The resolution of disputes can be costly and time-consuming in the context of a formal judicial proceeding. Mediation of disputes has a potential for efficiently reducing the volume of cases in the court system in this State. There is a compelling need for dispute resolution centers to divert some matters from the court system.

Illinois Equal Justice Act, Section 5(e)
Accessing Justice through Mediation: Pathways for Poor and Low-Income Disputants

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Center for Analysis of Alternative Dispute Resolution Systems (CAADRS)

Formed in 1995 and based in Chicago, CAADRS’ mission is to assist courts in making more effective use of alternative dispute resolution (ADR). This mission is accomplished primarily by collecting and disseminating reliable information about court ADR, assisting with the creation and monitoring of court ADR programs, and assessing court ADR programs. The CAADRS web site is the home of CAADRS’ online Court ADR Resource Center.

CAADRS has worked from one end of Illinois to the other – from Rock Island to Carbondale – assisting state and federal courts with the establishment, monitoring and evaluation of mediation programs. With CAADRS’ assistance, ten state circuits and one federal division planned and implemented civil mediation programs and monitored their progress. CAADRS also has worked with multiple family, child-related, and small claims mediation programs. CAADRS assistance ranges from multi-faceted evaluations such as one for the Child Dependency Mediation Program in Cook County, to simply sending court rules for a new program initiative from one county to another – passing along a seed. Although direct services are focused in Illinois, courts and individuals across the country call on CAADRS for advice and make use of CAADRS on-line resources. This has led to the expansion of the focus of CAADRS’ information resources to a more national perspective.

CAADRS is affiliated with the Center for Conflict Resolution, Chicago’s long-standing, community mediation organization. For more information about CAADRS, see www.caadrs.org.
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EXECUTIVE SUMMARY

The clear, central finding of the Study is that Illinois is now poised to develop mediation as a path to justice for poor and low-income disputants. Illinois is ready to develop from its current circuit-by-circuit, county-by-county approach to 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.

Reason for the Study
This Study was undertaken because of a conundrum. On the one hand, the Illinois Equal Justice Act (IEJA) states that mediation is an efficient way to resolve disputes and provides financial support for mediation programs involving poor and low-income residents of Illinois.1 On the other hand, funding through the IEJA is limited to programs that are described in the Illinois Not-for-Profit Dispute Resolution Center Act (DRCA).2 While the intent of the IEJA is to promote the use of mediation, it restricts the manner in which mediation can be used. If mediation is an efficient way to resolve disputes, should it be limited to one model? Is that working? Are there more models that would improve the ability of the Act to accomplish its mission while maintaining quality? This Study explores these questions in an effort to find in what way or ways mediation can be an effective path to justice for poor and low-income disputants in Illinois.

Goals of the Study
The goals of this study are to:

- Determine whether mediation is an appropriate method for resolving a significant portion of the legal needs of poor and low-income residents in Illinois outside of Cook County,3
- Develop an information base on the environment for mediation in Illinois,
- Develop service delivery models (a term used in this Study for the structure by which dispute resolution services might be provided), and
- Create a blueprint for developing access to justice through mediation for poor and low-income residents of Illinois.

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1 Illinois Equal Justice Act, 30 ILCS 765/5(e).
2 IEJA, 30 ILCS 765/15(c)(4); Illinois Not-for-Profit Dispute Resolution Center Act, 710 ILCS 20/5.
3 This Study looked at the possibilities for mediation in Illinois outside Cook County. Mediation for low-income residents has been available through the Center for Conflict Resolution in Cook County for more than 25 years, and a wide variety of legal services is being provided in that one county. Additionally, there are different challenges that arise in some other parts of the state, such as geographic dispersion of residents and the lack of public transportation in counties with sparse populations.
The Study
To achieve these goals, the Study addresses:

- What types of cases are best suited for mediation,
- Where in Illinois poor and low-income disputants currently have access to mediation,
- What the legal context is for mediation in Illinois,
- What legal services professionals think about mediation, and
- Where and how mediation programs should be developed.

After examining these issues, the Study puts forward the possibilities for mediation in Illinois: It describes about two dozen service delivery models and posits the Stepping Stones Model, a new model that would improve the coordination of the mediation community and the legal services community. It also discusses the supports and barriers to mediation in the state before making recommendations as to how to support the growth of mediation for poor and low income residents of Illinois through leadership and staff positions. The Study ends with a blueprint for mediation program development in the state.

Types of Cases
One of the most conclusive findings is that three types of cases – family, housing and consumer – should be the focus of mediation efforts. These case types came up again and again in the course of the Study as those that should be the focus of mediation efforts. The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans (Legal Needs Study) found that the three types of disputes that poor and low-income disputants in Illinois were most likely to face are family, housing and consumer.4 Those types also are the three types most amenable to mediation of those studied in the Legal Needs Study. When legal services lawyers were surveyed, they also reported that family, housing and consumer cases were the most likely to be well-served by mediation. Along those same lines, at the three Study gatherings around the state, the two types of cases that were discussed most frequently and with most passion were family and housing.

Legal Context
The mediation of disputes involving poor and low-income residents of Illinois is supported in the main by two statutes and two Supreme Court rules. The Illinois Not-for-Profit Dispute Resolution Center Act (DRCA) was enacted to support the Center for

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Accessing Justice through Mediation: Pathways for Poor and Low-Income Disputants

Conflict Resolution (CCR), a community mediation program in Chicago. It provides for a one dollar filing fee to support community mediation centers, which is mandatory in Cook County and optional in other circuits. When the drafters of the Illinois Equal Justice Act (IEJA) decided to provide for funding of mediation, they used the only funding statute for community mediation available, the DRCA, as the model that mediation organizations must emulate in order to receive funding under the IEJA. However, because the DRCA was only intended to fund the Center for Conflict Resolution, its structure has a number of requirements that limit the types of organizations and activities that are permissible. A mediation program that qualifies for funding must be a 501(c)(3) non-profit organization that uses volunteer mediators trained for 30 hours who operate within a peer review system and write up agreements at the conclusion of mediations. Further, the program must maintain records about the programs, including the number of cases resolved, and ensure that the mediation process is explained prior to mediation.

These requirements, especially those about being a 501(c)(3) and using only volunteers, put rather serious limitations on the types of programs that can be developed with IEJA funding throughout the state. In the Study, each of the 24 described service delivery models differs from the model in the IEJA in at least one respect. This is an indication of the options that would be available if the current funding arrangement under the IEJA were not limited to the DRCA definitions.

Looking beyond funding, there are statutory protections offered when mediations do take place. Three to note are:

- A disputant cannot be forced to mediate without a lawyer or some kind of representation if the disputant wants one (see 750 ILCS 5/404 - Conciliation; mediation, and 710 ILCS 35/10 - Uniform Mediation Act).
- Communications in the mediation are privileged from later disclosure in court (with some exceptions) and mediators must disclose conflicts of interest (see 710 ILCS 35/9 - Uniform Mediation Act – Illinois).
- If mediation is mandatory in court, fees for the mediation will be paid for indigent litigants (see 735 ILCS 5/-105 - Leave to sue or defend as an indigent person).

There are also Supreme Court rules and local court rules that have important bearing on mediation. Supreme Court Rule 99 gives judicial circuits the authority to establish mediation programs, subject to approval by the Supreme Court. Once approved, mediations conducted under these rules are confidential and the mediators have immunity to the same extent as a judge. Supreme Court Rule 905 mandates mediation of all contested custody and visitation issues in the state. It does not indicate, however, how

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5 The one dollar filing fee in the DRCA does not produce enough income to hire even half a staff person in counties outside of Cook, and raising filing fees has become politically very unpopular since the enactment of the DRCA in 1987. There is only one center other than CCR that receives DRCA funding and no new centers have been established since the IEJA was enacted in 1999.
services will be provided to poor and low-income parents. Some local court rules implementing mediation programs under the authority of Rules 99 and 905 provide direction to poor and low-income disputants on how to access services, but most are silent on this matter.

Current Status of ADR in Illinois
Current provision of mediation services to poor and low-income disputants across Illinois is uneven at best. Mediation has developed in a decentralized manner in Illinois. Unlike some states where there was a decision at the supreme court level that mediation would be implemented throughout the court system, in Illinois mediation has developed county by county or circuit by circuit as leading judges and lawyers have brought mediation into their jurisdictions. The benefit of this is that programs can be adapted to local needs, not forced on local legal cultures in a one-size-does-not-fit-all structure. About half the circuits in the state now have mediation programs for their large civil cases because of this approach. The downside, however, is that there has been little to no court funding available for mediation. The only statewide mandated mediation is under the recently adopted Supreme Court Rule 905 for all custody and visitation matters, but there is no funding to support the mandate.6 This has led to a scramble to determine how to provide mediation services for poor and low-income families in some of the circuits that did not provide comprehensive family mediation services previous to Rule 905.

Outside of Cook County there is very little mediation for consumer issues (less than 6% of counties have small claims programs) or housing issues (only one county has an eviction court program), the top two areas of greatest need expressed in the survey of legal needs. For custody and visitation issues (the third issue), there are programs in place or being put in place under Rule 905, but generally without monitoring, funding or support to ensure quality services for poor and low-income parents (or for parents in general). There is no pressure to assure quality mediation services and there is not much information available to legal services advocates that might assist them in meeting their clients’ needs through mediation programs.

What Legal Services Professionals Think about Mediation
Electronic surveys were created on SurveyMonkey, invitations were distributed to legal services providers at Prairie State and Land of Lincoln to visit the site and complete the survey, and their responses were analyzed. This generated 48 responses from all circuits in the state except the 13th Judicial Circuit. This represents 45% of the 107 legal services lawyers and paralegals in the state outside Cook County. Responses included a good cross-section of managing attorneys, staff attorneys and telephone counselors.

Data
Less than 6% of counties have small claims programs.
Only one county has an eviction court program.

6 IL. SUP. CT. R. 905 available at http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#905.
The survey responses point to four distinct findings related to attitudes toward mediation, education and training, use and availability of mediation services, and referral to mediation. To sum it up, the responses indicated: overall generally positive attitudes toward mediation; a need for training and education regarding mediation; reported use of the mediation services that were available, but limited availability of services; and the need to improve the referral process to mediation. One of the strongest findings from the survey was that the respondents said lack of money or free services stopped them from using mediation with their clients. Far and away the top two answers were, “My client could not afford to hire a mediator” and “There are no or too few pro bono mediators in my area.”

What Various Areas of the State Think about Mediation
Three gatherings were held from one end of the state to the other – Carbondale, Bloomington and Rockford. A total of 39 people participated, ranging from six to 19 per group, with two CAADRS staff at each gathering.

At each location a group of mediators, legal services lawyers, private lawyers, judges, academics (if there was a law school mediation clinic in town) and social service professionals (at one gathering) were invited to address the idea of poor and low-income disputants accessing justice through mediation. Together, the three gatherings provided insight into how mediation is perceived; how legal services, the private bar, the bench, the mediation community, and the wider community interact around mediation; and ideas for mediation programming.

Seven statements summarize the information drawn from the gatherings about how mediation should be structured to serve the interests of poor and low-income disputants.

- There was genuine interest in mediation as a means to address legal needs among poor and low-income litigants among the participants.
- The participants focused on two of the top three issues - housing and family disputes.
- There was a definite need for expert, regular technical support around the state to develop programs.
- The participants identified a need for staff infrastructure on the county or circuit level to support ADR programs.
- The participants liked the Stepping Stones Model (see below) to connect mediation and legal services.
- The participants were concerned that mediation as it is currently practiced does not meet the particular needs of poor and low-income people because of their particular challenges in life.
There is a need for collaboration among the various sectors, such as social services, courts and legal services, and in return, the collaboration should assist the sectors in working together more smoothly in general.

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.

**How to Develop Mediation Programs**

There are at least two dozen mediation models that can serve the most pressing needs of poor and low-income disputants. These service delivery models are variations on how mediation is provided – with those differences including who mediates, how the program is supported, what kinds of cases are handled, who funds them, etc. Some follow the IEJA model rather closely and others are much further afield. For example, a court might have a pool of funds from its county board to hire mediators on a sliding scale for poor and low-income parents who need mediators for contested custody and visitation matters. If so, the program would not qualify for funding from the IEJF because the mediators were not entirely volunteers and the program was run by the court, not a 501(c)(3) organization. On the other hand, a program might meet all the criteria and simply not have a peer review process in place.

The question is which model is best in any given setting. Additionally, mediation participants who are poor and low-income have particular needs, and the fine points of programs for them must be developed with those needs in mind. Any mediation program is going to be healthiest in an environment that is most welcoming to mediation in general, not just to mediation targeted at disputants with low incomes. Importantly, while there are so many models, the funding has not been available for these varied models. There are additional barriers to mediation, which are detailed below.

One of the keys to success in this endeavor, or one of the barriers to success, depending on how it is viewed, is the relationship between the mediation community and the legal services community. The mutual co-existence of the two communities – without deep cooperation – that has operated so far has not maximized service to disputants in the realm of mediation. To truly meet the needs of poor and low-income disputants in a high quality way, the worlds of mediation and legal services must be integrated into a joint system. This will involve developing understanding of the needs and interests of each, building bridges between the two communities, and then constructing processes that address those differing perspectives to maximize service to the needs of poor and low-income disputants.

**Finding**

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.
**The Stepping Stones Model**

The Stepping Stones Model is one example of an idea for integrating legal services and mediation, bringing a new level of service to poor and low-income disputants in the state.

In this model a disputant would move from one service to another receiving a variety of services. For example, disputants might receive legal advice or information prior to mediation, thereby addressing some of the concern of legal services lawyers that disputants could be taken advantage of in mediation because they do not know their legal rights. In mediation, they would have a voluntary, confidential, informal process with a neutral third party, the mediator, who would assist them in discussing the issues in conflict (including non-legal issues such as emotions) and in reflecting on their relative interests and positions. A key element of mediation is self-determination, and within that, the mediator would facilitate negotiations, aid the parties in reaching resolution if that is possible, and help them decide what it should be. Mediated agreements may not be quite the same as what a court might order, but may be more satisfying or more feasible for the participants. Agreements are often reached with more speed and cost-effectiveness, and with the opportunity to have one’s say and be heard by the other party. Depending on the program, disputants might work with pro bono lawyers to write up agreements after mediations are completed as a way to address mediators’ concerns about appearing to represent litigants in the drafting of mediation agreements. This would be true especially with complex agreements.

**Supportive Activities**

Supportive activities other than direct mediation services and the Stepping Stones Model also are 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 & 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**

One of the key elements built into the proposed statewide system is monitoring and evaluation. In terms of monitoring, the idea is that it is important not only to provide services but to know how they are being utilized and if those who are using them are satisfied with the services. Therefore, information on timeframes, cost and satisfaction of all participants would be collected and analyzed. This is especially important if experimental approaches that would need to be monitored and adopted as needed, such as the Stepping Stones Model, are used. By coordinating evaluation and monitoring on a statewide basis, comparable information can be collected across the state so that elements that lead to success and those that do not can be identified and improvements made.

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**Finding**

All programs must be monitored and compared on similar characteristics so that elements that lead to success can be identified.
To support this work, new staff positions in the state are proposed. They would include:

- **Court ADR Program Manager** to work with the local leadership team (discussed below) 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. This would be most beneficial in circuits that have several programs.

- **Statewide Mediation Program Coordinator** to work with the statewide leadership team (discussed below) to provide expert technical assistance and aid circuits around the state in developing, monitoring and assessing mediation programs. Also develop relationships with judges, lawyers and mediators and coordinate 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 around the state in meeting established goals by developing and installing a statewide statistical monitoring system, assisting local programs with implementing the monitoring program, collecting and analyzing data, and producing reports based on the data from all mediation programs.

**Blueprint for Mediation Programs**
The vision that came out of the Study is 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*. To accomplish this vision, a two-tiered statewide system is suggested. 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 and evaluation of its mediation programs. Each circuit’s leadership team also would be responsible for ensuring that the local program was monitored and evaluated and for working with the statewide leadership team and evaluation effort to collect comparable data from around the state.

- On a statewide basis, there would be a leadership team responsible for the vision for this effort, for being the face of it, for coordinating and supporting the local programs, and for bringing together the evaluations of the mediation activities of all the circuit programs around the state into one statewide evaluation. This team would have a special evaluation component to assist and track the local teams in their monitoring and evaluation efforts and to produce statewide evaluations of the effort.
Together, these teams would coordinate the development of mediation services for poor and low-income disputants throughout the state. Because not every circuit is ready for development, and some are already rather well-developed, the statewide leadership team would keep its eye on the wider vision and how the individual circuits together are working toward that eventual goal. In coordination with the circuit leadership teams, they would support the coordination of mediation and legal services, the selection and implementation of service delivery models, the promotion of mediation, and the collection and dissemination of the monitoring and evaluation information so that the public, policy-makers, and the users of the programs could be made aware of its successes. In this effort, they would receive support from paid professional staff. The teams also would determine which kinds of supportive activities – such as neutral training, party education, or training for lawyers who are advocates – would be most useful in their local areas.

Supports and Barriers to Mediation in Illinois

Supports

There are at least five strong supports to developing mediation as a path to justice for poor and low-income disputants:

- The increased level of interest that has developed around the state in recent years.
- An increased awareness of mediation, while at the same time mediation has not become so institutionalized that it cannot be adapted to make it especially workable to meet the needs of poor and low-income parties.
- The greatest needs of poor and low-income disputants are also the types of cases – family, housing, consumer – that are most amenable to mediation.
- With an increasing understanding of how mediation and the brief services model of legal services might work together, the new Stepping Stones Model is set to enhance the use of mediation as a path to justice for poor and low-income disputants. (See above for how this would work and how it would lower barriers.)
- The structural support provided by Illinois Supreme Court Rules 99 and 905 as discussed in Legal Context, above.  

Barriers/Funding

Of the five barriers to mediation of cases involving poor and low-income disputants in Illinois, lack of funding is certainly the “superbarrier.” This is because with funding, the first three barriers – lack of technical support for development of mediation services, lack of staff for mediation in judicial circuits, and lack of education and training for every type of participant in the mediation endeavor – all could be overcome. Another barrier, lack of coordination between legal services and mediation services, will require not only funding

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7 IL. SUP. CT. R. 99 available at http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#99.
but leadership and creative program development. Nonetheless, a stable supply of funding is essential to establish mediation services across the state.

**Study Findings**
The following summarize the findings of the Study.

**Finding 1**  
Mediation provides many viable paths to justice for poor and low-income residents in Illinois.  
This central finding is the heart of the study.

**Finding 2**  
Provision of mediation services to poor and low-income disputants across Illinois is uneven.  
This finding reflects the nature of actual provision of services. While there are many examples of mediation, there are few examples of the depth of services needed or of the many types of possible services discussed in this Study to serve the specific needs of poor and low-income disputants.

**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.  
Whether it is scheduling mediations for a time of day when fewer poor and low-income parties need to take time from work, educating mediators about the life issues facing poor and low-income residents, or designing programs to address the most pressing needs of poor and low-income disputants, there are ways to make mediation programs more responsive to the needs of this group of disputants.

**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.  
With the plethora of service options, the goal is to find what is best for a given community and its needs and local resources.

**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.  
Numerous models for delivering mediation services and services that support mediation have been presented in this Study. Clearly there is a match between many of the most pressing kinds of problems poor and low-income residents face and the kinds of issues mediation is most well-suited to address. Nonetheless, given that environment and that match, there are not abundant mediation services
in place and being utilized by poor and low-income disputants. In large part, mediation is not being used extensively by people of means in Illinois, either.

Finding 6
Most mediation programs for poor and low-income disputants should be focused on family, housing and consumer cases.
These are the types of cases for which there is a high correlation between a high level of need for assistance among poor and low-income disputants and cases being highly amenable to mediation. Therefore, these are the cases upon which most of the resources should be focused.

Finding 7
If there are other case types for which mediation can be provided efficiently, then programs for them also should be considered.
Certain local factors can support the efficient provision of mediation services for particular types of case.

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.
The new ways to think about how mediation and legal services can work together are increasingly sophisticated and demanding of participants from both the legal services perspective and the mediation perspective, but they have the potential of providing a new depth of services that can meet the needs of poor and low-income disputants in a more complete way.

Finding 9
If mediation is to truly serve poor and low-income disputants in Illinois, there are many ways beyond the basic mediation model in the Illinois Equal Justice Act that must be utilized.
Along with working more effectively with legal services, there are other ways in which mediation models can and should expand beyond the model found in the Dispute Resolution Center Act. For example, some will pay mediators instead of using volunteers, some will be housed in courts or other venues rather than 501(c)(3) organizations, while some will provide services that support mediation, such as education or training, instead of direct mediation services.

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.
Assuming that this new approach of helping more programs to bloom across the state is implemented, the next logical question will be why they bloom. Naturally some will not bloom, and it will make sense to ask why they have faltered. In
order to be able to answer these questions, the programs must be monitored and compared.

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. A looming question is what it would take for these new programs to be implemented. If they are a good idea and they have not happened before, there must be reasons. The barriers found in the Study are a lack of technical support, staffing, education & training, funding, and legal services and mediation working together. The latter was discussed above. With funding and leadership, many of the others can be addressed.

