

# ANALYZING THE ALTERNATIVES

ENCOURAGING THE EFFECTIVE USE OF COURT-RELATED ADR

A PUBLICATION OF RESOLUTION SYSTEMS INSTITUTE

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## FEATURE ARTICLE



PHOTO BY AMY MILLER

## ADR BLOSSOMS IN BLOOMINGTON

### NEW SMALL CLAIMS MEDIATION PROGRAM LAUNCHED

Pro se litigants dealing with small claims cases in the 11th Judicial Circuit now have a new avenue for resolving their disputes: mediation. The new program launched in October, with services provided by trained volunteers from the community who span a breadth of education and experience. Mediation is available on the second and fourth Fridays of each month in the courthouse for cases most amenable to mediation – typically those involving housing and consumer disputes, as well as small claims filings between family members.

As previously reported, RSI's Statewide

Mediation Access Project has worked extensively in McLean County in the development of this program. RSI staff began having discussions with 11th Circuit Chief Judge Elizabeth Robb in March 2008 and continued to provide program development support through the spring, summer and fall.

RSI assisted judges in brainstorming and identifying key stakeholders, facilitated discussions about policies and procedures, and assisted in drafting and editing program forms. In addition, RSI funded and organized a training for seventeen volunteer mediators and provided the court with a monitoring and

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## MEDIATION ACCESS PROJECT TAKES OFF

RSI is extremely grateful to the Illinois Equal Justice Foundation for funding much of the Statewide Mediation Access Project's (SMAP) second year. With financial support from the Illinois Equal Justice Foundation, SMAP can continue to reach out to circuits throughout the state, developing relationships, discussing mediation, and determining ways to assist courts in developing mediation programs as an alternative path to justice for poor and low-income disputants. Momentum from Year One has propelled SMAP forward into Year Two, with SMAP poised to assist a number of new programs.

One of the most promising of these is Dispute Resolution Institute (DRI), a new community mediation center in far southern Illinois. DRI is the product of a collaboration between professors and lawyers who participated in the former Southern Illinois University School of Law ADR Clinic Program and members of the Mediation Association of Southern Illinois. Both groups have been very involved in promoting the use of mediation in southern Illinois and wanted to create a professional organization that would provide small claims and family mediation to the widespread population of the 1st Judicial Circuit.

The biggest challenge facing the new organization is developing a system for providing custody and visitation mediation to poor and low-income residents of the most rural areas of the circuit. To help it get started, DRI has asked SMAP for organizational assistance, liaison support with courts and judges, and system design expertise for addressing the

challenge of providing services to rural residents.

In November, RSI Program Development Consultant Laura L. Noah traveled to Carbondale to meet with Mary Rudasill, clinic director and associate professor of law at SIU and DRI Board of Directors member, and Danielle Blair, who graduated from the SIU School of Law two years ago and who has worked in the Legal Clinic since as a program specialist for mediation programs. During that meeting, they discussed DRI's needs and ways in which SMAP can provide program support. At Ms. Blair's request, Ms. Noah also made a two-hour presentation to approximately twenty mediators on special considerations when mediating cases with poor, low-income and/or pro se disputants.

DRI is in the process of filing for non-profit 501(c)(3) status. The organization's five member board of directors will guide DRI as it moves forward. Along with Ms. Rudasill, the board is comprised of Michael Maurizio, Webb Smith, Treva O'Neill, Casey Parker, all local attorneys and mediators, as well as MASI members.

Prairie Land Conflict Mediation Center in central Illinois has also requested help from SMAP. Located in Champaign, the Center addresses family, public housing and elder disputes. The program is receiving court referrals and has many processes in place, but needs assistance with training volunteer mediators, many of whom live in the communities where disputes are most frequently occurring. Ms.

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## FAREWELL AND CONGRATULATIONS!

RSI said a provisional goodbye in December to long-term Director of Administration Jennifer Spagnolo. We at RSI don't know what we will miss more: Jennifer's wonderful personality or her ability to keep RSI humming along. Between organizing the office, providing support on all major projects, and making sure every document that left RSI was perfect, Jennifer was the backbone of the organization for seven years.

