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## ADR solutions and success stories can be found around the globe

Over the past decade, the popularity of litigation alternatives has steadily grown across many areas of law, as most practitioners have experienced.

In Cook County, for example, personal-injury actions and property-damage claims seeking only money damages of \$30,000 or less are assigned to the county's Mandatory Arbitration Program, and expansion of such programs continues.

As recently as March, Cook County Local Rule 13.4(e) was passed to greatly expand the breadth of domestic relations cases that will be referred to mediation services, both public and private.

However, despite the courts' widespread use of these ADR programs, many of the cases compelled to partake are considered entry-level or cases dealing with relatively nominal amounts of money. The cases in which ADR is used locally may reflect a general hesitation toward the use of litigation alternatives, a noteworthy departure from the prevailing trends across the United States and abroad.

To the extent that such a hesitation exists, the ever-growing size and scale upon which ADR is being used should instill confidence for a similar and continued expansion throughout Illinois.

Mediation efforts, though rarely part of the headline itself, are being used to help broker peace on an international scale in many conflicts making headlines. In response to the recent increase in tensions between Russia and the Ukraine, Kazakhstan President Nursultan Nazarbaev has offered to serve as a mediator, though his invitation remains pending.

Further, in both trade and border disputes, the United Nations provides arbitration processes, most recently initiated by the

Philippines against China in a dispute in the South China Sea.

Another prominent example of the use of ADR on a larger scale can be found in a close-to-home contract dispute between computer giant IBM and the state of Indiana.

The basis of the dispute is a 10-year contract worth more than \$1 billion entered into in 2006 by IBM and the state for the modernization and management of the Indiana's welfare system. Specifically, then-Gov. Mitch Daniels canceled the contract in 2009, claiming IBM had failed to implement a working system as promised. Soon thereafter, Indiana and IBM countersued one another.

Despite its massive scale, the parties recently announced that the matter — now pending in the Indiana Supreme Court on appeal of a more than \$50 million award — will proceed to mediation in February.

Somewhat similarly, ADR programs are being incorporated by the federal government, namely the IRS, into various regulations for more efficient solutions to

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certain tax appeals. In December, the IRS announced the formalized procedure for, and nationwide rollout of, post-appeal mediation in offer-in-compromise and trust fund recovery penalty cases.

The new program, based on a 2008 pilot program regarding such disputes, will be made available to help resolve disputes after unsuccessful negotiations with the IRS Office of Appeals and is available for both factual and legal issues. The goal of the program is to resolve disputes within



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90 days after the mediation request is approved, some of which involve disputed tax bills in excess of \$1 million.

Outside the United States, ADR is also being used to resolve tax disputes. In the United Kingdom, Her Majesty's Revenue and Customs, the UK analog to the IRS, has been testing ADR solutions as a means to resolving tax disputes since 2011. HMRC's two pilot programs, brought to fruition with help from the Center for Effective Dispute Resolution, both maintain effective solutions for resolving UK tax disputes, as reported by a 2013 HMRC publication.

As noted in a recent Centre for Effective Dispute Resolution conference by Phil Batson, UK ambassador to the Republic of Moldova, "Mediation benefits these [tax] cases by not only providing a neutral to help guide progress, but by also providing a structured timeline, preventing disputes from sitting on the back burner unnecessarily," despite the traditional use of litigation to resolve disputes.

The benefits derived from HMRC's mediation programs are quite similar, if not the same, as those espoused by proponents and practitioners of ADR in the "traditional" contexts here in Illinois, such as contract and family disputes.

The documented success and

growing implementation elsewhere of various ADR services serve as terrific evidence that the core tenants of litigation alternatives are not watered down as the stakes of the dispute at hand increase in size.

In addition to the courts and parties themselves, outside programs such as the Collaborative Law Institute of Illinois and CEDR, mentioned above, are essential in providing the advocacy and education necessary for the growth of ADR in all areas of law and business.

CEDR, established in 1990 with the support of the UK government, provides services to take mediation not only to the judicial system in England and Wales but also throughout the UK and internationally, with instruments such as annually updated model rules, seminars and more.

In addition to the law, CEDR provides mediation solutions in the commercial context around the world. In 2012, CEDR's Asia-Pacific Division instituted a 22-mediator panel based in their Hong Kong office as a direct response to the great demand for ADR in the resolution of commercial disputes.

The Hong Kong program provides mediation and negotiation training and assists in resolving disputes in a wide range of industries, including construction, retail, finance and technology. As of 2013, CEDR has successfully mediated 80 commercial disputes in its Asia-Pacific Division.

In light of the many above examples, it is clear that there remains a great deal of room for the growth and improvement of ADR locally. It is understandable that hesitation exists when it comes to adjudicating disputes outside of the courtroom. Parties often feel that doing so strips them of the protections afforded by the court process.

Those and other concerns, however — though legitimate in some instances — can largely be quelled in light of the road map provided and the successes experienced by ADR in many different contexts around the globe.