Conclusion
While some mediation is being provided through courts, bar associations and law schools 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. The Study provides a blueprint for implementing, monitoring and evaluating an integrated system focused on housing, family and consumer cases. It will require more programs, staff, training, marketing, expert guidance, and a smooth interplay between legal services and mediation so that disputants can shift between the two, receiving the services they need. 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.
I. DESCRIPTION OF THE STUDY

A. Reason for the Study
This Study was undertaken because of a conundrum. On the one hand, the Illinois Equal Justice Act (IEJA) states that mediation is an efficient way to resolve disputes and provides financial support for mediation programs involving poor and low-income residents of Illinois. On the other hand, funding through the IEJA is limited to programs that are described in the Illinois Not-for-Profit Dispute Resolution Center Act (DRCA). While the intent of the IEJA is to promote the use of mediation, it restricts the manner in which mediation can be used. If mediation is an efficient way to resolve disputes, should it be limited to one model? Is that working? Are there more models that would improve the ability of the Act to accomplish its mission while maintaining quality? This Study will explore these questions in an effort to find in what way or ways mediation can be an effective path to justice for poor and low-income disputants in Illinois.

Section 15(c)(4) of the IEJA states that funding should be distributed to “dispute resolution centers that have demonstrated or demonstrate compliance with the requirements of Section 5 of the Illinois Not-for-Profit Dispute Resolution Center Act” (DRCA). However, the DRCA was never intended to be a statewide funding mechanism; it was only meant to support the Center for Conflict Resolution (CCR), a community mediation program that receives a majority of its case referrals from the courts in Cook County. Additionally, the DRCA was written to ensure that only programs designed in a very particular manner would be eligible for funding, but the rigidity of the program eligibility requirements make it difficult to adapt to local needs in the rest of the state. The funding mechanism in the DRCA – a one dollar filing fee – does not produce enough income to hire even half a staff person in counties outside of Cook, and raising filing fees has become politically very unpopular since the enactment of the DRCA in 1987. These aspects of the DRCA have been a major reason why there is only one center other than CCR that receives DRCA funding and no new centers have been established since the IEJA was enacted in 1999. This means that any expectation that IEJA and DRCA funding would work together to support mediation throughout the state has not been realized.

8 The author would like to thank her colleagues at the Center for Analysis of Alternative Dispute Resolution Systems for all their excellent work on this Study. As always, it was a team effort. Without Jennifer Shack, Director of Research, Jennifer Spagnolo, Director of Administration, and Lindsey Green, Research Intern, this publication would not have been possible.
9 Illinois Equal Justice Act, 30 ILCS 765/5(e).
10 IEJA, 30 ILCS 765/15(c)(4); Illinois Not-for-Profit Dispute Resolution Center Act, 710 ILCS 20/5.
11 DRCA, 710 ILCS 20/5.
12 Filing fees are assessed on civil cases only. The number of civil cases filed in circuits outside of Cook in 2005 ranged from 7,305 to 31,276. The average per circuit was just under 16,500. This is the total possible number of cases on which a $1 filing fee could be assessed. In practice, however, the two circuits assessing this filing fee waive the fee for a variety of reasons, leaving a much smaller pool of cases for which the fee is assessed. For example, in Cook County 345,739 civil cases were filed in 2005, but $220,495 was collected in fees.
The fact that the acceptable recipients of IEJF funding were limited to a few programs was not an issue when the Foundation’s pool of funds was also limited. However, as the funding base has grown, the question arises as to whether the limitation on the range of mediation models is the best use of resources for poor and low-income disputants in Illinois. While there are ways to provide mediation services other than establishing a DRCA-compatible dispute resolution center, the fact that these other ways currently cannot be supported by the Illinois Equal Justice Foundation severely limits the expansion of mediation to low-income populations.

While this Study was prompted by the changing status of the Illinois Equal Justice Foundation, the time is especially ripe for the Study for other reasons as well. For example, the new Illinois Supreme Court Rule 905: Child Custody and Visitation Mediation (Supreme Court Rule 905) requires that every circuit establish a mediation program for every case involving child custody and visitation issues by January 1, 2007.\footnote{ILL SUP. CT. R. 905 \textit{available at} \url{http://www.state.il.us/court/SupremeCourt/Rules/Amend/2006/021006.pdf}.} This has posed quite a challenge to many circuits, especially as they try to meet the needs of poor and low-income parents for access to mediation services.\footnote{The trial courts in Illinois are divided into 23 judicial circuits. Each judicial circuit is comprised of one or more contiguous counties. These circuits range from those with large, dense metropolitan populations in a single county, such as Cook County, to extremely rural circuits with low, disbursed rural populations in multiple counties, such as the 2nd Judicial Circuit, which covers 11 counties in far southeastern Illinois. Each circuit has a chief judge who provides administrative leadership to the circuit.} In addition, Illinois Supreme Court Rule 99 authorizes circuits to establish mediation programs and obtain their approval from the Supreme Court.\footnote{ILL SUP. CT. R. 99 \textit{available at} \url{http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#99}.} These are manifestations of a growing acceptance of mediation by the highest court in the state, which reflects the growing awareness and acceptance by the legal profession and, to a lesser degree, awareness by the public.

This Study will explore a wide range of information as it fulfills its purpose. It will consider the limitations and the possibilities of mediation in the state to see if and how mediation can be an effective path to justice for poor and low-income disputants in Illinois.

**B. Goals of the Study**

The goals of this Study are to:

- Determine whether mediation is an appropriate method for resolving a significant portion of the kinds of legal needs of poor and low-income residents in Illinois,
- Develop an information base on the environment for mediation in Illinois,
- Develop service delivery models (a term used in this Study for the structure by which dispute resolution services might be provided), and
- Create a blueprint for developing access to justice through mediation for poor and low-income residents of Illinois.
C. Process of the Study

Information for this Study was collected through five methods. They were (1) researching a 2005 legal needs study, (2) on-line and telephone research on the use of mediation in Illinois and elsewhere, (3) informal research on the use of mediation outside of Illinois, (4) surveys of legal services and mediation providers, and (5) the facilitation of gatherings of judges, legal services providers, and mediators, among others.

1. Research on Legal Needs Study

This Study started with a thorough review of The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans (Legal Needs Study). The Legal Needs Study surveyed low-income residents of the state about the legal issues they had faced. It found that this population faced over 1.3 million civil legal problems in 2003, in a number of areas. This Study then determined whether and when there is a fit between the needs for legal assistance expressed by poor and low-income residents in the state and the kinds of cases for which mediation is appropriate.

In addition to examining the published study, it was necessary to dig deeper by looking at the raw data from the survey in order to gain a better understanding of the definition of the types of problems being faced. For this, data provided by the Research Director of the Legal Needs Study, Mark Marquardt, was critical.

2. On-line and Telephone Research

To gain a full picture of the structure already in place for mediation in Illinois, as well as to get an idea of options around the United States, extensive research was conducted through CAADRS’ Resource Center and on the Internet, with some follow up research done by phone. This search included all statutes, court rules, and programs in Illinois that either support or utilize mediation, with a focus on those that address the specific topics that were examined in the Legal Needs Study. A search was conducted as well for mediation programs across the country that would be helpful to poor and low-income people in an effort to find models that might be useful in Illinois.

The search began with CAADRS’ Resource Center, and then expanded to the Internet at large. Exhaustive searches were conducted on keywords for each topic. For example, for housing, searches were conducted on Google using the terms housing and mediation, landlord/tenant and mediation, housing and disputes, landlord/tenant and disputes, eviction and mediation, rent and mediation, and so on. Resources examined in the course of these searches included web sites, public education documents, statutes, and internal organization documents. For Illinois, the searches were also conducted within government agency web sites, as well as on the web sites of certain service organizations.

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17 Legal Needs Study, supra note 9, Introductory Letter.
18 Mark Marquardt (Unpublished data provided to CAADRS and on file with author) [hereinafter Marquardt Unpublished].
19 CAADRS maintains a comprehensive Resource Center on ADR as it relates to court activities in Illinois available at http://www.caadrs.org.
20 Legal Needs Study, supra note 9, at 17.
When there was insufficient information on the Internet about a particular program in Illinois, follow up calls were made to the agencies involved to gain more insight into them.

3. Informal Research
Informal research was conducted through telephone calls to programs in Illinois and nationally of which the author was aware through years of work in the field and through long-standing connections through the American Bar Association Section of Dispute Resolution. This yielded some useful insights, service delivery models and information.

4. Surveys
Legal services lawyers and mediators around the state were asked via email to participate in electronic surveys. The main purpose of the legal services survey was to gather information on their experiences with, and attitudes toward, mediation. The legal services respondents were also asked about their alternative dispute resolution (ADR) education and training. The purpose of the mediator survey was to determine their use of and interest in conducting volunteer and reduced fee mediations.

5. Gatherings
Three gatherings were held from one end of the state to the other in Carbondale, Bloomington and Rockford as a way to give voice to the Study. At each location CAADRS developed a list of mediators, legal services lawyers, private lawyers, judges and academics who were interested in the idea of poor and low-income people accessing justice through mediation. Many of the individuals were those with whom CAADRS had worked in the past. Generally a point person in each location would help fill in any gaps to round out the invitation list. Each person was invited by telephone to make it clear that that individual’s input was being sought, and to explain the purpose of the gathering and answer any questions. There was a high level of enthusiasm and almost without fail, people agreed to attend unless they had another commitment.

The gatherings were each based around a meal – either lunch or dinner – and lasted from two to three-and-a-half hours. The number of participants ranged from a high of 19 in Rockford and 13 in Carbondale, to six in Bloomington, as different approaches to conversations were used. (See Appendix 1 for notes from the gatherings, and Appendix 2 for a list of participants in the gatherings.)

D. Definitions
For the purposes of this Study, the following definitions will be used:

- Alternative dispute resolution and ADR are the terms used for the group of processes used as alternatives to litigation. The typical processes include mediation, arbitration, early neutral evaluation, summary jury trials, mini-trials, family group conferencing, parenting coordination, ombuds and facilitation. Judicial settlement conferences and negotiation are generally considered ADR processes as well. Sometimes the term is changed to appropriate dispute resolution or shortened to dispute resolution.
• **Mediation** is a voluntary process whereby a neutral third party, the mediator, assists disputing parties in discussing the issues in conflict and in reflecting on their relative interests and positions, facilitates negotiations between the parties, and aids them in reaching their own resolution if that is possible. If the parties reach resolution, it may remain informal upon agreement of all sides, the terms of the agreement may become a contract, or the parties may take the agreement to court for further action. Mediation may be participated in simply by engaging a mediator, or as a result of referral through a court program.

Mediation is valued for a variety of qualities: confidentiality, informality, speed, cost-effectiveness, the opportunity to deal with non-legal aspects of a dispute (such as emotions), and the opportunity to have one’s say about a dispute and be heard by the other party. A key element of mediation is self-determination, which gives the disputants control over whether to agree and what that agreement might look like. The agreement sometimes is not what a court would have ordered, but may be more satisfying or more feasible for the participants.

• **Mediators** are neutral, skilled individuals from a variety of backgrounds – law, social services, mental health, law school, community member, etc. – who provide mediation services. There is no state law in Illinois that dictates what qualifies a person as a mediator or a “certified mediator,” although certain court programs in the state do have requirements for being listed on their mediation rosters. Most require some combination of training, education and experience. Some also require availability for some minimal volunteer service.

• **Arbitration** is a process whereby a neutral third party, the arbitrator, hears evidence at an arbitration hearing about a dispute and then enters an award. Arbitrations can be binding – where the award can only be set aside by a court for a very limited set of reasons – or nonbinding – where the award can be rejected and a trial de novo commenced upon payment of a rejection fee. The court arbitration programs in Illinois for mid-level lawsuits are nonbinding. The idea is that the parties get a good idea of what their case is worth from the three-member arbitration panel and most of the cases can be expeditiously settled. Private arbitrations are more typically binding, are set by contract, and usually have single arbitrators, although there could be three-member arbitration panels in private arbitrations, too.

• **Arbitrators** are neutral, skilled individuals. The state court arbitration program uses only attorneys who have been trained to participate in the arbitration program. Private arbitrators are typically attorneys, but sometimes are neutral experts in other fields, such as engineering or construction.

• **Med-Arb** is a process wherein a neutral starts by attempting to settle a case through mediation, but if the parties are unable to reach agreement, the neutral becomes an arbitrator and decides the case for the parties. There are some concerns with this process – that parties will either not be forthcoming during the
mediation, for fear that their honestly will hurt them if the case goes to arbitration, or that the mediator-turned-arbitrator will be swayed by confidential information gained during mediation caucus during the decision-making of the arbitration.

There are many other dispute resolution processes, such as early neutral evaluation, parenting coordination, and settlement conferences, but this Study is focused on mediation because that is what the Illinois Equal Justice Act funds. Arbitration is defined here because it is mentioned in this Study and because there is still some confusion about the difference. Med-arb is also defined because it comes up later in the Study as a proposed method for meeting legal needs. For quick definitions of other processes, see “What You Need to Know about Dispute Resolution: The Guide to Dispute Resolution Processes,” the American Bar Association Dispute Resolution Section’s on-line guide at http://www.abanet.org/dispute/draftbrochure.pdf.

E. Outline of the Study
Following this introductory section, there are five substantive areas in the Study. The first (Section II), the Legal and Mediation Landscape, presents a thorough foundation for the rest of the Study. It reviews the legal needs in the state and what can be addressed through mediation, covers the statutory and court rules for ADR in Illinois, briefly summarizes the history of ADR in Illinois, explains the current status of mediation programs that address the types of cases facing poor and low-income disputants in Illinois, and reviews some mediation program ideas from outside Illinois. Together, this information provides a thorough vision of the landscape within which mediation of the types of issues that face poor and low-income disputants in Illinois can be conducted.

Section III presents findings from two procedures for gathering information. In one, surveys were used to learn about legal services providers’ experiences with, and attitudes toward, mediation and mediators’ experiences with volunteer and reduced fee mediations. The information collected from the surveys helped to gain an understanding of the current and potential practice of mediation for poor and low-income disputants. In another, legal services lawyers, private sector lawyers, mediators, judges, and academics or social services professionals were gathered to share their views on how mediation might or might not be a path to justice for poor and low-income disputants in the state. These two sources put a human face on the information collected in this Study, finding that there is a generally positive view toward mediation in the state among those contacted.

Section IV discusses the supports for and barriers to mediation as a means of achieving justice for poor and low-income disputants in Illinois. This finds that while there are significant barriers facing the development of mediation in general, and mediation for poor and low-income disputants specifically, there are also many factors supporting its development.

Following that, Section V discusses service delivery models that differ from the model funded under the Illinois Equal Justice Act that could be used to provide access to
mediation for poor and low-income disputants. A wide variety of models is available; however, some are more appropriate than others. One model, the Stepping Stones Model, is really the concept behind an unlimited number of models combining various forms of legal services and mediation services.

The final substantive section wraps up the Study with a blueprint of key considerations for the Foundation to use when determining whether and, if so, how to expand beyond the current model of mediation services for poor and low-income disputants in the state. The Study then ends with a brief Conclusion.

F. Technical Assistance Requests
One of the areas that was discussed in the proposal for this Study was the possibility that the activities of the Study might engender an interest in technical assistance. At this point no formal requests for such assistance have been made. At each of the three gatherings, the groups were enthusiastic about development of mediation in the local area. Conversation sometimes turned to discussion of how to design a particular program or improve a current activity, but because the goal of the gatherings was to discuss a broad range of ideas, rather than to engage in program planning, the facilitator redirected the discussion to the task at hand. One discussion did generate a call for possible future technical assistance. Following a gathering, the chief judge wrote a letter to CAADRS indicating that the circuit was interested in establishing a new small claims mediation program for which CAADRS would be called upon for assistance, as well as working on refining the existing family mediation program.

G. Geographic Area Studied
It is important to note that this Study looked at the possibilities for mediation in Illinois outside Cook County. It reports on the rules and some mediation programs within Cook County to provide well-rounded information, but it does not explore the plethora of legal service programs available in the county. All recommendations are intended for the other 101 counties of the state. Whenever the phrase “around the state” or “throughout the state” or the like is used in this Study, it should be taken to mean Illinois outside Cook County.

One reason for this is that the services that are available in Cook County are vastly different than those in the rest of the state. Mediation for low-income residents has been available through the Center for Conflict Resolution for more than 25 years, and a wide variety of legal services is being provided. Another reason for this is that geography presents special challenges across the state that can be very different from those found in Cook County. The geographic dispersion of residents and the lack of public transportation are just two examples of issues that arise in counties with sparse populations.
H. A Note about Court Focus

Much of this Study will focus on the provision of mediation services through courts, as referred by courts, or of certain types of court cases. That is not meant to exclude other ways to develop mediation cases, but it does reflect the reality that courts are the primary avenue to access disputes. To paraphrase the bank robber who, when asked why he robbed banks, replied, “Because that’s where the money is;” a mediator who is asked why go to court for mediation cases might very well reply, “Because that’s where the disputes are.”

A critical reason for the important role courts play in mediation systems is the voluntary nature of the mediation process. In order to get the second party to participate in mediation, it is generally necessary to indicate seriousness about the situation and the filing of a court case is often the necessary indicator of that seriousness.
II. LEGAL AND MEDIATION LANDSCAPE

The foundation of this Study is the environment within which mediation services are – or might be – provided. The idea is to develop a cohesive picture of the interaction between the need for services on the part of low-income residents of the state and the existing legal services for them, existing mediation programs, mediators, and the infrastructure for potential mediation programs. To do that, this section will review the legal needs of poor and low-income Illinoisans, discuss what makes a type of case amenable to mediation, look at what kinds of cases are amenable to mediation, and then see whether the areas for which there is legal need intersect with those cases that are amenable to mediation. The section will then review the statutes and rules that relate to ADR that could affect poor and low-income residents in Illinois. From there, a brief history of ADR in Illinois will be followed by a review of the programs currently in place in the state for the case types of interest to poor and low-income residents. The section will conclude with some ideas from other states about how to use mediation to address the needs of poor and low-income disputants.

Together, this information will paint a picture of a state where there is great need for legal services for poor and low-income residents, where those needs could be addressed in some significant measure by mediation, but where there are limited mediation services currently available. It will also describe the skeleton of statutes, court rules and programs upon which mediation services could be developed to serve poor and low-income disputants as those services are developed in conjunction with developing them for disputants of more financial means.

Why Mediation Is Used

In considering the use of mediation as a path to justice for poor and low-income disputants, it is important to consider why mediation is used as a path to justice at all. The Illinois Equal Justice Act addresses this question with, “The resolution of disputes can be costly and time-consuming in the context of a formal judicial proceeding. Mediation of disputes has a potential for efficiently reducing the volume of cases in the court system in this State. There is a compelling need for dispute resolution centers to divert some matters from the court system.”22 This section of the law illustrates two of the three main reasons that are generally used for employing mediation programs: to reduce costs and to save time. The third main reason that mediation programs often are implemented is to improve the satisfaction of disputants with their disputing experience and the outcomes they achieve in resolving their disputes. The IEJA also addresses the need to reduce the volume of cases in the court system, which also can be a benefit of mediation.23

In terms of reducing cost, the first question is whose cost would be reduced? The IEJA text indicates that part of the goal of mediation is reducing the number of cases in court, and therefore cost to the court. If there are fewer cases, there also will be less time demanded of the court. This results in a time savings to courts. The courts, however, must

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22 IEJA, 30 ILCS 765/5(e).
23 IEJA, 30 ILCS 765/5(d).
be involved in referring cases to mediation, monitoring a mediation program, etc. This has the effect of shifting some of the time saved in traditional activities involved in hearing cases to other activities involved in managing mediation programs. Nonetheless, a net time savings is still anticipated. These savings of time are directly related to savings of money in terms of staff time. Whether there would be any direct savings of time in terms of measures such as court processing time (e.g., fewer times that a divorce case would appear in court) would depend on how a mediation program was structured.

There is also the question of savings for litigants. Savings could be process-related. For example, for poor and low-income litigants, the savings could come in terms of programs that are scheduled in the evenings or other times when they do not have to take time from work for mediation; in cases that are settled the first time they come to court for small claims cases, instead of having to return to court and take time off; and in other ways that reduce the time lost from low-paying jobs and the transportation costs incurred when there is no income. Savings could be outcome-related as well. For example, payment schedules could be worked out that fit with a party’s ability to pay, rather than a court-imposed schedule.

This leaves the third factor: participant satisfaction. In mediation, disputing parties have an opportunity to talk about their dispute in a way they would not have in court. They have an opportunity to hear from the other side, and discuss the dispute, again, in a way that is not present in a court setting. They also have the opportunity to create solutions that are outside the purview of the court that meet their own needs and interests. Coming to an agreement is voluntary and that puts the power in the parties’ hands. If they do not reach resolution, they can return to court and have a judge decide their case as though the mediation had not happened. What they say in mediation is confidential (within common sense limits), so they are free to say what they need to say to get the case resolved. This process is generally very satisfying for participants. Even if they are unable to reach an agreement, they leave mediation feeling that they have been heard and they have tried to reach agreement.