While we are very sad that Jennifer is leaving, we are very excited about the reason. She gave birth to a new baby girl on January 13 and will be staying home to care for her. But that doesn't mean she can't still be a part of RSI. Fortunately for us, Jennifer will continue to be the final gate through which all RSI publications pass, dotting each i and crossing every t.

## THANK YOU TO OUR SUPPORTERS

Resolution Systems Institute extends its gratitude to the Illinois Equal Justice Foundation for its continued funding of the Statewide Mediation Access Project. Without the Foundation's support, RSI could not continue its work to expand mediation services to poor and low-income residents of Illinois.

RSI also thanks the Boskey Foundation for its support of RSI's monthly e-newsletter, *Court ADR Connection*.

In addition, RSI is grateful to all those who donated to the organization in the past year:

Hon. Harris Agnew  
Dean James Alfini  
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Hon. Elizabeth Robb  
Prof. Mary Rudasill  
Gary Weissman  
Susan M. Yates  
Nancy Neal Yeend



# MEDIATION USAGE REPORT:

As part of its service to court mediation programs in Illinois and those who use them, Resolution Systems Institute has been tracking the use of mediation for large civil cases in most circuits with such a program. Over the years, the number of mediations each program has reported has declined without explanation. The decline particularly concerned Chief Judge Janet Holmgren of the 17th Judicial Circuit, who is also a member of RSI's Executive Committee. She, as well as RSI, believed that more mediation was occurring than was being reported to the courts and, based on this, asked RSI to study the issue. The following is a summary of the study and its findings.

## BACKGROUND

The 17th Judicial Circuit's Major Civil Case Mediation Program began in 1993 as a pilot project aimed at reducing costs and time to resolution for litigants, as well as providing satisfaction with the legal system. Success with the program led the circuit to make the program permanent, and encouraged other circuits in the state to follow suit.

In the last few years, the number of cases reported as being mediated through the court monitoring system maintained by the 17th Circuit's Arbitration Center has started falling. From a recorded high of 162 mediations in 1995, the number declined slowly over the next several years, until a sudden decline to 32 in 2005. However, anecdotal evidence from lawyers and judges in the circuit indicated that the number of mediations being reported to the court was much lower than the number actually mediated. Because of this discrepancy,

the court asked that Resolution Systems Institute study what really was happening with mediation in the circuit. The court was also interested in getting information on what methods over all were being used to settle cases.

## METHODOLOGY

The court and Resolution Systems Institute decided that the best method for getting a complete picture of the way in which cases are settling was to gather data from three sources:

- The number of mediations reported to the 17th Judicial Circuit's Arbitration Center through normal court processes.
- The number of cases lawyers reported as having been settled through mediation. The lawyers were sent letters requesting information on settlement based upon recorded settlements by judges presiding over civil cases. Lawyer response was 87% for the cases reported by the judges.
- The number of mediations reported over a four-month period by the mediators who responded to requests for information on the cases they mediated.

To eliminate duplications, the cases that were reported as being mediated by these three sources were compared to discover which ones were reported by more than one source. Data was gathered between July 2006 and June 2007.

## FINDINGS

*Lawyers are using a healthy mix of methods to settle cases.*

Of the settlements reported by the lawyers,

# MORE THAN MEETS THE EYE

65% were through negotiation, 22% through mediation, and 14% through judicial settlement conferences. Two were arbitrated. (This totals more than 100% because more than one settlement method was used in three cases.)

*More mediation is occurring than has been reported through the court's monitoring system.*

The court officially recorded 17 mediations through the monitoring system maintained by the Arbitration Center. For the study, lawyers and mediators reported 33, for a total of 50.

However, this number is not complete because mediators only reported for four months, and not all judges with a civil call provided lists of cases that settled. For that reason, the number of mediations that took place during the study was extrapolated from the data at hand. This provided a range of 84 to 132 mediations, with the more likely range being between 84 and 101.

*There has been a decline in the use of mediation over the years, but it appears to have stabilized.*

The number of mediations reached a high of at least 162 in 1995. It declined to about 100 in 2000 and appears to have remained at around that number.

