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## Judges, ADR practitioners assess progress and seek out ways to improve

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Retired Cook County judge Anthony J. Bosco presided over a mediation last fall involving a family with three children involved in a car accident that ended their long-planned vacation to Walt Disney World.

When negotiations between the family and the insurance company began to stall, he had a sense of what might prompt some movement. Family members, he said, wanted the memories they were denied.

"We're almost there," Bosco recalled telling attorneys for the insurance company. "Now, I need a little more money. And that money is not going into anyone's pockets, it's going to take them to Disney World."

That sort of creativity to bring a case to resolution never could have happened in a courtroom, said Bosco, who has been a mediator for ADR Systems of America LLC since he retired from the bench in 1995.

The ability of a mediator or arbitrator — mainly retired judges who are known as neutrals in the alternative dispute resolution field — to exercise such creativity is one reason that many like Bosco suggest the field has become so successful as an alternative to courtroom litigation.

Bosco's comments came during an ADR Systems seminar Wednesday night. About 30 people — some sitting judges and a larger number of retired judges who are now working as mediators — heard updates on court-ordered mediation and listened to information garnered from ADR clients regarding how they could improve as mediators.

Cook County Circuit Judge Allen S. Goldberg, who presides over a commercial calendar, told the group that the success of the program has blossomed since its April 2004 inception, when judges were given the

option to order parties to participate in court-annexed mediation service.

So far, Law Division judges have referred 575 cases to mediation, Goldberg said. Of those, 52 percent fully settled and 8 percent partially settled, meaning 375 cases have reached some form of resolution.

"The beauty of the process is, if you let the process work, they begin to move to a resolution," Goldberg said.

That was evident in Bosco's case, which settled after the insurance company added an \$11,000 trip to Disney World to its offer. Bosco said the family even phoned to thank him when they returned from vacation.

Goldberg said the biggest change he has seen is in the number of commercial cases now being mediated, which frees up considerable space on the docket. Because of the positive effects, Goldberg said, more judges are being trained in mediation issues.

The increased business for dispute resolution companies — ADR Systems reportedly has doubled its business in the last year — also is an indication the legal community has begun to accept the benefits, Goldberg said.

"What I think we're seeing is that lawyers are not waiting for a judge to sign an order," he said.

Marc Becker, president and founder of ADR Systems, said non-binding mediation cases have surpassed arbitration, now accounting for 65 percent of the company's roughly 150 cases per month. When he began a decade ago, Becker said, binding arbitration made up nearly 95 percent of his business.

The caseload also has shifted from smaller disputes to cases with much larger monetary demands. In January alone, ADR worked on one-third of the total number of commercial cases the company saw all last

year, Becker said.

Becker's company currently is recruiting more mediators and working on getting approval to meet requirements for the mandatory continuing legal education training.

Even with the increase in work, Becker said, Illinois is about 10 years behind states like California, which has used court-ordered mediation for decades.

Still, advocates of the alternative to traditional litigation say the pendulum is swinging.

For one thing, there is a control factor to mediation: It is non-binding so either party can choose to take the case back to court if mediation breaks down.

Retired judge Thomas P. Durkin, an ADR mediator since 2001, said plaintiffs and defendants alike also have come to see the value in terms of time and money saved. For instance, Durkin said he has mediated personal injury cases that might have taken a week in court, in as little as three hours.

Because most suits are settled before trial anyway, Durkin said mediation simply expedites matters.

However, the cases that normally would go to trial will still go to trial, Durkin said.

"The cases that go to trial are the very, very strong or the very, very weak," he said.

According to Goldberg, the mediation process offers something else that litigants might perceive as missing in a courtroom setting.

"When they reach a settlement through the mediation process, they leave with a much better feeling because they feel they've had a chance to vent," he said, adding, "I think, ultimately, it's a wonderful thing for, for lack of a better term, our customers."