There is still the overriding question of whether poor and low-income disputants are reaching just outcomes. One study, "A Study of Domestic Mediation Outcomes with Indigent Parents," looked at whether settlement rates and outcomes were any different for indigent parents than for other parents and found no difference.24 Another study, the “California Family Court Snapshot Study,” surveyed 1,338 families who underwent mediation. It found that those parents with less education, lower incomes, and of ethnic minorities found mediation to be more helpful than other parents did.25

Following are some examples of how parties can take charge of their disputes and take advantage of the opportunity for honesty and creativity that mediation provides:

- The tenant and landlord who worked out an extra two weeks before an eviction, allowing the tenant (who acknowledged months of unpaid back rent) time to get a friend (who was at the mediation) to come with a truck to get her belongings and saving the landlord from hiring movers to remove the tenant’s belongings.

- The former boyfriend and girlfriend who worked out a time every other Saturday for him to see their baby at his mother’s house, even though they had not seen each other since soon after the baby was conceived, and she had originally told him the baby was not his.

- The home remodeler who agreed to return to the home of the senior citizen and finish the backsplash in her kitchen within the week. He apologized for not finishing sooner and for letting her job fall to the end of his job list and she said she would know better than to pay for all of a job before it was finished in the future.

- The hospital employee who had worked hard to get a GED in order to obtain a position in the dietetics department and then filed an employment discrimination complaint when he was recommended for a demotion to a position in another department. The mediation led to him telling his supervisor, “When you told me that I should find work in the housekeeping department, it was like you told me to go work on the plantation,” and the supervisor’s gasp of “I didn’t know! I was just trying to find a job that seemed like a better fit.” From there, they could resolve their dispute.

The three factors of speed, cost and satisfaction drive the provision of mediation services. This human element can make mediation especially meaningful as an opportunity for poor and low-income disputants to take control of their lives in terms of the conflict they are experiencing.

A. Legal Needs that Could Be Addressed through Mediation
The first of the six imperatives of the Legal Needs Study is, “Provide a full range of service options to make the legal system accessible to low-income Illinoisans.”26 One of the recommendations within that imperative is, “Expand the use of mediation, which can be an efficient and effective way to resolve many types of legal disputes.”27 In theory, the vast majority of the legal needs of poor and low-income residents of Illinois as identified in the Legal Needs Study could be addressed through mediation. The reality of how that would happen is quite another matter. Mediation is not a magic bullet that should be applied to all cases, but is an effective tool that should be used judiciously.

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26 Legal Needs Study, supra note 9, at 168-169.
27 Id. at 169.
Later, this Study will address mediation service delivery models for addressing various types of cases in effective ways. In this section the Study will review the types of cases that were identified as those that poor and low-income disputants experience, and those that are more or less amenable to mediation, or not amenable at all.

1. Legal Needs
The Legal Needs Study identified eleven areas of legal needs among poor and low-income Illinoisans.\(^{28}\) In order of greatest need, they are consumer, housing, family, public benefits, employment, health, education, disability, tort defense, wills and estates, and immigration.\(^{29}\) Some examples of the types of cases in each category follow.\(^{30}\)

- Consumer cases: unsatisfactory goods or services; repossession; bankruptcy; harassment by creditors; credit issues; or utility problems

- Housing cases for homeowners: unsatisfactory home repairs; mortgage foreclosure or threat of mortgage foreclosure; predatory lending; or late payment of property taxes

- Housing cases for renters: eviction; lock out; trouble collecting security deposits; or serious problems with conditions (e.g., lead paint or rats)

- Family: divorce; child custody and visitation; child support; adoption; termination of parental rights; paternity; guardianship; domestic violence or elder abuse

- Public benefits: problems with food stamps, General Assistance, Social Security, Supplemental Security Disability, Supplemental Security Income (SSI), veteran’s benefits or job training; or with educational services necessary to obtain work

- Employment: inability to collect unemployment benefits or pension benefits; or loss of a job because of race, age, sex or religion

- Health: problem getting a government insurance program, such as Medicaid, KidCare or Medicare, to pay for a covered medical service; turned down for a government insurance program; refused admission to a nursing home; transferred or discharged from nursing home against one’s will; or could not see a doctor or other health care provider because provider did not accept Medicaid

- Education: denied special education program for learning disability or other mental or emotional issue; placed in a special education program that was not right; or denied needed educational services because student does not speak English well

\(^{28}\) Legal Needs Study, supra note 9, at 17.

\(^{29}\) Id.

\(^{30}\) Id. at 19.
Section II: Legal and Mediation Landscape

- Disability: denial of housing or employment due to disability; inability to access a business or government service due to disability; or forced to live in an institution
- Tort defense: sued for personal injury or damage to property
- Wills and estates: problems with a will or an estate
- Immigration: unable to apply for immigration status; threatened with deportation; or treated unfairly by an employer because of immigration status

Legal Needs in Order of Priority
- Consumer
- Housing
- Family
- Public benefits
- Employment
- Health
- Education
- Disability
- Tort defense
- Wills & estates
- Immigration

2. Factors that Make a Case Type Amenable to Mediation

In looking at the factors that distinguish case types that are more amenable to mediation from those that are less amenable, the first factor to consider is flexibility of negotiating positions. Is there flexibility in negotiating a resolution or does one side take a take-it-or-leave-it stance? Is flexibility in outcome possible, or is the only option an either-or situation in which one side wins and one side loses? If there is room for flexibility, chances are good that the case type is amenable to mediation because the parties have room to negotiate a resolution. However, if one party is a government entity, for example, and can only offer one particular resolution, there is generally little reason to implement a mediation program. Along these same lines, if there are multiple issues or at least multiple items to work out, such as are found in a visitation schedule, a case type is more amenable to mediation than when there is only one issue that needs to be determined, such as whether to deport an individual.

Another way of looking at this is who the stakeholders are. If those participating in the mediation have personal funds at stake or have personal responsibility for actions involved in the dispute, the case is often more amenable to mediation than if a large entity attempts to participate through a representative. (Understandably, high emotions can make it more difficult to settle an individual case, but skilled mediators are well equipped to deal with this situation.) An entity has a more difficult time determining how to advise its representatives to be flexible and to respond to the human aspect of mediation than an individual who is personally involved. This is most readily seen in the problems that the federal government would have instituting a mediation program for public benefit programs. The government would find it difficult to instruct individual representatives to negotiate individual outcomes for hundreds of thousands of cases. In contrast, an individual landlord is free to negotiate a resolution with a tenant regarding a security deposit. This contrast is less clear

Amenability Factors
- Flexibility
- Stakeholders
- Ongoing relationships
when the large entity is a private company. For example, huge private insurers mediate settlements on a regular basis.

Another factor that distinguishes more versus less amenable case types is the interest in maintaining an ongoing relationship. In cases such as special education, in which parents, teachers and administrators need to work together to provide a positive educational environment for a disabled student, a mediation can chart a course for the future, as well as resolve a dispute. This can occur as well in employment discrimination cases in which an employee returns to, or continues to, work at the organization against whom he or she has filed a complaint.

3. Cases Amenable to Mediation
The general categories of the Study – family, housing (homeowners and renters), consumer, education, employment, disability, tort defense, wills and estates, health, immigration and public benefits – can be seen as forming a continuum in terms of how likely they are to be amenable to mediation. (The specific types of cases within the general categories that do not follow the continuum pattern will be discussed below.) The continuum starts with the kinds of cases that are generally considered a natural for mediation: family, housing, and consumer. These have all been mediated successfully across the country for years.31

**Family cases** are considered very amenable to mediation. They generally have the flexibility that comes with multiple issues to address and often involve ongoing relationships among the parties. These are often cases in which parties know the details of their situations intimately and can resolve them to a level that those outside the family, such as lawyers and judges, are incapable of reaching.

While most of the types of cases in this category are among the most amenable to mediation, they all demand some of the highest level of caution when determining whether there has been any abuse between the parties, whether all parties are capable of negotiating on their own behalf, whether there are any ongoing substance abuse or mental health issues, and ultimately, whether the decisions that are reached in mediation are in the best interests of the child, the elder or the person who is under guardianship. In the case of domestic abuse, some programs decide that cases in which abuse is present are not amenable at all. Others decide on a case-by-case basis which parties are able to mediate. These programs put extensive safeguards in place to ensure the safety and ability to negotiate of the party who has been abused. They are cases in which the promise of mediation to improve the authority of families to make their own decisions can be realized, but also cases where the responsibility of the court to oversee the quality of mediation services and to review any mediation agreements is paramount.

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Housing cases also are very appropriate for mediation because they often involve multiple issues and have flexibility in what can be negotiated. These cases are divided into those involving renters and those involving homeowners. Many renters’ issues could be mediated and are mediated on a regular basis in a few locations in Illinois today.\textsuperscript{32} Even eviction cases, which would not seem to be amenable to mediation, have been mediated, so long as there are some issues other than whether notice was received and payment was not made.\textsuperscript{33}

For some of the homeowners’ issues, such as crafting a resolution for bungled home repairs, mediation may be just the way to work out a creative resolution. Others, such as predatory lending, do not lend themselves to mediation. Only a mediation program that was worked out with the state would be effective for something like late property tax payments, but if it could be established and maintained, it probably could be very effective for helping to maintain homeownership.

A small subset of housing cases, such as predatory lending cases, do not lend themselves to mediation and are better being litigated because there is a need to ensure that other borrowers are not the victims of the predators. For the most part, however, housing cases are amenable to mediation.

Consumer cases are generally amenable to mediation, although there are some case types that are somewhat less appropriate. For example, a dispute over poor goods or services is often quite amenable to mediation and working out resolutions between consumers and merchants over products or services is quite typical of mediation cases in small claims mediation programs in Illinois. Working out terms for bankruptcy or credit issues can be handled in mediation quite nicely, while harassment is not something that is mediated. The former cases have the flexibility and multiple issues that make arriving at resolution through mediation likely. Problems with utility companies could be less amenable to mediation if a utility company is less flexible about outcomes, although it could work if the company participates in a process in a flexible way.

Education cases, particularly special education cases, are quite amenable to mediation. There is flexibility on the school’s part about how to work out a plan for each child and an ongoing relationship between child, teacher and administration. The Illinois State Board of Education offers mediation for cases involving disputes over students’ special education services.\textsuperscript{34}

Tort defense cases are prime candidates for mediation, although a party would need a lawyer to make good use of the mediation process. Twelve circuits in Illinois have mediation program rules for large civil cases.\textsuperscript{35} These cases contain a variety of issues and generally are so individual that they are dealt with on a case-by-case basis, which makes them amenable to mediation.

\textsuperscript{32}See supra p. 51.
\textsuperscript{33}See http://www.caadrs.org/adr/ccprogrs.htm.
\textsuperscript{34}See http://www.caadrs.org/adr/mediation.htm.
Employment cases vary in how amenable they are to mediation. Disputes over employment discrimination are quite amenable because they involve multiple issues (not just whether there was discrimination, but often emotional issues and other issues involving the workplace) and the parties who have decision-making power as well as the parties directly involved in the case can participate. These cases are mediated in Illinois on the state and federal level. Employment disputes involving unemployment or pension benefits may be less amenable to mediation because there are fewer issues and there may be a single large entity involved.

Disability cases are often amenable to mediation for many of the same reasons as employment discrimination. There would likely be issues, such as emotional and financial matters, surrounding the disability-related claim that would make the case more amenable to mediation. Disability cases would also be likely to deal with a variety of parties, so they tend not to have the rigidity of just one large entity with which to negotiate resolutions.

Will and estate cases may or may not be amenable to mediation. If there are family members who need to sit down and sort out their differences about a will, mediation can be very useful. There is such an effort conducted by a judge in Cook County. If, however, a legal determination is required, these cases will not be amenable to mediation.

Health cases that affect poor and low-income residents of Illinois are not typically amenable to mediation. Mediation is not generally effective at reversing a decision of private or public coverage, which is at the crux of many of the health issues in this case type.

Immigration cases also are not typically amenable to mediation. These cases are determined as a matter of law, not of negotiation.

Public benefit cases are unlikely to be amenable to mediation because they involve large bureaucracies that find it difficult to exercise flexibility in negotiations on a case-by-case basis. It may be possible that a state agency would want to be involved in developing a mediation program for disputes that arise concerning its services. If so, then mediation services could be possible.

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36 See http://www.eeoc.gov/, see also http://www.state.il.us/dhr.
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Cases Amenable to Mediation
(from most amenable to least amenable)

<table>
<thead>
<tr>
<th>Cases Amenable to Mediation</th>
<th>Cases of Greatest Legal Need</th>
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<td>Housing</td>
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<tr>
<td>Consumer</td>
<td>Family</td>
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<td>Wills &amp; estates</td>
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<td>Public benefits</td>
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4. Case Types Most in Need of Intervention

Considering which cases are more or less amenable to mediation leads to the logical next question: how does the greater or lesser degree of amenability relate to the greater or lesser degrees of legal need in these categories among poor and low-income people in Illinois? According to the Legal Needs Study, the “leading categories, both in terms of the percentage of households experiencing them and the total number of problems, were in the areas of consumer, housing, family and public benefits law. Problems in these categories accounted for approximately two-thirds (66.1%) of all the legal issues in the survey.” There is a remarkable correlation between the three areas of greatest legal need and the three areas that are most amenable to mediation. On the other hand, public benefit cases, the fourth type, would only be amenable to mediation if special programs were to be arranged agency-by-agency, which is highly unlikely for federal programs, although not entirely out of the question, and difficult to establish for statewide programs, although more feasible than federal programs.

There is a remarkable correlation between the three areas of greatest legal need and the three areas that are most amenable to mediation — family, housing, and consumer cases.

B. The Statutory and Court Rule Environment

The environment for mediation of cases involving people in Illinois who are poor or who have low incomes is shaped most directly by statutes and court rules. There are state and

37 Legal Needs Study, supra note 9, at 17.
38 Legal Needs Study, supra note 9, at 16.
39 Legal Needs Study, supra note 9, at 17 (providing a list of the top case types).
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federal laws, state rules at every level, and federal rules at the district and national levels effecting how ADR is accomplished in Illinois. While many more low-income litigants are likely to make use of local rules on custody and visitation mediation in a given year than a federal law on ADR, any of these statutes or rules might come into play for low-income litigants.

The following describes the Illinois laws, federal laws, Illinois court rules and federal court rules that relate to ADR as the law is practiced in Illinois.

1. Illinois Statutes
Most broadly categorized, the statutes in Illinois that relate to ADR fall into two groups: those that address specific kinds of cases (i.e., family, consumer and employment) and those that relate to the provision of ADR services themselves. The latter group addresses issues such as funding, confidentiality and provision of services for individuals who are unable to pay.

Family
20 ILCS 520/1 15 - Foster parent rights.
Summary: Establishes the right of foster parents to mediate decisions affecting licensure.
Text:
A foster parent's rights include, but are not limited to, the following:
(6) The right to be provided a fair, timely, and impartial investigation of complaints concerning the foster parent's licensure, to be provided the opportunity to have a person of the foster parent's choosing present during the investigation, and to be provided due process during the investigation; the right to be provided the opportunity to request and receive mediation or an administrative review of decisions that affect licensing parameters, or both mediation and an administrative review; and the right to have decisions concerning a licensing corrective action plan specifically explained and tied to the licensing standards violated.
Comment: This might be helpful for relatives of those whose children have been brought into the system who have been determined to be unfit to be foster parents.

750 ILCS 5/508 (c)(4) - Illinois Marriage and Dissolution of Marriage Act - ADR in Matrimonial Fee Dispute Cases
This section of the Marriage and Dissolution of Marriage Act addresses when an ADR process to resolve disputes between lawyers and clients regarding fees and costs in matrimonial cases is mandatory. Such a process is mandatory in circuits for counties with populations of greater than 1,000,000 unless both the client and the lawyer opt out. In all other circuits it is only mandatory if neither side opts out.
Comment: Since this statute deals with legal fees, this is unlikely to be of much use for low-income clients.

750 ILCS 5/404 - Conciliation; mediation.
Summary: States that the court can prohibit mediation that requires parties to meet without counsel.
Text:
(a) If the court concludes that there is a prospect of reconciliation, the court, at the request of either party, or on its own motion, may order a conciliation conference. The conciliation conference and counseling shall take place at the established court conciliation service of
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that judicial district or at any similar service or facility where no court conciliation service has been established.

(b) The facts adduced at any conciliation conference resulting from a referral hereunder, shall not be considered in the adjudication of a pending or subsequent action, nor shall any report resulting from such conference become part of the record of the case unless the parties have stipulated in writing to the contrary.

The court, upon good cause shown, may prohibit conciliation, mediation or other process that requires the parties to meet and confer without counsel.

**Comment:** This statute pertains to all dissolution cases, not just those involving children. This is just something to be aware of in designing a mediation program.

750 ILCS 5/602.1(b) - Illinois Marriage and Dissolution of Marriage Act - Mediation of Custody Issues

**Summary:** This section of the Marriage and Dissolution of Marriage Act authorizes the court to order mediation to assist the court "in making a determination whether an award of joint custody is appropriate".

**Text:**
For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may order mediation and may direct that an investigation be conducted pursuant to the provisions of Section 605. If there is a danger to the health or safety of a partner, joint mediation shall not be required by the court.

750 ILCS 5/607.1(c)(4) Illinois Marriage and Dissolution of Marriage Act - Mediation of Visitation Issues

**Summary:** This section of the Marriage and Dissolution of Marriage Act authorizes the court to order mediation for the resolution of visitation issues, except in cases in which there is evidence of domestic violence.

**Text:**
Enforcement of visitation orders; visitation abuse. …
(c) After hearing all of the evidence, the court may order one or more of the following: …
(4) Counseling or mediation, except in cases where there is evidence of domestic violence, as defined in Section 1 of the Domestic Violence Shelters Act, occurring between the parties.

Consumer

220 ILCS 5/10 101.1 – Public Utilities Act

**Summary:** Encourages the mediation of disputes between consumers and public utilities and requires the Illinois Commerce Commission to establish a voluntary mediation program.

**Text:**
Sec. 10 101.1. Mediation; arbitration; case management.
(a) It is the intent of the General Assembly that proceedings before the Commission shall be concluded as expeditiously as is possible consistent with the right of the parties to the due process of law and protection of the public interest. It is further the intent of the General Assembly to permit and encourage voluntary mediation and voluntary binding arbitration of disputes arising under this Act.
(c) The Commission shall prescribe by rule such procedures and facilities as are necessary to permit parties to resolve disputes through voluntary mediation prior to the filing of, or at any point during, the pendency of a contested matter. Parties to disputes arising under this Act are encouraged to submit disputes to the Commission for voluntary mediation, which shall not be binding upon the parties. Submission of a
dispute to voluntary mediation shall not compromise the right of any party to bring action under this Act.


Employment
775 ILCS 5/7A-102(b)(1) - Illinois Human Rights Act - Department of Human Rights Procedures
This section allows for the complainant and respondent in civil rights cases to agree to mediation without waiving any rights available through the Human Rights Act and without incurring any obligation to accept the result of the mediation process. It prohibits the disclosure by the Department of Human Rights of anything occurring in mediation and marks it as inadmissible as evidence in any subsequent procedures without the agreement of both complainant and respondent.

Comment: This service is provided free to the parties. It could be useful to legal services lawyers, and is a program that is in place, not one that needs to be established.

Arbitration
735 ILCS 5/2-1001A et seq. - Illinois Mandatory Arbitration System
This section authorizes the use of arbitration in civil actions valued under $50,000 by implementation of Illinois Supreme Court Rules.

Funding
735 IL CS 5/2-1007A and 735 ILCS 5/2-1009A - The Use of Arbitration Funds for Other ADR Activities
These two amended sections of the Mandatory Arbitration System statute address the expenses of conducting a court-annexed arbitration program and the use of the mandatory arbitration filing fees. In those counties that have mandatory arbitration programs, the fees received by the circuit court clerk may be authorized to fund not only mandatory arbitration programs, but other ADR programs as well.

Comment: Typically, this has allowed arbitration centers to use their space for large civil mediations. It has not expanded beyond that, but there is no apparent legal reason why it could not.

30 ILCS 765 - Illinois Equal Justice Act
This act authorizes the Illinois Equal Justice Foundation, a not-for-profit corporation created by the Illinois State Bar Association and the Chicago Bar Association, to establish and administer the Illinois Equal Justice Fund. The foundation is authorized under the act to distribute fund money to legal information centers, regional legal services hotlines, self-help assistance desks, dispute resolution centers, and other qualified civil legal services providers.

Funding & Confidentiality
710 IL CS 20/1 - Illinois Not-for-Profit Dispute Resolution Center Act
This act authorizes the creation of a dispute resolution fund in circuits located in counties with a population of greater than 2,000,000 and offers the terms under which other circuits may establish such a fund. The fund is to be used for the establishment and maintenance of not-for-profit dispute resolution centers. It also provides for confidentiality of cases at qualified dispute resolution centers.
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Comment: The Center for Conflict Resolution (CCR) in Chicago receives funding in the amount of the statutory cap of $200,000 each year, but outside Cook County the $1 per case filing fee is not enough to pay even half of an annual staff salary. This means that the DRCA has not been an incentive to establish community mediation centers around the state.  