*Pre-suit mediations are occurring.*

The mediators reported 7 pre-suit mediations over the four months for which they provided information. However, only 3 are definitely known to have been in the 17th Judicial Circuit. The jurisdiction of the other 4 is unknown.

## RECOMMENDATIONS

*Continue encouraging the use of mediation early in the case.*

Other research has shown that mediation reduces time to settlement when compared to direct negotiations, particularly when conducted earlier in the case. Settlement without mediation often occurs after most, if not all, discovery has been completed.

*Create a better system to monitor the use of mediation.*

The current tracking system is only capturing a small percentage of the cases being mediated. A better system is needed so that the court has reliable information it can share with litigators and parties to encourage their use of mediation.

*Create a system to monitor the quality of the mediation program.*

This includes monitoring the quality of the mediation experience for the parties and the quality of the mediator. Establishing a system for having mediation participants complete post-mediation evaluation forms which are compiled and reviewed by the court on a regular basis is a key part of this process.

*Develop or sponsor continuing education seminars for judges, lawyers and mediators.*

The court has an interest in ensuring that all mediations, including those not ordered by the court, are of high quality. If mediation is done well, it can help with court case flow and enhance the experience of litigants. In this area, education may be the best method for maintaining or increasing the quality of the mediations.



# OUT AND ABOUT WITH RSI

Executive Committee member Hon. Janet Holmgren had a busy 2008. In March, she attended the National GAINS Center annual conference in Washington, D.C., with the team from the 17th Judicial Circuit Therapeutic Intervention Program Mental Health Court. The team presented on the circuit's model mental health court. In April, she presented at the ISBA Civil Practice Section's Allerton Conference on the circuit's Pilot Project on Professionalism for the Illinois Supreme Court. She also was a panelist at the NIU College of Law's "Jury Trials" Symposium on the topic of professionalism.

Program Development Consultant Laura Noah is teaching Forensic Mediation and Conflict Resolution at the Chicago School of Professional Psychology, adding to her busy schedule that includes teaching Conflict Resolution at North Central College in Naperville.

Executive Director Susan M. Yates was a presenter in November at the Cook County Law Division's monthly brown bag series. The topic was "Practical Ethics in Mediation and Settlement."

CourtADR.org now has more than 4,000 resources in its Research Library! The library contains articles, books, court rules and more.

## CONTINUED FROM PAGE 01 BLOOMINGTON MEDIATION

evaluation database for tracking program statistics and participant responses to exit surveys. RSI continues to provide ongoing program support through the accessibility of RSI staff in answering volunteer mediator and program coordinator questions.

As Judge Robb explained at one of the final program development meetings, this was more than just an opportunity to establish a small claims mediation program. It was an opportunity to completely revamp the court's small claims program to make it friendlier to pro se litigants.

The court created a Question & Answer sheet for litigants, which can be found on the court's web site. Information on mediation is now also being provided to pro se disputants at various stages: online, at the court house, when they appear in front of the small claims judge, and throughout the mediation process.

Chief Judge Robb credits RSI with helping to launch the program. "I knew that other circuits had developed small claims mediation programs, but it was not until we were offered the opportunity to collaborate with RSI and receive professional mediation training that we were able to create this unique program," she said. "Judge [Rebecca] Foley and I have appreciated the opportunity to work with the staff of RSI and community members who have a passion to mediate disputes."

The program has been met with positive support from the community. In fact, people have stopped the judge outside of the court setting and thanked her for starting this program. It

is a testament to what can happen with the combination of inspired leadership of a chief judge, invested local stakeholders, and expert input from RSI.

For more information on the program, go to <http://www.mcleancountyil.gov/circuitcourt/>.

## COURT ADR CONNECTION UPDATE

RSI is pleased to announce the award of a grant from the James B. Boskey Memorial Foundation to support the ongoing publication of *Court ADR Connection*.

Launched in July, *Court ADR Connection* is RSI's free, monthly e-newsletter featuring court ADR news and events from around the country. The e-newsletter also highlights research in the field, as well as other notable resources on RSI's Court ADR Resource Center, at [CourtADR.org](http://CourtADR.org).

The Boskey Foundation has been a long-time supporter of the Resource Center, and RSI is grateful for the Foundation's support of this new publication.

