumer cases.

FINDING 7

If there are other case types for which mediation can be provided efficiently, then programs for them also should be considered.

FINDING 8

Mediation and legal services should no longer function as mutually exclusive paths, but instead function together as a joint system to serve poor and low-income disputants.

FINDING 9

If mediation is to truly serve poor and low-income disputants in Illinois, many paths beyond the basic mediation model in the Illinois Equal Justice Act must be utilized.

FINDING 10

All programs must be monitored and compared on similar characteristics so that elements that lead to success and those that lead to failure can be identified.

FINDING 11

Only with sufficient program funding will poor and low-income disputants be able to use mediation as a path to resolve their conflicts and achieve just outcomes.



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