710 ILCS 40/1 et seq. - Reviewing Court Alternative Dispute Resolution Act
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 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.  

Comment: Because the vast majority of legal services cases do not involve appeals, this statute has no impact on the day-to-day functioning of legal services for low-income litigants. If a case were appealed in the First District, where a program has been put in place, the legal services lawyer handling it would need to be aware of this rule, the related rule which makes the possibility of settlement discussions more likely there, and have the skills to handle those discussions.

Privilege Against Disclosure, etc.

710 ILCS 35 - Uniform Mediation Act – Illinois
The UMA establishes a privilege against disclosure in court of any mediation communication, with certain exceptions. It bars mediators from reporting specified information to the court regarding the mediation, requires all mediators to disclose conflicts of interest to the parties, and gives parties the right to be represented in mediation. Additionally, it provides for attorney participation: “An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.”  

Comment: This is very important to functioning mediations and mediation programs of all types, not just those involving low-income disputants.

Free Access to Mediation

735 ILCS 5/5 105 - Leave to sue or defend as an indigent person.  
Summary: States that if court-related mediation is mandatory, fees shall be waived for indigent parties.  

Text:  
(a) As used in this Section:  

(1) "Fees, costs, and charges" means payments imposed on a party in connection with the prosecution or defense of a civil action, including, but not limited to: filing fees; appearance fees; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2 206 of this Code and publication of necessary legal notices; motion fees; jury demand fees; charges for participation in, or attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; charges for certified copies of court documents; and all other processes and

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40 See supra note 3.  
41 ILL. 1st DIST. CT. APP. R. 37.
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procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action.

(2) "Indigent person" means any person who meets one or more of the following criteria:

(i) He or she is receiving assistance under one or more of the following public benefits programs: Supplemental Security Income (SSI), Aid to the Aged, Blind and Disabled (AABD), Temporary Assistance for Needy Families (TANF), Food Stamps, General Assistance, State Transitional Assistance, or State Children and Family Assistance.

(ii) His or her available income is 125% or less of the current poverty level as established by the United States Department of Health and Human Services, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the fees, costs, and charges.

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of fees, costs, and charges and whose payment of those fees, costs, and charges would result in substantial hardship to the person or his or her family.

(iv) He or she is an indigent person pursuant to Section 5 105.5 of this Code.

(b) On the application of any person, before, or after the commencement of an action, a court, on finding that the applicant is an indigent person, shall grant the applicant leave to sue or defend the action without payment of the fees, costs, and charges of the action.

(c) An application for leave to sue or defend an action as an indigent person shall be in writing and supported by the affidavit of the applicant or, if the applicant is a minor or an incompetent adult, by the affidavit of another person having knowledge of the facts. The contents of the affidavit shall be established by Supreme Court Rule. The court shall provide, through the office of the clerk of the court, simplified forms consistent with the requirements of this Section and applicable Supreme Court Rules to any person seeking to sue or defend an action who indicates an inability to pay the fees, costs, and charges of the action. The application and supporting affidavit may be incorporated into one simplified form. The clerk of the court shall post in a conspicuous place in the courthouse a notice no smaller than 8.5 x 11 inches, using no smaller than 30 point typeface printed in English and in Spanish, advising the public that they may ask the court for permission to sue or defend a civil action without payment of fees, costs, and charges. The notice shall be substantially as follows:

"If you are unable to pay the fees, costs, and charges of an action you may ask the court to allow you to proceed without paying them. Ask the clerk of the court for forms."

Comment: Utilizing this statute is essential when developing a mediation program in a community that may not be entirely open to mediation. When this is combined with Supreme Court Rule 905 requiring custody and visitation mediation, for example, it is clear that each circuit must find a way to provide free mediation services.

How these statutes affect the use of mediation as a means of accessing justice for low-income disputants in Illinois:
First, begin with what is not here. There is no sweeping law that mandates mediation across the board. This means that no low-income litigant is going to be able to require that the other side engage in mediation when it is in the best interest of that litigant to do so. Disputants have a statutory right to mediation in very limited cases, i.e., foster parents.

center for analysis of adr systems
who can require mediation of disputes over their licenses (see 20 ILCS 520/1-15 - Foster parent rights, above); and divorce clients who have access to various forms of ADR in disputes with their former lawyers over disputed fees in divorces cases (although this is only mandated in single-county circuits with populations of greater than one million, and in other circuits if both parties do not opt out) (see 750 IL CS 5/508 (c)(4) - Illinois Marriage and Dissolution of Marriage Act - ADR in Matrimonial Fee Dispute Cases, above). This means that in Illinois there is no law that grants anyone, rich or poor, unfettered access to mediation.

Second, there are protections offered when mediations *do* take place. A disputant cannot be forced to mediate without a lawyer or some kind of representation if the disputant wants one (see 750 ILCS 5/404 - Conciliation; mediation, and 710 ILCS 35/10 - Uniform Mediation Act, above). Communications in the mediation are privileged from later disclosure in court (with some exceptions) and mediators must disclose conflicts of interest (see 710 ILCS 35/9 - Uniform Mediation Act – Illinois, above). Very importantly, if mediation is mandatory in court, fees for the mediation will be paid for indigent litigants (see 735 ILCS 5/-105 - Leave to sue or defend as an indigent person, above). (See the later section of this Study regarding mediations required under court rules.)

Third, there are three laws that deal with funding for ADR in the state; however, these statutes are piecemeal and voluntary, and have had little effect in expanding the use of mediation in the state overall. Unlike states where the state court has been involved in developing and sustaining court-related ADR, there is no funding from the court to support mediation. The Illinois Not-for-Profit Dispute Resolution Center Act (see 710 IL CS 20/1, above) provides a $1 per civil case additional filing fee in any circuit where the chief judge determines it would assist in providing mediation services. It is mandatory in Cook County and optional in all other circuits. To date, the 21st Judicial Circuit is the only circuit other than the Circuit Court of Cook County to implement the statute’s provisions. The Use of Arbitration Funds for Other ADR Activities (see 735 IL CS 5/2-1007A and 735 ILCS 5/2-1009A, above) permits filing fees collected to support arbitration programs to be used for other ADR programs as well. This has not expanded beyond occasionally assisting large civil cases, but there is no apparent legal reason why it could not. The third law is, of course, the Illinois Equal Justice Act. The portion of this Act that addresses funding mediation entities is taken from the Dispute Resolution Center Act.

Together, these laws paint a picture of mediation that is highly voluntary both in terms of provision of services and funding, but in which some essential safeguards are present that would allow for mediation for poor and low-income residents to grow if funding were more available. As it stands, there is little funding in place for ADR in the state. For a complete picture of the status of mediation, the court rules must be consulted.
2. Federal Statutes Related to ADR in Illinois

There are three kinds of laws in this section. Two federal laws govern how ADR will be used in the federal courts. Two other statutes have sections that deal with mediation of issues involving individuals with disabilities, and one has a section authorizing the granting of funds to states to establish mediation programs for visitation and access disputes between unmarried parents.

28 USC §471-482 - Civil Justice Reform Act of 1990
Requires each United States district court to develop a civil justice expense and delay reduction plan. As part of this plan, the act authorizes district courts to refer appropriate cases to designated ADR programs. The act also requires district courts to consider the use of neutral evaluation programs and addresses the question of who should attend settlement discussions.

Authorizes each United States district court to require litigants in all civil cases to consider the use of the ADR process. Provides the framework by which each district court should promulgate procedures and rules regarding the ADR process within its jurisdiction.

Individuals with Disabilities

42 USC 12101- Equal Opportunities for Individuals with Disabilities Act
§ 12212. Alternative means of dispute resolution
Text: Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter. (Pub. L. 101–336, title V, § 513, July 26, 1990, 104 Stat. 377.)
Comment: The Justice Department has established an ADA mediation program in response to this statute.42

20 USC 1415(e) - Individuals with Disabilities Education Improvement Act of 2004
Requires that each state establish a voluntary mediation program to resolve conflicts between parents of students with disabilities and their schools. Such a program is to be administered by the state’s department of education.
Comment: Under this statute, the Illinois State Board of Education has instituted a statewide program in which mediation is free to the parties.43

Funding

42 § 669b. Grants to States for access and visitation programs
Authorizes the provision of grants to states to establish mediation programs.
Text:
(a) In general
The Administration for Children and Families shall make grants under this section to enable States to establish and administer programs to support and facilitate noncustodial parents’ access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements.

(b) Amount of grant

The amount of the grant to be made to a State under this section for a fiscal year shall be an amount equal to the lesser of—

(1) 90 percent of State expenditures during the fiscal year for activities described in subsection(a) of this section; or
(2) the allotment of the State under subsection (c) of this section for the fiscal

Comment: Under this statute, grants have been made to three counties in Illinois – Cook, DuPage and Sangamon – to set up such programs.

How these statutes affect the use of mediation as a means of accessing justice for low-income disputants in Illinois:

As is the case with the Illinois statutes, these federal statutes generally provide for voluntary participation in programs. Unlike the state statutes, however, these statutes provide for funding for some of the programs they authorize. These first two laws listed give the federal courts in Illinois (and nationally) the opportunity to use ADR and to require that civil case litigants use it. While they provide frameworks and guidelines, they also are very flexible about how ADR is defined and delivered. That flexibility has led the federal courts in Illinois to rely for the most part on federal magistrates to conduct settlement conferences as the predominant form of dispute resolution in the state for federal litigation.

The statutes instituting mediation for disability issues are more likely to be of use to poor and low-income residents. The mediation program administered by the Illinois State Board of Education to resolve special education disputes and the Justice Department’s Americans with Disabilities Act mediation program would be encountered by parents if they were being advocates for their disabled children’s education in situations where there were problems with the education being provided and those problems were not being addressed without needing to go to mediation.

One statute that deserves special note is the last one listed: the funding statute for the program that mediates visitation schedules between parents who have never been married immediately upon finding of paternity. This serves parents in relationships that range from the on-going to the one-night-stand, and can assist in developing a schedule for parental involvement at an early stage of the child’s life.

3. Court Rules Related to ADR in Illinois
a. Illinois Supreme and Appellate Court Rules

Three Illinois Supreme Court Rules address mediation. One authorizes the circuits to establish mediation programs, provides a process for approval of rules governing those programs, and provides for immunity for mediators in those programs; another authorizes the appellate courts to establish mediation programs (which the First Appellate District has done, the rule for which is found below); and the third mandates mediation of all custody and visitation disputes in the state. Another rule requires that the advisability of ADR be discussed in the initial case management conference in civil cases. Procedures for arbitration are provided in another rule.
Supreme Court Rule 99
Text of Rule: [www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#99](http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#99)
Summary: This rule authorizes circuits to undertake mediation programs. Circuits electing to establish a mediation program are directed to adopt rules for the conduct of mediation proceedings and to submit them to the Supreme Court. The Rule specifies the matters that should be addressed in the circuits' local rules for their mediation programs and states that a person approved by the circuit to act as a mediator under the rule shall have judicial immunity in the same manner and to the same extent as a judge.

Supreme Court Rule 310.1: Appellate Court Settlement Conference Program
Text of Rule: [www.state.il.us/court/SupremeCourt/Rules/Art_III/artiii.htm#310.1](http://www.state.il.us/court/SupremeCourt/Rules/Art_III/artiii.htm#310.1)
Summary: This rule authorizes the appellate courts to establish mediation programs. Courts electing to establish mediation program are directed to adopt rules for the conduct of mediation proceedings and to submit them to the Supreme Court. The Rule specifies the matters that should be addressed in the court's local rules for their mediation programs.

Supreme Court Rule 905: Child Custody and Visitation Mediation
Text of Rule: [www.state.il.us/court/SupremeCourt/Rules/Amend/2006/021006.pdf](http://www.state.il.us/court/SupremeCourt/Rules/Amend/2006/021006.pdf)
Summary: This rule mandates that each circuit establish a mediation program for all cases involving child custody and visitation issues. Additionally, the rule outlines what the local court rules for these programs should address.

Pretrial Procedure - Initial Case Management Conference
Citation: Rule 218(a)(7) of the Illinois Supreme Court
Text of Rule: [www.state.il.us/court/Rules/Art_II/ARTII.htm#218](http://www.state.il.us/court/Rules/Art_II/ARTII.htm#218)
Summary: This rule provides that the advisability of alternative dispute resolution be considered at the initial case management conference. This conference is to be held no later than 35 days after the parties are at issue and no more than 182 days following the filing of the complaint.

Supreme Court Arbitration Rules
Citation: Rule 86 et seq: Court-Annexed Mandatory Arbitration
Text of Rule: [www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#86](http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#86)
Summary: The rules apply to actions subject to mandatory arbitration within circuits with arbitration programs in Illinois. They include the procedures for the appointment, qualification and compensation of arbitrators, the scheduling of hearings, discovery, conduct of the hearings, awards and judgments.

First Appellate District Settlement Conference Program
Citation: Rule 37, Settlement Conference Program
Summary: This rule outlines a program wherein civil appeals may be mediated by a sitting judge or approved mediator by motion of the parties or the court. The rule makes all communications and documents prepared for mediation confidential and authorizes the court to impose sanctions for failure to participate in good faith. The rule outlines the qualifications for appellate mediators and the administration of the program, as well as the nature of the conference.
What these rules mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:

These statewide rules vary in their relevance to disputes experienced by poor and low-income residents in Illinois. In terms of day-to-day services to low-income litigants, Supreme Court Rule 99 and Supreme Court Rule 905 are the most important statewide rules. Supreme Court Rule 99 gave authority to circuits to implement mediation programs and Supreme Court Rule 905 required the circuits to provide mediation for all custody and visitation issues no matter what kind of case they arose within. Circuits generally have found that their court-based mediation programs have been approved under Supreme Court Rule 99. Supreme Court Rule 905 is still taking some time to settle in across the state as circuits that did not have custody programs, or did not have ways to provide for poor litigants to participate in their programs, adjust. Nonetheless, these two rules have had tremendous impact on creating the possibility for a culture of mediation that serves low-income disputants across the state.

This study focuses on mediation, but the move to implement an arbitration program was often the first step toward more of an ADR culture in a circuit, so information on arbitration is included here. Still, arbitration cases are not likely to be terribly important to the majority of poor and low-income disputants in the state. Nor are they likely to be involved in a case that goes to a Supreme Court Rule 218 conference and it is even less likely that they would be involved in appealing a case.

b. Illinois Circuit Court Rules

There are many more rules at the circuit level in Illinois related to ADR. They are mostly for major civil mediation, arbitration for mid-level cases, and mediation of custody and visitation, with a few rules for small claims, child protection and a dispute resolution center.

i. Major Civil Litigation Mediation Rules

1st Judicial Circuit Mediation Rules
Citation: Court Mediation Rule
Summary: This rule establishes a Court-Annexed Mediation program of civil cases, including family law, in the 1st Judicial Circuit. It details the rules and procedures regarding mediation, including actions eligible for mediation; scheduling of mediation; mediation rules and procedures, which include information on appointment of the mediator, disqualification of the mediator, and sanctions for failure to appear; qualifications and certification of mediators; and immunity. The rule states that "if any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the court shall appoint a mediator who shall serve without compensation from any party to the action."

3rd Judicial Circuit Settlement Conference Rule
Citation: Standing Case Management Order for All Asbestos Personal Injury Cases - Part V: Settlement Conferences
Summary: This order establishes a mediation process for asbestos personal injury cases filed in Madison County. The "mediator" in these cases is the Asbestos Presiding Judge or anyone designated by the Asbestos Presiding Judge. The order discusses attendance, sanctions, and confidentiality.
6th Judicial Circuit Mediation Rules  
Citation: Court Administrative Order 99-4  
Summary: This order establishes a Court-Annexed Mediation program of civil cases in counties of the 6th Judicial Circuit in which the presiding judge has adopted its provisions (currently Champaign County). It details the rules and procedures regarding mediation, including actions eligible for mediations; scheduling of mediations; and mediation rules and procedures, which include information on appointment of the mediator, disqualification of the mediator, and sanctions for failure to appear.

11th Judicial Circuit Mediation Rules  
Citation: Rules of the Circuit Court of the 11th Judicial Circuit, 111 et seq.  
Summary: This section applies to court-annexed mediation for major civil litigation in the 11th Judicial Circuit (McLean and Ford Counties). It details the rules and procedures regarding mediation, including actions eligible for mediations, exclusions from mediation, scheduling of mediations, and mediation rules and procedures, which include information on confidentiality of communications.

12th Judicial Circuit Mediation Rules  
Citation: Rules of the Circuit Court of the 12th Judicial Circuit, 21.00 et seq.  
Summary: This section applies to court-annexed mediation for major civil litigation in the 12th Judicial Circuit (Will County). It outlines actions eligible for mediations, scheduling of mediations, mediation rules and procedures, which includes information on the confidentiality of communications, and mediator qualifications. The rule mandates that court-assigned mediators “perform one pro bono mediation per year.”

14th Judicial Circuit Mediation Rules  
Citation: Rules of the Circuit Court of the 14th Judicial Circuit, Part 26  
Summary: Part 26 applies to the Court-Annexed Civil Mediation Program in the 14th Judicial Circuit. It lists the actions eligible for the program and outlines the scheduling process. It also discusses the appointment of the mediator, mediator compensation, the disqualification of the mediator, emergency relief, who should attend the mediation, communication, sanctions, and confidentiality. The rule also provides a list of qualifications needed to be placed on the roster and the duties of the supervising judge. Mediator immunity is provided for in the rule as well. To be placed on the court roster, mediators must agree to provide mediation at no compensation twice per year.

16th Judicial Circuit Mediation Rules  
Citation: Rules of the Circuit Court of the 16th Judicial Circuit, 12.01 et seq.  
Text of Rule: www.cic.co.kane.il.us/printable/ARTICLE_12.pdf  
Summary: This rule applies to court-annexed mediation for major civil litigation in the 16th Judicial Circuit (Kane County). It outlines actions eligible for mediations, scheduling of mediations, mediation rules and procedures, confidentiality, and mediator qualifications. To be approved for the court roster, mediators must agree to mediate at no compensation four times per year.

17th Judicial Circuit Mediation Rules  
Citation: Local Rule 2.08: Court-Annexed Mediation  
Text of Rule: www.co.winnebago.il.us/judicial_court/Local%20Rules/LR2.08.html  
Summary: This rule applies to court-annexed mediation for major civil litigation in the 17th Judicial Circuit (Winnebago and Boone Counties). It outlines actions eligible for court-annexed mediations, scheduling mediations, mediation rules and procedures, which includes
information on the confidentiality of communications, mediator qualifications, and mediator immunity.

18th Judicial Circuit Mediation Rules
Citation: Rules of the Circuit Court of the 18th Judicial Circuit, 14.00
Summary: This rule applies to court-ordered mediation for major civil litigation in the 18th Judicial Circuit (DuPage County). It explains the purpose of the mediation process, the filing of cases eligible for mediation, discovery, order of referrals to court-ordered mediation, location of mediation conferences, attendance at a mediation conference, settlement prior to mediation conference, termination and report of a mediation conference, mediation conference confidentiality, certification and re-certification of mediators, and removal of mediators. The rules states that “if any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the Court shall appoint a mediator who shall serve pro bono without compensation from any party to the action.”

19th Judicial Circuit Mediation Rules
Citation: Rules of the Circuit Court of the 19th Judicial Circuit, Part 20.00
Text of Rule: [www.19thcircuitcourt.state.il.us/rules/rules20.htm](http://www.19thcircuitcourt.state.il.us/rules/rules20.htm)
Summary: This rule applies to court-annexed mediation for major civil litigation in the 19th Judicial Circuit (Lake County). It explains the purpose of the mediation process, the actions eligible for court-annexed mediation, scheduling of the mediation, mediation rules and procedures, confidentiality of communications, mediator qualifications, court-ordered mediation in civil cases, and duties of the supervising judge. The mediator must agree to mediate twice per year without compensation.

20th Judicial Circuit Mediation Rules
Citation: Court-Annexed Mediation for Civil Cases
Summary: This rule applies to court-annexed mediation for major civil litigation in the 20th Judicial Circuit. It addresses the eligible actions as well as exclusions from the program, appointment of the mediator, confidentiality, immunity, the role of counsel in mediation, and mediator communication with the parties.

Cook County Law Division Major Case Court-Annexed Civil Mediation Program Rules
Citation: Rules of the Circuit Court of Cook County, 20.00 et seq.
Summary: This rule applies to any contested civil matter pending in the Cook County Law Division. Under the rule, cases may be referred to the mediation by the court or by motion of the parties. The rule also discusses the manner in which mediators are appointed, the compensation of the mediator, and the conduct of the mediation. Discovery is to continue throughout the mediation process. The rule provides mediators approved by the court with judicial immunity in the same manner and extent as a judge. Confidentiality extends to all oral and written communications with the mediator at any time. The rule states that “each court-certified mediator shall agree to mediate one case without compensation.”
Accessing Justice through Mediation

ii. Domestic Relations Mediation Rules (and Status of Supreme Court Rule 905 Implementation)

1st Judicial Circuit Court-Ordered Mediation
Citation: Addendum: Court-Ordered Mediation
Summary: The rule provides for mediation to be referred for all cases arising from family law. It outlines the procedures to follow during the initial stages of mediation, including assessment of the parties’ ability to mediate, the role of counsel and the need to advise parties to obtain independent legal review, and conduct of the mediation conferences. The rule also provides for confidentiality of communications made in mediation conferences and requires mediators to remain impartial and to promote the best interests of children.