If you would like to subscribe to *Court ADR Connection*, visit [CourtADR.org](http://CourtADR.org) and register your email address through the homepage, or email [adrupdates@aboutrsi.org](mailto:adrupdates@aboutrsi.org), subject line "subscribe." Past issues of *Court ADR Connection* are available on RSI's organizational web site, at [www.AboutRSI.org](http://www.AboutRSI.org).

This newsletter is also available in PDF format. If you would prefer to receive a PDF version, please send an email to [adrupdates@aboutrsi.org](mailto:adrupdates@aboutrsi.org).

Welcome to Molly McCaughey, RSI's new Director of Administration. Ms. McCaughey graduated in 2008 from Truman State University with a degree in English and minors in communications and psychology. She has hit the ground running and is doing a great job of filling some very big shoes.

Where does the decade go? On March 10, RSI marked an amazingly productive ten years of Jennifer Shack putting her hard work and incredible mind into almost every corner of the organization's efforts. Not bad for someone who likes to change jobs frequently.

Ms. Yates participated in a planning charette for the Association of Family and Conciliation Courts. She and others from outside AFCC were invited to discuss trends and themes that would have an impact on the organization's mission in the coming years. Ms. Yates found the process to be interesting in light of RSI's own efforts to plan for the future.

Judge Holmgren continues to be a member of the Illinois Supreme Court's Judicial Conference and serve on the Criminal Law and Probation Issues Committee. One of the committee's current projects is to explore the feasibility of utilizing ADR in criminal cases.

Executive Committee member Justice Robert E. Byrne is enjoying retirement, but took time out to teach ADR at Chicago-Kent School of Law for the fall semester.



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**RSI MISSION STATEMENT**

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

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

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**MEDIATION ACCESS PROJECT CONTINUED FROM PAGE 03**

Noah began meeting with Joy George, the Center's Executive Director, in January. (For more on this program, see "Innovative Partnering" on page 2.)

SMAP has also begun to work with a busy circuit in Illinois that is seeking to expand and improve upon its small claims mediation service, which currently has only one mediator a few times a month. In another circuit, a legal aid attorney and a judge active in bringing mediation to the circuit have requested help in expanding the family mediation program to include more services for poor and low-income disputants and in exploring whether they can create a small claims mediation program.



**JUDGE JANET HOLMGREN HONORED**



Seventeenth Circuit Chief Judge Janet Holmgren is the latest recipient of *Rockford Woman* magazine's Woman of the Year Award. Judge Holmgren, who is a member of RSI's Executive Committee, was one of 41 women nominated for the award.

The award recognizes women's accomplishments and their influence in the community. Jennie Pollack, the magazine's editor, said Judge Holmgren stood out for making the justice system work for abused and neglected children, juvenile offenders, and those who have mental health and addiction problems. Judge Holmgren was thrilled to be honored with the award, saying she appreciates the recognition the award gives to women's achievements. It gives girls a role model and lets them know they can do anything they want to do. RSI is proud to say that Judge Holmgren is very much proof of that.

**APPELLATE COURT LOOKS AT ARBITRATION**

The 1st District Appellate Court made two rulings on court-annexed mandatory arbitration in the second half of 2008. In *Busch v. Mison*, No. 1-07-2112, the court ruled that a single notice of rejection of an arbitration award may be filed when one party is both defendant and plaintiff in separate actions.

John Busch and his passenger, Sheb'Tufi Kushma, each filed claims against Michael Mison, who filed a counter claim against Busch. At arbitration, damages were awarded to Busch and Kushma, and were denied to Mison in his countersuit. Mison filed one rejection of award for all three cases. The court interpreted Supreme Court Rule

92(c) to mean that rejection of any part of an award is a rejection of the entire award. Therefore, a single rejection was sufficient.

In *Jackson v. Bailey*, No. 1-07-1502, the court held that the simple fact of not receiving the postcard notifying counsel of the date of an arbitration hearing does not make null Supreme Court Rule 91(a). That rule states that arbitration will proceed without a party who fails to appear after "due notice" of the hearing. Failure to appear bars the party from rejecting the award. The court ruled that it was counsel's responsibility to keep track of the hearing date and to notify the clerk of his change of address.



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