2nd Judicial Circuit Judicial Mediation
Citation: 2nd Judicial Circuit Court Rules, Rule 21: Pilot Judicial Mediation Program
Text of Rule: http://www.illinoissecondcircuit.info/Rules_and_Forms/Local_Rules/local_rules.html#21
Summary: This rule lays out the procedures for a pilot judicial mediation program in which judges conduct mediation of contested custody and visitation issues. The judges must have completed 40 hours of mediation training. To avoid conflict of interest, the case cannot have been called before the mediating judge. Mediation should take place between 60 and 75 days from referral, and without the presence of counsel. If an agreement is reached, the mediating judge enters it as a provisional order, which the trial judge can reject or co-sign.

2nd Judicial Circuit Mandatory Settlement Conferences
Citation: 2nd Judicial Circuit Court Rules, Rule 19: Pre-Trial Conferences in Family Cases
Text of Rule: http://www.illinoissecondcircuit.info/Rules_and_Forms/Local_Rules/local_rules.html#19
Summary: This rule mandates that judges conduct a settlement conference in all contested pre-judgment dissolution of marriage cases. It requires the settlement conference to occur at least 30 days prior to the date of the hearing on remaining issues and states that all parties and trial attorneys must be present. In addition, each party must file a financial affidavit and a settlement conference memorandum at least 7 days before the settlement conference.

3rd Judicial Circuit Mediation of Custody and Visitation Issues Program
Citation: Mediation of Custody and Visitation Issues Program
Text of Rule: www.co.madison.il.us/CircuitClerk/PDF/RulesCustodyMediation.pdf
Summary: Requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children” unless the case is determined to be ineligible due to concerns about safety or competency. The case cannot proceed to a judicial hearing on contested issues until mediation has been concluded. The court is to maintain a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the court will pay the mediators at a much reduced rate through funds provided by the county.

4th Judicial Circuit Child Custody Mediation
Citation: Rule 11: Mediation – Child Custody
Summary: Makes mediation of all cases involving disputed child custody, parenting plan, child visitation, and removal the policy of the court. Mediators are approved by the court and required to comply with the Model Standards of Conduct for Mediators. The court determines whether a case is considered a low-income case and thus eligible for mediation
for a reduced fee or at no charge. If ineligible, the parties are responsible for the mediator’s full fee.

5th Judicial Circuit Family Mediation Program
At the time of the study, the rule had been submitted to the Supreme Court for approval, but not yet approved. Mediators would be required to provide pro bono services.

6th Judicial Circuit Court-Referred Divorce Mediation – Champaign County
Citation: Standards and Procedures for Champaign County Court-Referred Divorce Mediation, Rules 1-11
Summary: The rule outlines the subject matter of mediation, the procedures to follow during the initial stages of mediation, mediator qualifications, the role of counsel and the need to advise parties to obtain independent legal review, and conduct of the mediation conferences. The rule also provides for confidentiality of communications made in mediation conferences and requires mediators to remain impartial and to protect the best interests of the children.

7th Judicial Circuit Family Mediation Program
Citation: Rule 308 Mediation
Text of Rule: www.co.sangamon.il.us/Court/Documents/7thCircuitRules_jan%2007.pdf
Summary: This rule outlines mediation standards and procedures for three contexts: custody, visitation, and financial issues in matrimonial and family cases; custody and visitation disputes in cases governed by Supreme Court Rule 905 other than dissolution and paternity; and visitation and access for paternity cases. The rule also outlines the procedures for judicial mediation of these issues. Qualification and compensation of the mediator are covered (including the requirement that mediators agree to conduct reduced fee or no-fee mediations as requested by the court), and the duties of the attorneys.

8th Judicial Circuit Mediation Program for Domestic Relations and Family Law Cases
Citation: 8th Judicial Circuit Local Rule 7.4
Text of Rule: http://www.co.adams.il.us/courts/rulesofthecircuit.pdf
Summary: Requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children” unless the case is determined to be ineligible due to concerns about safety or competency. The court is to maintain a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the mediator will provide services on a reduced-fee or no-fee basis. Each mediator shall accept such cases as assigned by the court.

9th Judicial Circuit Family Mediation Program
At the time of the Study, the rule had been approved by the Supreme Court, but had not yet been voted on by the Circuit Judges. When passed, the rule would call for a roster of attorneys from around the circuit who had been trained as mediators. Nothing was in place for indigent parties.

10th Judicial Circuit Family Mediation Program
At the time of the Study, the rule had been submitted to the Supreme Court for approval, but not yet approved. It called for roster mediators who had law or behavioral science backgrounds. Training was being provided by Bradley University. A board that includes a judge and a representative from Bradley had been set up to determine who is qualified to attend the training. Mediators would be required to provide reduced fee and no-fee services.
11th Judicial Circuit Court-Referred Divorce Mediation - Custody and Visitation

**Citation:** Rule 105(c): Mediation of Child Custody and Visitation

**Summary:** The rule requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children” unless the case is determined to be ineligible due to concerns about safety or competency. Mediation is conducted in accordance with the Standards and Procedures for Divorce Mediation by a court-approved mediator. The mediators are required to provide “some minimal mediation service in the community for nominal or no-fee for individuals meeting the relevant poverty guidelines in the community.”

11th Judicial Circuit Court-Referred Divorce Mediation - Financial Issues

**Citation:** Rule 105(e): Mediation of Financial or Property Issues

**Summary:** This rule authorizes the use of mediation for family cases involving contested issues of financial support, distribution of financial obligations, and debt or distribution of property. Referral to mediation may be at the request of either party, or by the court's own motion. Mediation is conducted in accordance with the Standards and Procedures for Court-Referred Financial Issues Mediation by a court-approved mediator. The rule also makes confidential the content of the mediation session.

12th Judicial Circuit Court-Referred Divorce Mediation

**Citation:** Mediation Program - Domestic Relations Cases, Rule 8.17

**Summary:** This rule mandates mediation for all custody, visitation, and other non-economic child-related issues. The rule discusses the qualifications of mediators, establishes referral procedures, and delineates the extent of confidentiality granted to the mediation. Mediators are required to provide reduced fee or no-fee services at most twice per year.

13th Judicial Circuit Rules Implementing Supreme Court Rule 905

**Citation:** 13th Judicial Circuit Local Rules 8.15-8.24

**Summary:** This rule requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children” unless the case is determined to be ineligible due to concerns about safety or competency. The court is to maintain a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the mediator will provide services on a reduced-fee or no-fee basis. Each mediator is required to accept one such case per year.

14th Judicial Circuit Family Mediation Program

At the time of the study, the rules were being reviewed by the Supreme Court for approval.

15th Judicial Circuit Family Mediation Program

At the time of the study, the rules were in the process of being written.

16th Judicial Circuit Family Mediation Program

**Citation:** 16th Judicial Circuit Family Mediation Program, Rule 15.22

**Text of Rule:** [www.cic.co.kane.il.us/printable/ARTICLE_15.pdf](http://www.cic.co.kane.il.us/printable/ARTICLE_15.pdf)

**Summary:** The rule limits court-referred mediation to issues of child custody, visitation, removal, or other non-economic issues relating to the child or children, and excludes any cases in which an impairment of one of the parties is found to exist. It outlines the qualifications of mediators and the referral and mediation process. It also addresses conflict of interest, provides for confidentiality, gives instructions regarding the provision of a status report and provides a method by which fees will be paid. Mediators are required to conduct at most two mediations per year at a reduced fee.
17th Judicial Circuit Family Mediation Program
Citation: 17th Judicial Circuit Family Mediation Program, Local Rule 14.08
Text of Rule: www.co.winnebago.il.us/judicial_court/Local%20Rules/LR14.08.html
Summary: The rule authorizes the referral of all issues of child custody, visitation, and removal to mediation except when one of the parties is unable to participate competently. It outlines the qualifications and duties of mediators, including advising the parties to obtain independent legal counsel and terminating mediation if the best interests of the children are not being considered. It also describes the referral process and provides for confidentiality. The rule authorizes the creation of an advisory committee to advise the Chief Judge as to rules of procedure, standards for mediators, and evaluation of the program. Mediators are required to provide reduced fee and no-fees services when asked by the court.

17th Judicial Circuit Financial Mediation Program
Citation: 17th Judicial Circuit Financial Mediation Program, Local Rule 14.09
Text of Rule: www.co.winnebago.il.us/judicial_court/Local%20Rules/LR14.09.html
Summary: This rule authorizes the referral of property and financial disputes to mediation. Referred cases may not proceed to a judicial hearing on contested issues without leave of court or until the mediation process has been concluded and its outcome has been reported to the court. The rule outlines the referral process, the qualifications of mediators, and the mediation process. It also imposes a duty to assess the parties for impairments and to terminate the mediation when the impairment affects safety. Also discussed are confidentiality, attendance, entry of judgment, and evaluation.

18th Judicial Circuit Mediation & Evaluation Program
Citation: 18th Judicial Circuit Mediation & Evaluation Program, Rule 15.18 & 15.19
Text of Rule: www.dupageco.org/courts/generic.cfm?doc_id=593
Summary: The rule authorizes the referral of all issues of parental responsibility, child custody, visitation, removal, access or other non-economic issue to mediation and excludes cases in which an impediment to mediation is found to exist. It outlines the qualifications of mediators and the referral process and discusses attendance, confidentiality, conflict of interest, and the disclosure of information. The rule also authorizes the order to evaluation of any of the issues eligible for mediation once mediation has been completed. It discusses the qualifications of evaluators, the referral procedure, the evaluation process, conflict of interest, the disclosure of information and the payment of fees. Mediators are required to provide reduced fee or no-fee services at most four times per year.

18th Judicial Circuit Family Court Pilot Program
Citation: 18th Judicial Family Court Pilot Program, Rule 15.20
Text of Rule: www.dupageco.org/courts/generic.cfm?doc_id=593
Summary: The rule authorizes the transfer of all cases in which there are multiple cases pending in the Domestic Relations and Misdemeanor Divisions involving family members or persons having a relationship as set out in 725 ILCS 5/112A-3(3) in divorce cases, legal separation cases, domestic violence cases, or juvenile cases involving truancy, abuse, delinquency and neglect. It outlines procedure regarding notification, the setting of court dates, and motions objecting to such transfer. Also discusses factors that would be deemed prima facie evidence of good cause not to transfer cases.
19th Judicial Circuit Family Division Mediation Program Rules - Lake County
Citation: 19th Judicial Circuit Family Mediation Program, Part 11.00, Rule 11.13
Text of Rule: www.19thcircuitcourt.state.il.us/rules/rules.htm
Summary: The rule orders court-referred mediation for issues of child custody, visitation and removal except where an impairment exists. It also authorizes the court to order mediation for economic issues. It outlines the referral and mediation process as well as the qualifications and duties of mediators. The rule addresses confidentiality and outlines the method by which fees will be paid. It includes in the mediation process a mandatory orientation session and bars attendance of counsel at the mediation session without the agreement of all parties and the mediator. Mediators are granted judicial immunity. Mediators are required to conduct at most two mediations per year at a reduced fee and to volunteer to staff a room at the courthouse that is available one morning per week for immediate referral by the judge.

20th Judicial Circuit Mediation Program
Citation: Mediation Program Rules 1-7, 20th Judicial Circuit
Summary: The rule limits court-referred mediation to issues of child custody, visitation and removal. It outlines the qualifications of mediators, provides for confidentiality, and discusses the duties of the mediators, including advising the parties to obtain independent legal counsel and to protect the best interests of the children. It also outlines referral and reporting procedures.

21st Judicial Circuit Divorce Mediation Program – Kankakee County Only
Citation: 21st Judicial Circuit Divorce Mediation Program, Part 9
Text of Rule: www.prairienet.org/fordiroq/21st/rules/rules.htm#35a
Summary: The rule limits court-referred mediation to issues of child custody, visitation, and removal and excepts cases in which one of the parties is unable to participate competently. It outlines the referral and mediation process as well as the duties of mediators. It also addresses confidentiality and outlines the method by which fees will be paid. The mediators are assigned on a rotating basis, with the judge deciding which cases will be conducted at no charge to disputants.

22nd Judicial Circuit Family Division Mediation Program Rules - McHenry County
Citation: 22nd Judicial Circuit Family Mediation Program, Part 18.00
Summary: The rule orders court-referred mediation for issues of child custody, visitation and removal except where an impairment exists. It outlines the referral and mediation process as well as the qualifications and duties of mediators. The rule addresses confidentiality and outlines the method by which fees will be paid. It also authorizes the Presiding Judge to establish an advisory committee whose role is to advise him or her in establishing and implementing administrative policy consistent with the Family Division Mediation Program rules.

Cook County Domestic Relations Proceedings
Citation: Cook County Domestic Relations Proceedings, Part 13, Rule 13.4
Text of Rule: www.cookcountycourt.org/rules/index.html
Summary: The rule orders each pre-judgment case in which child custody is contested to be directed to mediation and authorizes referral to mediation for visitation issues and post-judgment matters involving child custody, visitation or removal. It also addresses confidentiality. The amendments in April 2002 outline in greater detail the mediation procedure to be followed and add a section on the appointment, qualification and compensation of mediators.
Cook County Domestic Relations Division General Order Regarding ADR  
**Citation:** General Order 03 D 8  
**Text of Rule:** [www.cookcountycourt.org/rules/index.html](http://www.cookcountycourt.org/rules/index.html)  
**Summary:** This order outlines the procedures for the mediation and binding arbitration of fee disputes in the Domestic Relations Division. According to this order, fee dispute cases must go through either binding arbitration or mediation prior to being heard by the court unless both parties opt out of the ADR procedures.

### iii. Other Mediation Rules

17th Judicial Circuit Small Claims Mediation Program  
**Citation:** Court Annexed Small Claims Mediation, Rule 2.09  
**Text of Rule:** [www.co.winnebago.il.us/Judicial_Court/Local%20Rules/LR2.09.html](http://www.co.winnebago.il.us/Judicial_Court/Local%20Rules/LR2.09.html)  
**Summary:** This rule authorizes referral to mediation of small claims cases involving pro se litigants. All such litigants shall be offered the opportunity to participate in mediation at the first return date; however, mediation can take place at any time in the small claims process. The rule provides for confidentiality and creates a peer review process for mediators.

Cook County Circuit Court Child Protection Mediation Program  
**Citation:** Cook County Abuse, Neglect and Dependency Proceedings, Rule 19A.19  
**Text of Rule:** [www.cookcountycourt.org/rules/index.html](http://www.cookcountycourt.org/rules/index.html)  
**Summary:** This rule authorizes referral to mediation of active abuse, neglect or dependency cases. Referral can be made at any point in the case after the temporary custody hearing. Judges have discretion as to which cases can be referred. Also addressed are mediator appointment, qualification and compensation; who may participate in the mediation; the use of interpreters; termination of the mediation; and confidentiality.

Cook County Not-For-Profit Dispute Resolution Center Rules  
**Citation:** General Orders of the Circuit Court of Cook County, 19.00 et seq.  
**Text of Rule:** [www.cookcountycourt.org/rules/index.html](http://www.cookcountycourt.org/rules/index.html)  
**Summary:** This order is pursuant to the Illinois Not-For-Profit Dispute Resolution Center Act. It outlines the procedures within Cook County for the collection and distribution of funds to qualifying dispute resolution centers. Also, it describes the criteria and application process for dispute resolution centers seeking to qualify for funding.

### iv. Illinois Arbitration Rules

11th Judicial Circuit Arbitration Rules  
**Citation:** Rules of the Circuit Court of the 11th Judicial Circuit, Court-Annexed Mandatory Arbitration, 1  
**Summary:** This rule applies to court-annexed arbitration in the 11th Judicial Circuit (McLean and Ford Counties). The arbitration rules of the Illinois Supreme Court are referenced within. In this circuit, the amount in controversy must exceed $2,500 but not exceed $30,000. This rule includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, administration of the hearings, awards and judgments. Also, it outlines the duties of the supervising judge for arbitration.
12th Judicial Circuit Arbitration Rules
Citation: Rules of the Circuit Court of the 12th Judicial Circuit, 22.00 et seq.
Summary: This rule applies to court-annexed arbitration for the 12th Judicial Circuit (Will County). The arbitration rules of the Illinois Supreme Court are referenced within. In this circuit, the amount in controversy must exceed $5,000 but not exceed the amount authorized by the Supreme Court for the 12th Judicial Circuit. This rule includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, conduct of the hearings, default of a party, awards and judgments. Also, it describes the administration of the mandatory arbitration program.

14th Judicial Circuit Arbitration Rules
Citation: Rules of the Circuit Court of the 14th Judicial Circuit, Part 24
Summary: This rule applies to court-annexed arbitration for the 14th Judicial Circuit. The arbitration rules of the Illinois Supreme Court are referenced within. In this circuit, the amount in controversy must be greater than $5,000 but not exceed $50,000. This rule includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, conduct of the hearings, default of a party, awards and judgments. It also describes the administration of the mandatory arbitration program.

16th Judicial Circuit Arbitration Rules
Citation: Rules of the Circuit Court of the 16th Judicial Circuit, 11.00 et seq.
Text of Rule: www.cic.co.kane.il.us/printable/ARTICLE_11.pdf
Summary: This rule applies to court-annexed mediation for major civil litigation in the 16th Judicial Circuit (Kane County). It details the rules and procedures regarding mediation, including actions eligible for mediations, scheduling of mediations, and mediation rules and procedures, which includes information on confidentiality of communications.

17th Judicial Circuit Arbitration Rules
Citation: Rules of the Circuit Court of the 17th Judicial Circuit, 2.07
Text of Rule: www.co.winnebago.il.us/judicial_court/Local%20Rules/LR2.07.html
Summary: This rule applies to court-annexed arbitration in the 17th Judicial Circuit (Winnebago and Boone Counties). The arbitration rules of the Illinois Supreme Court are referenced within. In this circuit, the amount in controversy must exceed $5,000 but not exceed $50,000. This rule includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, administration of the hearings, awards and judgments.

18th Judicial Circuit Arbitration Rules
Citation: Rules of the Circuit Court of the 18th Judicial Circuit, 13.00 et seq.
Text of Rule: www.dupageco.org/courts/generic.cfm?doc_id=591
Summary: This rule applies to court-annexed arbitration in the 18th Judicial Circuit (DuPage County). The arbitration rules of the Illinois Supreme Court govern the rules in this rule. The 18th Judicial Circuit has varying arbitration rules and procedures depending upon the monetary claim of the civil case. Generally, this rule includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, administration of the hearings, awards and judgments. Also, it outlines the duties of the supervising judge for arbitration.
Section II: Legal and Mediation Landscape

18th Judicial Circuit Expedited Matrimonial Fee Arbitration Program
Citation: 18th Judicial Circuit Expedited Matrimonial Fee Arbitration Program, Rule 15.19
Summary: This rule mandates the use of arbitration to resolve disputes regarding fees in domestic relations cases pursuant to 750 ILCS 5/508(c) as long as neither the counsel nor the client opts out.

19th Judicial Circuit Arbitration Rules
Citation: Rules of the Circuit Court of the 19th Judicial Circuit, 17.00 et seq.
Text of Rule: [www.19thcircuitcourt.state.il.us/rules/rules17.htm](http://www.19thcircuitcourt.state.il.us/rules/rules17.htm)
Summary: This rule applies to court-annexed arbitration in the 19th Judicial Circuit (Lake County). The arbitration rules of the Illinois Supreme Court are referenced within. In this circuit, the amount in controversy must exceed $5,000 but not exceed $30,000. It includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, administration of the hearings, awards and judgments.

20th Judicial Circuit Arbitration Rules
Citation: Mandatory Arbitration Rules of the 20th Judicial Circuit – St. Clair County
Summary: In this circuit, the amount in controversy must exceed $2,500 but not exceed $20,000. It includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, administration of the hearings, awards and judgments.

Cook County Arbitration Rules
Citation: Rules of the Circuit Court of Cook County, 18.00 et seq. Rules of the Circuit Court of Cook County, 18.00 et seq.
Summary: This rule applies to court-annexed arbitration in the Cook County. The arbitration rules of the Illinois Supreme Court are referenced within. In this circuit, the amount in controversy must not exceed $30,000. It includes actions subject to mandatory arbitration, qualifications to be an arbitrator, procedures for the scheduling of hearings, discovery, administration of the hearings, awards and judgments.

How these rules affect the use of mediation as a means of accessing justice for low-income disputants in Illinois:

These rules are the core of the path to justice using court-related mediation for the cases that are most pressing for poor and low-income disputants in Illinois. The rules cover custody and visitation across the state (as well as some other family issues, such as the occasional financial mediation program), mediation for major civil litigation and arbitration for mid-level cases in the majority of circuits, and one small claims mediation program. In Cook County there is a community mediation program (that mediates a wide variety of cases, including small claims, eviction, employment discrimination, Law Division and Chancery cases) and a child dependency mediation program.

With enactment of Supreme Court Rule 905, which requires all circuits to provide mediation for custody and visitation matters, the circuits have either expanded their established programs, or developed new methods for providing services to poor and low-income families. The circuits have devised many approaches to deal with this requirement, such as:
The court maintains a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the court will pay the mediators at a much reduced rate through funds provided by the county.

The court maintains a roster of mediators whom the parties pay, unless the parties are found to be unable to do so. In that case, there is a requirement that mediators agree to conduct reduced fee or no-fee mediations as requested by the court in order to be listed on the roster to receive cases for which they are paid. (While most rules are silent on a number of cases required, there is a maximum of two free cases per year in one circuit, two reduced fee cases in two circuits, a maximum total of four reduced fee and free cases per year in another circuit, and a requirement of at least one free case per year in another circuit. Another circuit requires mediators to staff a room where judges can send parties for immediate referral.)

In judicial mediation, judges mediate contested custody and visitation issues. If an agreement is reached, the mediating judge enters it as a provisional order, which the trial judge can reject or co-sign.

In another option, the court maintains a full-time, paid staff of mediators who mediate all contested custody and visitation issues, regardless of income.

In yet another circuit, mediators from a local university with law degrees or advanced degrees in behavioral science are trained as mediators and required to provide reduced fee and no-fee services.

What is untested is how effective these custody and visitation approaches under Supreme Court Rule 905 will be. There are no statistics about how many litigants will require these services and while Supreme Court Rule 99 requires reporting of mediation statistics in general, there has not been any requirement of reporting the cases that were referred for free or reduced-fee services, of those that actually received these services, or of who provided those services.

**Finding**

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.

c. Federal District Court Rules in Illinois

**Northern District of Illinois: Bankruptcy Mediation**

**Citation:** U.S. Bankruptcy Court Rule 9060-1 et seq.

**Text of Rule:** [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov)

**Summary:** This rule applies to bankruptcy mediation in federal court. It includes the procedures regarding referrals of cases to mediation, selection of a mediator, scheduling a mediation conference, submission of materials and conduct during the mediation conference. Post mediation procedures, such as the mediator’s compensation and confidentiality rules, are also included.
Northern District of Illinois: Lanham Act Mediation
Citation: U.S. District Court Rules (N.D. Ill.), 16.3 et seq. (Voluntary Mediation Program-formerly 5.10)
Summary: These rules apply to cases arising under the Federal Trademark Act of 1946 (the "Lanham Act"). They outline the procedures for the federal court-annexed mediation program, including the screening and assignment of cases. Also included are minimum criteria for being included on the list of neutrals, as well as a list of Lanham Act neutrals.

Northern District of Illinois, Western Division: Civil Case Mediation
Citation: Local Rules for Alternative Dispute Resolution Mediation
Summary: These rules authorize the use of mediation for all civil cases except those involving pro se litigants, mortgage foreclosures, social security, prisoner civil rights, and bankruptcy appeals. Under these rules, a case may enter mediation on stipulation of both parties, through a motion by one party, or by court order. The rules also address the timing of referral and mediation, the qualifications and compensation of neutrals, who must participate in the mediation sessions, confidentiality, and the procedures to follow if the rules are violated.

Northern District of Illinois: Settlement Discussions
Citation: U.S. District Court Rules (N.D. Ill.), 16.1 (formerly 5.00)
Text of Rule: www.ilnd.uscourts.gov
Summary: This rule includes the Standing Order Establishing Pretrial Procedure, Section 5 of which refers to settlement. Section 5 addresses the authority of the court to require settlement discussions, who should be present at such discussions, and who should preside over them.

Northern District of Illinois: ADR Confidentiality
Citation: U.S. District Court Rules (N.D. Ill.), 83.5
Text of Rule: www.ilnd.uscourts.gov
Summary: This rule makes confidential all non-binding ADR proceedings in a case pending before the court, including any act or statement made by any party, attorney, or other participant.

Central District of Illinois: Civil Case ADR
Citation: U.S. District Court Rules (C.D.Ill.), 16.4
Summary: This rule authorizes the court to utilize mediation, summary jury trials, and summary bench trials as alternative methods of dispute resolution. All civil cases, including adversary proceedings in bankruptcy, may be referred to mediation. Summary jury trials are available to any case triable by jury. Summary bench trials are available to those cases not triable by jury. The rule makes the entire mediation confidential.
Central District of Illinois: Settlement Conferences
Citation: U.S. District Court Rules (C.D. Ill.), 16.1(B)
Text of Rule: www.iled.uscourts.gov/localrules.htm
Summary: This rule identifies the role of settlement conferences in pretrial procedures. The rule addresses the authority of the presiding judge to require that parties submit to settlement conferences, who should be present at settlement conferences, and who should conduct them.

Southern District of Illinois: Civil Case ADR
Citation: U.S. District Court Rules (S.D. Ill.), 16.3
Text of Rule: www.ilsd.uscourts.gov
This rule authorizes the court to refer any civil case to summary jury trial or other alternative method of dispute resolution.

Southern District of Illinois: Settlement Conferences
Citation: U.S. District Court Rules (S.D. Ill.), 16.4
Text of Rule: www.ilsd.uscourts.gov/forms/lrules.pdf
Summary: This rule identifies the role of settlement conferences and other methods of alternative dispute resolution in pretrial procedures. The rule requires that settlement conferences be held in most civil cases and identifies who should attend such conferences and who should preside over them. The rule also discusses confidentiality in settlement conferences.

How these federal rules affect the use of mediation as a means of accessing justice for low-income disputants in Illinois:
For the most part, these rules provide for settlement conferences and make mediation and other forms of ADR optional. In the Northern District of Illinois, there are two case type-specific rules for mediation of Lanham Act (trademark) and bankruptcy cases. There is also a mediation program in the Western Division (based in Rockford, Illinois) of the Northern District.

Two areas where these efforts to settle cases are likely to intersect the interests of poor and low-income disputants are in cases of discrimination and bankruptcy. With federal magistrates often using mediational approaches in their settlement conferences, lawyers advocating for clients with discrimination cases need to be well-versed in this approach to advocacy.

d. Other Federal Court ADR Rules

U.S. Court of Appeals, Seventh Circuit
Citation: Federal Rules of Appellate Procedure, Rule 33
Text of Rule: www.ca7.uscourts.gov/Rules/rules.htm#frap33
Summary: This rule authorizes the court to direct attorneys to participate in conferences, including settlement conferences, to address matters that may aid in a case's disposition. It also authorizes the court to enter an order implementing any settlement agreement reached in such a conference. The rule identifies methods for conducting settlement conferences, who should attend them, and who should preside over them.
Section II: Legal and Mediation Landscape

U.S. Court of Appeals, Seventh Circuit  
Citation: Rules for the U.S. Court of Appeals for the Seventh Circuit, Rule 33  
Text of Rule: www.ca7.uscourts.gov  
Summary: This rule authorizes the court to conduct pre-hearing conferences that include an exploration of the possibility of settlement.

Federal Rules of Civil Procedure  
Citation: Federal Rules of Civil Procedure, Rule 16  
Summary: Rule 16 of the Federal Rules of Civil Procedure is titled "Pretrial Conferences; Scheduling; Management." This rule corresponds to the local rules that authorize the court to require parties to participate in settlement conferences in the Northern, Central, and Southern Districts of Illinois. Among its contents are provisions that address the court's authority to direct attorneys and unrepresented parties to appear before the court to take action with respect to settlement. The rule also addresses the use of unspecified special procedures to assist in resolving a dispute.

What these federal rules mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:

Two of these rules are important in distinct ways. The first establishes the 7th Circuit appellate mediation program and the last provides authority for the local federal rules regarding settlement conferences. Only the first rule directly implements a program that a lawyer for a poor or low-income litigant might someday encounter, the mediation program in the Seventh Circuit Court of Appeals. It is a well-respected program, surprisingly effective at settling cases at the appellate level. It would require well-developed mediation advocacy skills on the part of any lawyer who practiced there.

What these statutes and rules mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:

On the positive side, there is a lot of potential in these laws and rules. Illinois does have the Uniform Mediation Act so that all parties in mediation have a reasonably clear expectation of their rights, of the confidentiality of mediation communications in future court proceedings, and of the mediators’ responsibility to disclose conflicts of interest. Supreme Court Rule 99 provides a structure for any circuit that wants to establish any type of mediation program. There is also the Dispute Resolution Center Act, which could provide some limited funding for community mediation programs and does provide immunity for mediators in its programs. And there is the Illinois Equal Justice Act, which can provide funding for mediation for low-income clients.

However, in terms of what is in place for poor and low-income disputants, when all these laws and rules are reviewed, the picture that emerges is of thin, uneven mediation availability for their most pressing needs – consumer, housing and family issues. There are rules in place for one small claims mediation program for consumer and housing issues outside Cook County (which is not covered in this Study) (although three other programs that operate without court rules will be discussed below). And although passage

Finding
Provision of mediation services to poor and low-income disputants across Illinois is uneven.
of Supreme Court Rule 905 should provide custody and visitation mediation in every circuit, it remains to be seen how that will work for poor and low-income parents. Without monitoring systems in place that specifically track poor and low-income litigants, it will be extremely difficult to know how well these families are being served. For example, if a circuit has a rule that provides that each mediator on the roster will mediate two cases at no charge per year and there are twelve mediators on the roster, is serving 24 families in that circuit sufficient? And the question arises as to whether all twelve mediators mediate regularly and with equally high quality. If one or two mediators only mediate twice a year when called to do their no-fee mediations, it is unlikely that their mediation skills are high enough to make them safe mediators. Without monitoring of who is mediating what number of cases overall, and who is mediating no-fee cases for poor and low-income disputants, there is no way to track which mediators may need to be flagged for assessment of quality of services based on infrequent mediation (as compared to other factors, such as complaints, that might cause a mediator to be flagged for assessment).

What is missing is a funding and administrative structure (either a law, rule or program initiative) to support a comprehensive approach to quality court mediation throughout the state. With this funded structure, there would be a system by which poor and low-income disputants throughout the state would be ensured access to high quality services in appropriate cases.

- A system would ensure that mediation became part of the way that law was practiced for all litigants. For example, to implement Supreme Court Rule 905, each circuit would establish a roster of mediators with certain requirements for all custody and visitation cases, no matter what the income of participating families was. A careful process for screening cases would be designed and implemented to ensure that only appropriate cases were referred to mediation. Each case would be referred to someone on the roster. The number of cases mediated, by whom, referred in what manner, and with what outcome, would all be monitored and analyzed. Procedural justice measures for parties also would be collected and analyzed. If a circuit chose to address consumer and housing issues through a small claims mediation program, another roster of mediators would be established with its own requirements, monitoring and analysis.

- Providing access to mediation to disputants with financial means, as well as to poor and low-income disputants, would help to ensure that mediation is seen as a positive option for improving outcomes, not only as an option for people with few means. Part of the way to accomplish that is to give any disputant with an appropriate case the opportunity to access mediation, regardless of income.
Section II: Legal and Mediation Landscape

- Currently mediation is not provided throughout the state, but a comprehensive system that monitored and assessed it would help inculcate it throughout Illinois. The information from this system would help to educate state-level decision-makers about the effectiveness of the programs, and educate circuit-level program implementers about what to expect.

- Funding the system, as compared to promulgating unfunded rules, would ensure everyone had access to mediation. This funding might support training for mediators in areas that are in real need, paying mediators when there are not enough high quality volunteer mediators available, developing the programs around the state, monitoring and evaluating the overall system, and maintaining the programs on the local level.

- There have been very few attempts to ensure services in the state are high quality, but a statewide initiative would need to address and ensure this aspect if the initiative and mediation were going to be respected and effective on a statewide level.

Illinois has some of the key structures in place to provide for the basics such as confidentiality and court mediation program approval by the Illinois Supreme Court, but there are still some holes that need to be filled in order to meet the needs of poor and low-income disputants in making the best possible use of mediation. The most important area to address is funding, which is followed by the need to establish a structure for monitoring and evaluating what is happening. If there were a way to systematize the development and operation of mediation programs around the state, while still maintaining their ability to be responsive to their unique surroundings, that would be a great addition to the development of mediation in Illinois.

C. The State of Mediation in Illinois Today
To understand the state of mediation in Illinois today, it is important to understand first how it has developed. This section will start by doing that, and then will look at where mediation is being used in the state today.

1. Development of Mediation and ADR in Illinois
One way to look at the development of mediation in Illinois is to compare it to other states across the country. The development of alternative dispute resolution in Illinois has followed a different path from that in states such as Florida, Texas or California that have developed mediation cultures that have successfully integrated into the legal culture. States with successful programs tend to have two kinds of leadership and two kinds of support that have enabled their court ADR programs to grow and inculcate ADR within their legal cultures. These factors are:

Finding
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.
Accessing Justice through Mediation

- Committed leadership at every level of judiciary (from the circuit to the state supreme court level) in support of ADR

- Strong leadership in the top echelons of the bar (from the local to the state level) in support of ADR

- Staff people at the state level who help circuits develop their mediation or ADR programs

- A staff person at the circuit level who is responsible for mediation or ADR programs

While Illinois has had some of these support factors some of the time, they have not been in place to the extent that they have in these leading court ADR states. With mediation, and ADR more generally, less available around Illinois, it also has been less available to poor and low-income disputants. The following explains the different path that Illinois has taken in developing ADR programs.

a. Court Support

Unlike the states where there has been support for mediation at the highest reaches of the courts, for many years an Illinois Supreme Court Justice was on record as being opposed to mediation. Although the entire court was not known to be opposed, with one justice having taken such a public stand on a matter of court administration, there would be no statewide development of court-related mediation in Illinois even if the others were in favor – and it is not publicly known where the other members of the Court stood.

While some might think private mediation could have been adopted without court support – and there has been some use of mediation in Illinois where there were no court-sponsored programs – for there to be a true cultural shift in the way the law is practiced, across the country it has been seen that the courts need to lead the way. In states that have uniformly adopted ADR, not only has the judiciary been a leader in speaking in favor of mediation, but these state court judiciaries have generally supplied some tangible support to assist local courts in developing their court ADR programs. This support might come in the form of technical assistance, pilot program grants, or ongoing financial support for court ADR programs. With court ADR programs in place, the culture of the legal practice generally adapts to include ADR.

b. Bar Support

In most states with active ADR or mediation cultures, there have usually been leading lawyers who have taken up the cause of ADR or mediation. There have been a few active, leading litigators around Illinois who have taken on mediation practices, but there are few who are primarily associated with ADR, and fewer yet who are leaders of bar associations who have chosen ADR as their platforms.

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44 Hon. Moses W. Harrison, Protecting the Courts, DCBA Brief, Jan. 1997 at 28.
c. Illinois History

In Illinois, the net effect of the negative-to-lukewarm view of ADR at the top of the Illinois judiciary, plus the absence of any positive support, plus the lack of aggressive leadership from the top echelons of the bar, was that court-related ADR in Illinois grew slowly and only in areas where creative local leaders among the bench and bar took the initiative to implement programs. This meant that the focus of local mediation programs followed the interests and concerns of these local leaders. More interest in family issues led to the creation of family programs in one area, while more interest in large civil cases led to more mediation programs for those cases in another area.

Courts in the state did have the unique service of the Center for Analysis of Alternative Dispute Resolution Systems (CAADRS) to assist with development of programs, implementation of monitoring systems, and technical assistance with issues that arose along the way. This is thanks in large part to the support of the MR Bauer Foundation, which provided almost all of CAADRS’ financial support for its first decade, and the leadership of individuals such as former 17th Judicial Circuit Chief Judge Harris H. Agnew. CAADRS, too, was shaped by its leadership, putting more of its resources into large civil cases initially, rather than other types of cases such as family matters, although that has shifted over the years.

Because of this grassroots approach, the level of development of ADR activity now varies greatly among circuits in the state. Some circuits have no mediation while another, the 17th Judicial Circuit, based in Rockford and serving Winnebago and Boone Counties, has arguably one of the most well-developed ADR cultures in the state, with mediation for large civil, family, and small claims cases, as well as arbitration for mid-sized cases. This is due to almost fifteen years of steady work and leadership from the bench and leaders in the bar. It is also the legacy of Judge Agnew who was devoted to the development of ADR in the circuit during his long tenure on the bench, and who now spreads the word around the state to other circuits.

One area in which there was both local interest in many circuits and a source of support for program development, was the development of mediation programs for large civil cases. CAADRS assisted circuits in writing their court rules for their programs, establishing their pilot programs, and conducting trainings for the pilot groups of mediators. The circuits collected statistical information using CAADRS’ computer program and provided the information to CAADRS for analysis and posting on-line. This effort helped initiate programs in ten circuits, with another circuit (which has since split into two circuits) initiating a program on its own.⁴⁵ Some of these programs have become well-established, while others have not taken hold.

Eventually the Supreme Court Justice who opposed ADR retired. In 2001, the Supreme Court enacted Rule 99, which provided a system for circuits to obtain approval for their mediation programs.⁴⁶ It also granted immunity to the mediators who provided services

⁴⁵ First Circuit, Sixth Circuit, Eleventh Circuit, Twelfth Circuit, Fourteenth Circuit, Sixteenth Circuit, Seventeenth Circuit, Eighteenth Circuit, Twentieth Circuit and Circuit Court of Cook County.
⁴⁶ ILL SUP. CT. R. 99 available at http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#99.
when they were mediating in programs approved under the rule. With this, mediation was clearly authorized by the Supreme Court.

In February 2006 the push for family mediation received a major boost when Supreme Court Rule 905 was adopted. Effective January 1, 2007, all circuits were required to have mediation programs for all contested child custody and visitation issues. Circuits without programs faced the challenge of creating programs and all circuits faced the daunting prospect of providing services to everyone regardless of income.

Supreme Court Rule 905 can be looked at as a glass half-empty or glass half-full situation. Is it an enormous step forward because the Supreme Court is requiring that all custody and visitation cases be mediated or is it an unfunded mandate because there is no ongoing support (there has been assistance with some mediator training) to assist the circuits in realizing this ambitious goal? Either way, it has certainly put family mediation on the agenda in courts throughout the state.

There are two other threads that run through this history: arbitration and community mediation. Illinois has had court-ordered arbitration for mid-level cases since 1987. This program, which each circuit can ask the Supreme Court for permission to adopt, now operates in nine circuits. The first community mediation program was started in Chicago in 1979. It and the Victim Assistance Center in Kankakee County are the only two programs that have received funding under the Illinois Not-for-Profit Dispute Resolution Center Act, although there are at least two other entities in the state that are considering developing themselves as community mediation programs.

**d. Mediation and Low-Income Parties**

Because these mediation programs were being developed mainly by lawyers and judges to fit the court system, they were formed around case types. They were not formulated to address the specific needs of poor and low-income clients. Some of the large civil case mediation programs had, and have, requirements that mediators provide a certain number of their first cases at no cost, but those were put in place to market and develop the programs, rather than to reach out and serve a group of under-served clients. There was no expectation that the recipients were to be low-income.

Many other programs do have requirements for mediators to provide free services, but little information is available about how much they are utilized. See Appendix 3 (Illinois

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47 Id.
49 Id.
50 Illinois Mandatory Arbitration System, 735 ILCS 5/2-1001A et seq.
51 The Center for Conflict Resolution, which was founded by the Chicago Bar Association Young Lawyer’s Section. See http://www.cerchicago.org.
52 DRCA, 710 ILCS 20/1, et seq. The small claims mediation program in Rockford and the Northern Illinois University College of Law Zeke Giorgi Legal Clinic are looking to develop community mediation.
53 The author was involved in the development of most of the major civil litigation mediation programs in the state and so was involved in discussions as to anticipated users of these free mediations.
Mediation Programs with Reduced-Fee or No-Fee Services) for a listing that is maintained on the CAADRS web site as a public service for individuals and programs seeking access to free or reduced-cost services.\textsuperscript{54}

It is interesting to note that juvenile and adult misdemeanors are being addressed in five circuits, and juvenile cases did appear in the Legal Needs Study, but only 4% of those reported concerns came from outside Cook County.\textsuperscript{55} Based on that low reported rate of concern, juvenile matters are not an issue that this Study will address.

To provide access to mediation, these court rules either require mediators on the court rosters to provide a certain number of mediations per year at no fee (ranging from one to four, but typically two), or simply provide that indigent parties will not have to pay, without saying how that will happen.\textsuperscript{56} It became apparent at the gatherings, and in informal conversations with judges and lawyers around the state, that there are no hard numbers as to how many cases will require free services and how many mediators will be available to provide them.

Expecting that mediations will be provided for poor and low-income disputants solely through required voluntary efforts may raise some issues. If there is a healthy mediation climate, mediators are mediating for pay regularly, and mediation is generally seen as what all parties do, the issues would be less significant. But in the current mediation environment in much of Illinois, where mediation is still not the norm, expecting all mediators to provide free mediations may lead to:

- Mediators with limited mediation experience or skills providing no-fee mediations to poor and low-income litigants because everyone on the mediator roster has to provide such services irrespective of their abilities. While parents who are able to pay can select their mediator, parents who cannot pay would be expected to accept the mediator who was appointed to them. For rosters that have relied on the free market, along with basic training and education criteria, to determine which mediators get hired to mediate, taking away the free market element from poor and low-income families can leave them with mediators who would not otherwise be selected to mediate.

- Mediation being seen as the thing that poor and low-income litigants do, so the legal community does not make use of it for litigants with financial means.

- Experienced mediators feeling a sense of unfairness when they are the only professionals involved in a case who are not paid.

At one of the gatherings, the issue was summed up as a conflict between the indigent litigant’s right to access services without paying for them, and the professional mediator’s right to be paid for providing services.

\textsuperscript{54} See http://www.caadrs.org.
\textsuperscript{55} Legal Needs Study, supra note 9, at 75.
\textsuperscript{56} See supra Appendix 3.
Accessing Justice through Mediation

2. Use of Mediation in Illinois Today

This section will discuss the types of cases for which mediation is being used in Illinois, starting with those three types of cases where there is the greatest need for legal assistance in Illinois – consumer, housing and family law, which also are the top three types of cases that are most amenable to mediation.

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<tr>
<th>Cases Amenable to Mediation (from most amenable to least amenable)</th>
<th>Cases of Greatest Legal Need^57</th>
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<td>Family</td>
<td>Consumer</td>
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<td>Housing</td>
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<td>Consumer</td>
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a. Consumer Cases
The issues involving poor and low-income consumers in Illinois are often related to repossessions, bankruptcy, collections, defective products or services, and consumer complaints. There are no mediation programs in Illinois for repossessions or collections. Bankruptcy cases, however, can be mediated in the U.S. District Courts for the Northern District of Illinois and the Central District of Illinois, with no-fee mediation available in the Northern District.58

Mediation has been used for disputes about products and services in small claims and pro se courts, in some areas for many years with great success. Small claims court mediation programs are in place in Cook, Winnebago, McHenry, Kankakee, Sangamon and Jackson Counties. They are all court-related to some extent and they tend to work with local bar associations or law schools. The extent to which these programs reach poor and low-income litigants is not being monitored, and the programs’ effects on these individuals have not been studied.

Three web sites indicate that mediation or other forms of dispute resolution are offered for consumer complaints: utility mediation is offered by the Illinois Commerce Commission; the Illinois Attorney General has an "informal dispute resolution" process for consumer fraud cases and the Better Business Bureau has a consumer program as

^57 Legal Needs Study, *supra* note 9, at 17.
^58 *Bankr. N.D. Ill.* R 9060-1 et seq. (rule 9060-7 deals with pro bono mediation); *D. C.D. R.* 16.4 et seq.
Section II: Legal and Mediation Landscape

well. Information is not available as to whether these programs are being utilized by poor or low-income consumers, or how effective they are for these consumers.

b. Housing Cases
The issues involving poor and low-income homeowners in Illinois are often related to unsatisfactory home repairs, mortgage foreclosures, predatory lending, property tax issues, and Section 8 issues. Those related to poor and low-income renters are evictions, lock-outs of rental units, return of security deposits and conditions of rental units.

Unsatisfactory home repairs often can be dealt with in the small claims and pro se programs outlined above. The Study did not find any mediation programs for mortgage foreclosures, predatory lending, property tax issues or Section 8 matters in Illinois.

On the rental side, there are more programs than the homeowners’ side. For eviction cases, there is a long-standing eviction court program in Forcible Entry and Detainer Court in Cook County operated by the Center for Conflict Resolution. It mediates cases where there are issues in addition to straightforward matters of whether there is an arrearage and notice was given.

For cases involving lock-outs, poor conditions, and return of security deposits, disputants may be referred to mediation through small claims court as described above. They may also seek assistance from Residential Alternatives for Dispute Resolution (RADR), the affiliate of the Center for Conflict Resolution in Chicago that focuses specifically on mediation assistance for tenants, landlords, neighbors, owners, co-op and condo associations in housing-related disputes. In Evanston they may call the Human Relations Commission, where staff works on the phone and through in-office mediations. There is also the Interfaith Housing Center of the North Suburbs, which works in a similar fashion. Both these last two resources have a very low case flow and all the entities in this paragraph are located in Cook County.

c. Family Cases
The types of family cases involving poor and low-income residents in Illinois in order of how predominantly they were voiced in the legal needs survey were: child support, divorce, custody, visitation, domestic violence, elder abuse, guardianship, adoption/termination of parental rights, paternity and maintenance/pension benefits.

60 See http://www.ccrchicago.org.
63 See http://www.interfaithhousingcenter.org/.
64 Marquardt Unpublished, supra note 11.
FAMILY CASE ISSUES

- Child support
- Divorce
- Custody and visitation
- Domestic violence
- Elder abuse
- Guardianship
- Adoption/termination of parental rights
- Paternity
- Maintenance/pension benefits

i. Child Support, Divorce, and Custody and Visitation

The courts’ approach to mediation has been very different for custody and visitation than for the two areas of greatest need – child support and divorce. (Divorce here refers to resolving any or all of the issues of divorce, such as financial issues, which may involve division of debt or pensions among poor or low-income couples; child-related issues if there are children involved – financial matters and those related to parenting time and responsibilities; or any other issues, such as orders of protection.) Over the years, there has been a shift toward more circuits requiring that all divorcing couples with children, no matter what their financial status, use mediation for child-related issues such as custody and visitation, but not for financial matters, even child support.65 Mediation is not required for divorces that do not involve children. With the adoption of Supreme Court Rule 905 mandating mediation for custody and visitation cases, many circuits have struggled to find ways to provide mediation services to individuals who are unable to pay for them. The most common response has been to require mediators who are on court-approved rosters to provide mediation to paying disputants to also provide some services to indigent litigants for free. Other circuits have been successful in finding partners in surrounding communities, such as the Southern Illinois University Law School in Carbondale or the Victims Assistance Center in Kankakee, to provide mediation services free of charge.66

ii. Domestic Violence

It is not surprising that the next highest issue voiced is domestic violence. It is often the qualifying incident for domestic relations cases to be accepted by legal services programs. The offices are so inundated by requests for services that they can only assist those with the greatest need, and that is often those who are experiencing violence.

Domestic violence also raises the greatest concerns when considering mediation. No matter what the referral source, all family mediation programs must do careful screening

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65 Under Supreme Court Rule 905 as of January 1, 2007, every judicial circuit in Illinois is required to have a program to mediate child custody and visitation issues. If a couple with financial means divorces, they can hire a mediator to help them resolve all issues, including financial issues, such as maintenance and pension benefits. This is not the way that most couples deal with divorce, but it is now available in most of the state. There are also now some experimental court programs with financial mediation, but they are for the most complex divorces. The one exception is a judicial mediation program in the Second Judicial Circuit where a judge helps the parties work out the child support amount as part of custody and visitation mediation when needed to determine living arrangements for children.

66 Southern Illinois University School of Law ADR Clinic can be found at http://www.law.siu.edu/clinic_services/adrindex.htm; Victim Assistance Center information can be found at http://www.caadrs.org/adr/kankakee.htm.
Section II: Legal and Mediation Landscape

for domestic violence so that someone who has been victimized is not in the position of trying to negotiate directly with the person who has victimized her or him without any preparation or support. While it is absolutely clear that violence itself is never mediated, there is deep difference of opinion about whether people who have been victims of violence should participate in mediation. There is great disagreement about whether parties who have been the victims of violence can participate in mediation if the mediation is arranged properly. Some would say there is never enough support for that to be possible. Others, such as those who operate the Cook County Marriage and Family Counseling Service mediation program, would say that when they do attempt mediation with abused parties, a combination of efforts – such as in-depth screening and a variety of support systems (such as shuttle mediation and/or having a support person for the victim attend the mediation) and very experienced, well-trained mediators who mediate within a supportive community of mediators who work full-time and are available to discuss these issues and refine approaches for working with them – makes this kind of mediation not only possible, but meaningful for those who have been so disempowered.

iii. Elder Abuse, Guardianship and Adoption

The next three issues – elder abuse, guardianship, and adoption/termination of parental rights – can be grouped together. Again, clearly the actual abuse of elderly individuals would not be mediated, but if these allegations come up among family members in the midst of guardianship cases, or if there is concern about possible neglect of an elderly family member, another family member may ask for a mediation in lieu of filing a guardianship case so that family members can sit down together and work out how an aging parent needs to be cared for. The same kinds of issues often come up in guardianship cases, which have been successfully mediated in Cook County in the past by volunteers from the Center for Conflict Resolution.

Another situation in which family dynamics are at the heart of mediations is in the child dependency mediation program in Cook County Juvenile Court. These mediations often deal with conflict between biological parents who may be unable to care for their children and foster parents who are family members interested in adoption. This conflict can significantly delay the provision of a permanent home for the children. Because of the nature of the case, many legal and social service entities are involved in the mediations as well. The large number of parties with a complex mix of legal, social and psychological issues makes these particularly complicated mediations. The mediations, however, can be


68 From conversations with Cookie Levitz, Cook County mediator. Screening mechanisms on file with the author.

69 For information on this program, contact the Center for Conflict Resolution available at http://www.ccrchicago.org.
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especially powerful in helping all the parties come to terms with the likely eventuality of the adoption. Due to the many participants and the complicated dynamics, these cases are often co-mediated and in Cook County they are mediated by full-time paid co-mediators.

For parents who have already adopted children through the foster care system, the Department of Children and Family Services (DCFS) offers mediation for disputes with adoptive parents regarding their adoption assistance from the agency. DCFS also offers mediation for working out disputes over guardianship agreements with the agency.70

iv. Paternity

Paternity would seem at first to be the kind of case that is unsuited to mediation. Either someone is the father or he is not. Once paternity is established, however, many of the same child-related issues as in divorce, especially visitation, arise. These have been mediated for years through a Department of Children and Family Services grant in Cook, DuPage, Kane, Lake, and Sangamon Counties.71 All circuits are now required to mediate custody and visitation issues in paternity cases due to Supreme Court Rule 905.

d. Public Benefit Cases

The Study found no mediation programs for public benefit cases in Illinois.

e. Employment Cases

Unemployment cases were broken down in the Legal Needs Study into three categories: unemployment benefits, pension benefits, and employment discrimination.

Of these, the most commonly cited was unemployment benefits, with pension matters being cited by only about one-fifth as many.72 Currently, there are no mediation programs for either; however, judges in the U.S. District Court for the Northern District of Illinois have successfully conducted settlement conferences between employers and employees concerning ERISA cases for many years.73

Employment discrimination based on race, age, sex, or religion was of concern to almost as many respondents to the survey as unemployment benefits.74 Mediation is available statewide for these cases through the Illinois Department of Human Rights (IDHR) and the Equal Employment Opportunity Commission (EEOC). In Chicago, the Chicago Commission on Human Rights offers mediation of these issues as well.75 These issues, as well as grievance issues and workplace disputes, are also mediated through the workplace (for example, the U.S. Postal Service) or through private mediation.

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70 See http://www.state.il.us/dcfs/docs/adoptigdmanl.pdf
71 See http://www.caadrs.org/adr.
72 Marquardt Unpublished, supra note 11.
73 Data collected by the court and on file with CAADRS.
74 Marquardt Unpublished, supra note 11.
On the advocacy side of things, the Chicago Lawyers’ Committee for Civil Rights Under Law administers a Settlement Assistance Program in which lawyers provide pro bono representation in settlement conferences before federal magistrate judges in the Northern District of Illinois. The purpose is to help pro se disputants settle their cases and attempt to overcome a power and information imbalance between represented and unrepresented parties. Currently, 45 law firms are participating in the program. Additionally, the Center for Disability and Elder Law represents parties in EEOC mediations in approximately three cases a month.

f. Health Care Cases
Most of the issues involving health care also involve large bureaucracies, so mediations encounter the same difficulties as public benefit cases. The top health care issues are access to Medicare-covered medical care, getting private insurance to pay for medical care, and gaining access to government health care programs. The Illinois Attorney General has a Health Care Assistance Program in which they either open a mediation file or refer the consumer to an appropriate agency. There is no public study available as to how effective this Attorney General’s program is in general, or specifically in serving the needs of poor and low-income disputants.

Only four survey respondents mentioned issues with nursing homes, such as refusals of admissions, or transfers or discharges against the patient’s will. However, for those who do have such problems, the Mediation Association of Southern Illinois is available to mediate them in the far southern part of the state.

There are mediation options for quality of care issues, which were not raised in the survey. Medicare provides mediation of quality of care complaints through the Illinois Foundation for Quality Health Care. Additionally, the Chicago Dental Society offers a Mediation and Peer Review Service to the public as a means of settling disputes between patients and their dentists.

g. Education Cases
The education issue about which respondents expressed the most concern was suspension, expulsion or other severe punishment. If the student is disabled and the student's misbehavior is caused by his or her disability, under the Individuals with Disabilities Education Improvement Act (IDEA 2004), schools cannot impose severe levels of discipline (such as expulsion) on that student. The burden of proof, however, is on the parent to prove the connection. Because these issues fall under IDEA, such

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78 See http://www.ag.state.il.us/consumers/healthcare.html.
79 Marquardt Unpublished, supra note 11.
80 See http://www.mediatenow.org.
81 See http://www.ifqhc.org/beneficiary/mediation.html.
83 Legal Needs Study, supra note 9, at 25.
84 IDEA, 20 USC 1415(k).
85 Id.
complaints can be mediated through the Illinois State Board of Education (ISBE) mediation program. This same mediation program is available for disputes regarding rejection for special education services or inappropriate placement. Interestingly, the ISBE also has a list of agencies that provide mediation services for schools through the Refugee Children School Impact Grant. Mediations conducted through this grant are similar to those conducted through the ISBE’s larger program.

h. Disability-Related Cases
It is interesting that disability-related issues per se fall so far down the list of concerns voiced in the survey, when “[a]lmost three-quarters (73.9%) of households that included at least one person with a disability experienced a legal problem during 2003, which means that these households were roughly 50% more likely to have a legal problem than the sample as a whole (49%).” The top issue – denial or loss of a job due to disability – can be mediated in the same ways as other employment discrimination cases. This is true for some of the other issues that were further down the list, such as public accommodations and access to government buildings and services.

Along with the mediation programs at IDHR and EEOC mentioned above, mediation of discrimination due to disability is also available to students, faculty and staff under policies at Illinois State University. The 2003 Illinois Register Rules of Governmental Agencies include rules for mediation between the Department of Human Services, Office of Rehabilitative Services and clients who are disabled. Also, as mentioned above in discussing education, the Illinois State Board of Education provides mediation services. On a national level, the Department of Justice established the ADA Mediation Program to deal with discrimination complaints.

i. Tort Defense Cases
Although tort defense cases are very far down the list of priorities for poor and low-income residents in the state, it is one issue where mediation is relatively widely available in Illinois. Currently, twelve circuits have court rules for programs that address these cases. These are also the kinds of cases where private mediators are available in the larger cities – often former judges and very experienced litigators. Because of the complexity of these cases, these litigants would need skilled representation, but their lawyers could make good use of mediation, just as parties with means make use of it.

86 See http://www.isbe.net/spec-ed/.
87 Id.
88 See http://www.isbe.state.il.us/bilingual/pdfs/refservprovmailing_list.pdf.
89 Legal Needs Survey, supra note 9, at 36.
90 See http://www.policy.ilstu.edu/policydocs/grievance_eoaa.htm.
92 See http://www.isbe.net/spec-ed/.
94 Legal Needs Survey, supra note 9, at 17.
95 See http://www.caadrs.org/adr/mediation.htm.
j. Wills and Estate Cases
While these are not high-priority cases for poor and low-income residents, they can be mediated.96 There is a judge in Cook County who consistently settles these cases using a very mediational approach.

k. Immigration Cases
Immigration matters fell at the bottom of the list of priorities for poor and low-income residents of the state.97 There are no mediation programs in Illinois for this kind of case.

What this information means in terms of mediation as a means of accessing justice for low-income disputants in Illinois:
Outside of Cook County there is very little mediation for consumer or housing issues, the top two areas of greatest need expressed in the survey of legal needs. There are custody and visitation programs in place or being put in place, but generally without monitoring, funding or support to ensure quality services for poor and low-income parents. There is an especially acute lack of pressure to assure quality mediation services through a complete program of mediator and mediation evaluations, ongoing training for mediators, ensuring that mediators mediate regularly (or do not stay on the roster), or other monitoring or skill improvement activities.

Many of the other types of cases involve large government or private entities, which require a special kind of mediation program development if they are to work. Outside of CAADRS, which collects and distributes information on all court ADR activities, there is nowhere for advocates to turn to find reliable information on sources of mediation for their non-court clients.

In summary, outside of custody and visitation mediation, there is very little mediation available for poor and low-income residents that would assist in meeting their legal needs. Other than the information on the court programs, there is not much information available to legal services advocates that might assist them in meeting their clients’ needs through other mediation programs.

3. Use of Mediation to Serve Poor and Low-Income Disputants outside Illinois
To get ideas for other models for providing mediation to poor and low-income disputants, programs in other parts of the country were researched. Following are some examples of those programs:

a. Consumer
While there are not many options, there are some programs in other states that differ from what is currently available in Illinois for mediation of consumer issues. A variety of government entities across the country mediate consumer complaints. As in Illinois, attorneys general in many states mediate these cases, but in some states other entities provide such services, including district attorney’s offices (for example, the District

96 Legal Needs Survey, supra note 9, at 17.
97 Id.
Accessing Justice through Mediation

Attorney's office in Ventura County, California has a mediation program, California's Department of Consumer Affairs, and some cities and towns.\(^{98}\)

While Illinois has a U.S. Department of Agriculture mediation program (that deals with farm loans, farm and conservation programs, wetland determinations, rural water loan programs, grazing on national forest system lands, and pesticides), many states and Canada have mediation of farm debts by statute. Minnesota also has debtor-creditor mediation available for all debts by statute, which is administered by the courts.\(^{99}\) Additionally, California's Department of Consumer Affairs provides mediation of complaints against repossessors.\(^{100}\)

In addition to these public services, debt mediation is a thriving business in the private sector. It is used to help collectors retrieve monies, reduce the amount owed, deal with disputes as to the debt owed, and work out plans that deal with credit ratings. These range from ethical businesses, even non-profits, to dangerous rackets.

### b. Housing

Several of the types of housing cases that confront poor and low-income disputants are handled by mediation programs. For example, for mortgage foreclosure and predatory lending cases, the National Anti-Predatory Lending Consumer Rescue Fund provides a process they call mediation to the loan lender or servicer to have abuse terms eliminated and to delay or stop foreclosure proceedings, but it is more like telephone conciliation where there is an attempt over the phone to negotiate new terms, rather than a face-to-face mediation.\(^{101}\)

As noted above, Illinois handles the mediation of housing cases through small claims programs in the courts and, in a minor way, through small non-profit organizations. In other states, housing discrimination violations are handled through local housing authorities (such as the Boston Housing Authority Mediation Program), through equal housing organizations (for example, the Metropolitan St. Louis Equal Housing Opportunity Council); and through a state agency (the Department of Fair Employment and Housing Mediation Program in California).\(^{102}\)

### c. Family

While family mediation is probably the most well-developed area of mediation in general, it is still a challenge to bring it to poor and low-income families. Nonetheless, many formulations have been attempted across the country. Because mediation tends to

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\(^{98}\) See [http://da.countyofventura.org/special_prosecutions/consumer_support/consumer_mediation.htm](http://da.countyofventura.org/special_prosecutions/consumer_support/consumer_mediation.htm) (Ventura County program) and [http://www.dca.ca.gov/complainthelp](http://www.dca.ca.gov/complainthelp) (California Department of Consumer Affairs program).

\(^{99}\) See [http://www.revisor.leg.state.mn.us/stats/572/41.html](http://www.revisor.leg.state.mn.us/stats/572/41.html).

\(^{100}\) See [http://www.dca.ca.gov/complainthelp](http://www.dca.ca.gov/complainthelp).

\(^{101}\) See [http://www.ncrc.org/fairlending/ncrc_crf.htm](http://www.ncrc.org/fairlending/ncrc_crf.htm).

be conducted by private mediators, often the challenge is to find ways to access those providers. Some examples of how other states are attempting this are:

- Some Wisconsin courts have partnered with (contracted with) private mediation centers. In others, the court provides the services and the first session is provided free of charge. After the first session, the court charges a flat fee (usually $100 to $200), which is split between the parties (and waived for indigent parties).

- Some courts in Texas use volunteer mediators during Settlement Week, a week in which the courts close except for the conduct of mediations or settlement conferences in an effort to get as many cases as possible to settle.

- An Ohio statute calls for the courts to maintain a mediation services program and charge parties on a sliding scale.

- Some Pennsylvania courts charge a flat fee for mediation and refer parties either to court-sponsored service or private mediation service. Counties may charge a filing fee of up to $20 on divorce and custody complaints to fund the mediation program. In Allegheny County, pro se parties must have legal counsel review the parenting agreement for a flat referral fee of $100.

- In California, mediation is paid for through filing fees and marriage license fees. Mediators on the courts’ rosters are then paid by the court.

Whether any payment is feasible for a family that is truly poor is a question that would have to be addressed in program design. Conflicting opinions were expressed at the gatherings. One opinion was that participants have a greater buy-in if they are asked to pay something for the mediation services. Others felt that some parties absolutely had nothing they could pay or had a right to pay nothing and therefore should not pay.

Financial issues in family cases are less likely to be mediated than custody and visitation. Child support amounts are not generally mediated, however there are some exceptions. For example, in Delaware, mediation is used to work out a child support agreement using the Delaware Child Support Formula to calculate support. A new program in Michigan

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103 Wis. Stat. § 767.405(3)(c); See, e.g., Eau Clair County.
104 For example, Green County Circuit Court, La Crosse County Circuit Court, and Trempealeau County Circuit Court.
105 Fort Bend and Lubbock County Courts are two examples.
107 For example, PA Allegheny Cty. Civ. LR 1915.4-3(v) (West 2005); PA Lehigh Cty. Civ. LR 1940.7 (West 2004).
109 PA Allegheny Cty. Civ. LR 1915.4-3(iv) (West 2005).
uses community mediators and a series of forms to mediate financial issues such as dividing debt between poor and low-income couples who are divorcing.\textsuperscript{112}

Issues around guardianship are increasingly being mediated. The Center for Social Gerontology has an adult guardianship mediation program and coordinates the National Elder Mediation Network, whose mission is to provide national leadership in the issues surrounding elder mediation.\textsuperscript{113} In a related area, California has a program to mediate the wrongful injury or death resulting from elder abuse in nursing homes.\textsuperscript{114}

d. Employment
Mediation options in Illinois for employment discrimination cases, described above, are typical of the ways employment discrimination cases are being mediated across the country.

e. Health
For quality of care complaints under Medicare, mediation is an option under the Beneficiary Complaint Response Program, which is part of the US Department of Health and Human Services, Centers for Medicare and Medicaid Services.\textsuperscript{115}

f. Education
All states are required to provide mediation of special education issues through their departments of education under the Individuals with Disabilities Education Improvement Act of 2004 (see Federal Statutes, above).\textsuperscript{116} Mediation is voluntary, with both parties having the option of agreeing to mediate or not.

g. Disability-Related
Issues involving discrimination on the basis of disability can be mediated through the US Equal Employment Opportunity Commission. Also on a national level, the Department of Justice established the ADA Mediation Program.\textsuperscript{117} There is at least one local effort to provide mediation of these issues: the Disability Rights Legal Center Disability Mediation Center at Loyola Law School - Los Angeles.\textsuperscript{118}

\textsuperscript{112} Conversation with Douglas A. Van Epps, Director, Office of Dispute Resolution, Michigan State Court Administrative Office. Notes on file with author.
\textsuperscript{113} See http://www.tcs.org/med.
\textsuperscript{114} See http://www.sbcadre.org/articles/0017.htm.
\textsuperscript{115} See http://www.cms.hhs.gov/BeneComplaintRespProg/03_Mediation.asp.
\textsuperscript{116} IDEA, 20 USC 1415(e).
\textsuperscript{117} See http://www.usdoj.gov/crt/ada/mediate.htm.
\textsuperscript{118} See http://www.disabilityrightslegalcenter.org/about/disabilitymediation.cfm.
III. Experiences with, and Attitudes toward, Mediation

This section will review two sets of input: one from surveys and the other from gatherings. While the gatherings were selected groups of people who tended to be interested in mediation, the legal services surveys were more representative of the population of legal services providers as a whole. Together, these two sets of input provide the human side to the information in this Study.

Two surveys were conducted for this study. One went to legal services providers and asked about their experiences with mediation and their attitudes about it. The other went to mediators and asked about their experiences with, and future desires about, providing no-fee and reduced-fee mediation services to poor and low-income disputants.

Further information was collected from three gatherings that took place from the northern to the southern end of the state. The purpose of the gatherings was to ask legal services lawyers, private lawyers, judges, mediators, and academic or social services professionals about their experiences and thoughts about providing mediation services to poor and low-income disputants, and to lead them in a discussion about how mediation might be a path to justice for poor and low-income disputants in the state.

Together, the surveys and the gatherings painted a picture of a legal community, especially a legal services community, that was positive about the contributions that mediation could make to resolving the problems of poor and low-income disputants in the state. Illinois is ready to move to a higher level of involvement in the use of mediation for people of all income levels, while being cautious about the particular challenges of providing these services to poor and low-income disputants.

A. Surveys of Legal Services Providers and Mediators

The experiences with and attitudes toward mediation of those who would be using and providing mediation in the state are an essential factor in determining the possibility of using mediation for disputes involving poor and low-income residents. To gather this information, electronic surveys were created on SurveyMonkey, invitations were distributed to legal services providers and mediators to visit the site and complete the survey, and their responses were analyzed. (See Appendix 4, Legal Services Provider Survey, and Appendix 5, Mediator Survey.)

1. Legal Services Providers

The survey was distributed in two ways. Prairie State Legal Services provided 62 email addresses for their legal staff, an email was sent inviting them to visit the site and complete the brief survey, and Michael O’Connor, the executive director, was asked a week later to encourage their participation. For Land of Lincoln Legal Services, Deputy Director Linda Zazove sent the email to the legal staff inviting them to go to the site and complete the survey. Together, this generated 48 responses from all circuits in the state except the 13th Judicial Circuit. This represents 45% of the 107 legal services lawyers in
the state outside Cook County. Responses included a good cross-section of managing attorneys, staff attorneys and telephone counselors.

a. The Respondents
As shown below, more than half the respondents (26 of 48) were staff attorneys. Other respondents included five managing attorneys, five telephone counselors, a director, and seven who marked “other”. Those who marked other were directors or coordinators of litigation (3); paralegals (3), two of whom were also pro bono coordinators; and a director of equal access.

<table>
<thead>
<tr>
<th>Position</th>
<th>Director</th>
<th>Managing Attorney</th>
<th>Staff Attorney</th>
<th>Telephone Counselor</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Respondents</td>
<td>1</td>
<td>5</td>
<td>26</td>
<td>5</td>
<td>7</td>
</tr>
</tbody>
</table>

The respondents’ experience ranged from just a few months to more than 30 years. The breakdown below shows a relatively even distribution between categories, with 21 having ten or fewer years of experience and 17 having 11 or more years.

<table>
<thead>
<tr>
<th>Number of Years Experience</th>
<th>Less than 5</th>
<th>6 to 10</th>
<th>11 to 20</th>
<th>More than 20</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Respondents</td>
<td>12</td>
<td>9</td>
<td>9</td>
<td>8</td>
</tr>
</tbody>
</table>

As mentioned above, the respondents were geographically diverse, working in at least 64 counties (and likely more as the survey only asked for the top six counties in which they worked) and in all circuits except the 13th. They also varied in the area covered, from lawyers who worked in all 24 counties of southern Illinois to those who worked just in one northern county.

When asked what two case types reflected the highest percentage of their case load for the past two years, the attorneys’ responses reflected in part the legal needs expressed in the Legal Needs Study. The three highest responses were landlord-tenant (18 responses), child custody (17 responses), and domestic violence/order of protection (14 responses). After that came public benefits/health (8 responses) and other housing issues (6 responses). There were three responses each for consumer/business, debt collection/repossession, and senior citizen services. Again, there was an “other” category with 11 responses. Most of these were divorce (5 responses), family (3 responses, one specifically mentioning custody), or the combination of divorce and SSI cases. The other two responses were from someone who worked on a hotline and someone who did not have a caseload.
Section III: Experiences with, and Attitudes toward, Mediation

### What are the two case types that reflect the highest percentage of your case load for the past two years?

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord/tenant</td>
<td>18</td>
</tr>
<tr>
<td>Child custody</td>
<td>17</td>
</tr>
<tr>
<td>Domestic violence/order of protection</td>
<td>14</td>
</tr>
<tr>
<td>Divorce/family</td>
<td>9</td>
</tr>
<tr>
<td>Public benefits/health</td>
<td>8</td>
</tr>
<tr>
<td>Other housing</td>
<td>6</td>
</tr>
<tr>
<td>Debt collection/repossession</td>
<td>3</td>
</tr>
<tr>
<td>Senior citizens services</td>
<td>3</td>
</tr>
<tr>
<td>Consumer/business</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
</tbody>
</table>

### b. Mediation Training of Respondents

The majority of respondents (33, or 69%) reported having no training or law school instruction on mediation. However, 20% (9 out of 44) did report taking a course in law school and 18% (8 out of 44) reported receiving some mediation training. Two said they had had both a course in law school and training. Five who attended training said that their training lasted two days or more; for one, training was less than one day. Two reported receiving training on representing clients in mediation.

### c. Whether Legal Services Lawyers Use Mediation

The picture of mediation use that emerges from the survey results is that lawyers representing clients are more likely to refer disputants to mediation than those simply interviewing clients to decide whether their case is eligible for legal services. Of those for whom the question applied, 56% said they had referred at least one client they represented to mediation in the past two years. The majority of those referred five or fewer clients to mediation in the past two years.

#### In the past 2 years, how many clients that you represented have you referred to mediation?

<table>
<thead>
<tr>
<th>Number of Clients</th>
<th>None</th>
<th>1 to 5</th>
<th>6 to 10</th>
<th>More than 10</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14</td>
<td>12</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

Of those who interviewed clients, 37% said they had referred at least one client to mediation in the past two years. There was a definite split between those who were limited in their referrals and those who more actively referred, with eight in the first category and five in the latter.

#### In the past 2 years, how many clients that you have interviewed have you referred to mediation?

<table>
<thead>
<tr>
<th>Number of Clients</th>
<th>None</th>
<th>1 to 5</th>
<th>6 to 10</th>
<th>More than 10</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>24</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td>7</td>
</tr>
</tbody>
</table>

The providers are very unlikely to attend the mediation. The five attorneys who have attended mediation with their client all had landlord/tenant and other housing caseloads, and all attended five or fewer mediations in the past two years. At least some of the
reason for low attendance rates is that a large number of respondents had custody and visitation caseloads, for which lawyer attendance at mediation is not the norm.

<table>
<thead>
<tr>
<th>How many mediations have you attended as an advocate for your client in the past 2 years?</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
</tr>
<tr>
<td>29</td>
</tr>
</tbody>
</table>

**d. Mediation Services Reported**

The respondents overwhelmingly reported that mediation is available, with 86% indicating it is available in the counties they serve. They reported that it is predominantly available through court (24 responses), and then private mediators (12 responses), followed by a law school clinic (6 responses), a community mediation center (5 responses) and a non-profit legal organization. 119

The kinds of cases that the lawyers said can be mediated through these services include the top three case types from the Legal Needs Study referenced above, although not in the same order. The top two are family issues: child custody (35 responses) and divorce – financial matters (19 responses). They are followed by small claims (12 responses), large civil (9 responses) and landlord/tenant disputes (8 responses).

<table>
<thead>
<tr>
<th>Issue</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child custody</td>
<td>35</td>
</tr>
<tr>
<td>Divorce – financial issues</td>
<td>19</td>
</tr>
<tr>
<td>Small claims</td>
<td>12</td>
</tr>
<tr>
<td>Large civil</td>
<td>9</td>
</tr>
<tr>
<td>Landlord/tenant</td>
<td>8</td>
</tr>
</tbody>
</table>

**e. Providers’ Views on Mediation**

*Appropriateness*

Legal services providers who responded to the survey had a positive view overall of mediation and its potential for assisting poor and low-income litigants. (See Appendix 6, Summary of Responses to Legal Services Provider Survey.) When asked about their views on the efficacy of mediation for the resolution of the types of issues identified as the most pressing in the Legal Needs Study, the majority had positive views. Respondents reported at the rate of 72% and 70% respectively that they saw mediation as a good method for resolving housing and consumer disputes. Even more (75%) agreed (23 responses) or strongly agreed (13 responses) that absent allegations of domestic violence, mediation can be a good method to resolve child custody disputes between low-income parents. More impressive was that only three respondents disagreed with this statement. 120

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119 The survey was conducted in 2006 before Supreme Court Rule 905, which mandates mediation of child custody and visitation matters, was in effect. The answers might have been different if the survey were conducted in 2007.

120 Another nine were neutral, while one did not answer the question.
Section III: Experiences with, and Attitudes toward, Mediation

<table>
<thead>
<tr>
<th>Mediation can be a good method for resolving:</th>
<th>Agree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child custody</td>
<td>75%</td>
<td>6%</td>
</tr>
<tr>
<td>Housing</td>
<td>72%</td>
<td>9%</td>
</tr>
<tr>
<td>Consumer</td>
<td>70%</td>
<td>11%</td>
</tr>
</tbody>
</table>

Concerns and Benefits
When asked about some possible concerns regarding the use of mediation for low-income disputants, the respondents were divided as to how concerned they were. For example, 69% did not think that cases in which allegations of domestic violence were present could be mediated, while 29% agreed they could.

<table>
<thead>
<tr>
<th>Cases in which allegations of domestic violence are present can be mediated.</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Neither Agree nor Disagree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>14</td>
<td>2</td>
<td>21</td>
<td>11</td>
</tr>
</tbody>
</table>

The respondents were as likely to believe that poor communication skills hampered low-income litigants when negotiating in mediation as to believe that cases involving domestic violence did, with 33 saying so. Only three thought they did not, while 11 were neutral. Fewer believed that low-income clients were at a disadvantage in mediation, however, with 25 (52%) believing so, and nine indicating this was not a concern.

<table>
<thead>
<tr>
<th>Poor communication skills hamper low-income litigants in mediation.</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Neither Agree nor Disagree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5</td>
<td>28</td>
<td>11</td>
<td>3</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Low-income litigants are at a disadvantage in mediation.</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Neither Agree nor Disagree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7</td>
<td>18</td>
<td>14</td>
<td>9</td>
<td>0</td>
</tr>
</tbody>
</table>

Despite concerns about protecting the parties in mediation, a majority of respondents agreed that mediation empowered low-income litigants to resolve their own problems, with 25 respondents either agreeing or strongly agreeing and 11 neutral. Eleven disagreed.

<table>
<thead>
<tr>
<th>Mediation empowers low-income litigants to resolve problems themselves.</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Neither Agree nor Disagree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>23</td>
<td>11</td>
<td>10</td>
<td>1</td>
</tr>
</tbody>
</table>

Although mediation is often valued for its time-savings, this group of respondents was not universal in seeing it that way. In the survey, 57% agreed that mediation saved lawyers time; however, only 23% disagreed. The others had no opinion. There was a much stronger unanimity of feeling in response to the statement “Mediation isn’t useful
because attorneys can resolve the problem on their own.” No one agreed with it, and 80% either disagreed or strongly disagreed. The remaining nine were neutral.

Factors Preventing Use of Mediation
The top three factors cited by the respondents regarding what prevented them from using or recommending mediation were issues of access to mediation. By far the top responses were not being able to afford a mediator (27 responses, or 56%) and too few or no free mediators (26 responses, or 54%). No other factor comes close to these. The next closest factor, that there were no mediation programs available, is also an access issue. It received only eight responses. The next factors may be considered to be education issues as they are about refusal to mediate by the opposing party/attorney (6 responses) or the legal services client (5 responses), or because judges do not encourage mediation (4 responses).

Have any of the following prevented you from using or recommending mediation in cases?
(Please check all that apply)

<table>
<thead>
<tr>
<th>Reason</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>My client could not afford to hire a mediator</td>
<td>27</td>
</tr>
<tr>
<td>There are no or too few pro bono mediators in my area</td>
<td>26</td>
</tr>
<tr>
<td>There are no mediation programs in my area</td>
<td>8</td>
</tr>
<tr>
<td>The opposing party/attorney did not agree to mediate</td>
<td>6</td>
</tr>
<tr>
<td>My client did not agree to mediate</td>
<td>5</td>
</tr>
<tr>
<td>Judges do not encourage mediation</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
</tr>
</tbody>
</table>

i. Benefits for Legal Services Litigants
In response to the question, “What benefits does mediation present for legal services clients?” the respondents mentioned many of the benefits that are generally associated with mediation. The major theme was the savings of time and money through quicker resolution (14 of 33 respondents). The resolution of disputes that was more beneficial, more fair, and of greater satisfaction to the disputants was another widely cited benefit (13 respondents). Roughly 18% each stated that mediation provided empowerment/control over the outcome and helps litigants to avoid the intimidating, confusing, and time consuming alternative of going to court. One respondent summed up many of the statements by saying, “If done correctly, mediation would allow clients to help participate in the solution to their problem, and thus empower them. It would also save time, money and resources for both sides and for the court.” One interesting point made was that mediation could be especially good when both parties are indigent, but only one has legal assistance.
Section III: Experiences with, and Attitudes toward, Mediation

### What benefits does mediation present for legal services clients?121

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Savings of time/cost/quicker resolutions</td>
<td>14</td>
</tr>
<tr>
<td>Solves disputes/better resolutions</td>
<td>13</td>
</tr>
<tr>
<td>Empowerment/control of outcome</td>
<td>6</td>
</tr>
<tr>
<td>Avoid bad aspects of going to court</td>
<td>6</td>
</tr>
<tr>
<td>Opportunity to discuss issues face to face</td>
<td>2</td>
</tr>
<tr>
<td>Opportunity to get neutral opinion</td>
<td>2</td>
</tr>
<tr>
<td>Informality of the process</td>
<td>1</td>
</tr>
<tr>
<td>None</td>
<td>1</td>
</tr>
</tbody>
</table>

Some respondents compared mediation to what would happen to poor and low-income disputants without it. One expressed the belief that it would be better than court, “…hopefully a better shot at presenting the client's side of the story than s/he would get in court if the client is pro se (which a large percentage of those who contact legal services end up being due to legal aid limited resources) since many judges are hostile toward pro se litigants.” Another respondent took a more positive view of this same situation and anticipated, “Quicker resolution of dispute in a mutually agreeable manner. Mediation would be especially helpful in circumstances where the client will not receive extended or full legal services from our staff, but only advice and brief services.”

#### ii. Problems for Legal Services Litigants

In response to the question, “What problems does mediation present for legal services clients?” two themes were repeated: that mediation is not affordable and that low-income disputants have education, communication, and other issues that make them less likely to benefit from mediation or that put them at a disadvantage in the process. These two were reported by 16 respondents each (out of 27 respondents) as barriers to mediation.

<table>
<thead>
<tr>
<th>Problem</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordability/cost of mediation</td>
<td>16</td>
</tr>
<tr>
<td>Power imbalance/socio-economic level disadvantages them</td>
<td>16</td>
</tr>
<tr>
<td>Mediators do not understand issues unique to poor disputants</td>
<td>5</td>
</tr>
<tr>
<td>Difficult to access services</td>
<td>2</td>
</tr>
<tr>
<td>Poor disputants may see the process as inherently unfair</td>
<td>2</td>
</tr>
<tr>
<td>Getting other side to agree to mediate</td>
<td>1</td>
</tr>
<tr>
<td>Mediation is just another step</td>
<td>1</td>
</tr>
</tbody>
</table>

The respondents stated that parties would be expected to pay for mediation and, as one said, “They cannot afford to pay for the most basic of needs; they are not going to be able to afford mediation.” As another said, “None of our clients can afford it.” One respondent noted that more mediators willing to work at no charge were needed, while another mentioned that without the local university program, which provides mediation at no charge, it would be unlikely that their clients would be able to afford it.

The respondents had great concern that the poor disputants will not fare well in mediation. They noted that poor disputants are challenged by poor communication skills,

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121 Thirty-three respondents; more than one response per respondent
122 There were 27 people who responded to this question and more than one response from some respondents.
low levels of education, and a poor understanding of their rights and the worth of their case. They may not know that the mediation and agreement are voluntary. Further, in mediation they felt that those with greater resources lead to power imbalance and intimidation. Some statements to this effect were:

- “My major concern is that clients will not appreciate their legal position or rights and will end up with less than they would if they were represented.”
- “Clients who are not articulate tell me that they feel the other side dominated the mediation & that they were not as aggressive & got less of the mediator's attention.”
- “Some clients will not be able to state their positions clearly, either due to fear/nervousness or lack of knowledge about the law and their options. Lack of education and/or language skills are also problems.”

In a related concern, five respondents worried that mediators were biased against low-income disputants or did not understand the special issues such disputants had in mediation. This was of particular concern because they felt poor disputants enter the process at a disadvantage.

One respondent was opposed to mediation across the board, an attitude summed up in the comment, “Encouraging mediation diverts us from the larger problem of providing more access to justice.” This comment was in stark contrast to the vast majority of respondents who – despite some concerns about how mediation would be paid for and how their clients’ special needs would be addressed – were in favor of mediation for poor and low-income disputants and saw it as an additional path to justice.

f. Potential Use of Mediation

The question of what proportion of each respondent’s cases would be appropriate for mediation brought an array of answers:

<table>
<thead>
<tr>
<th>Proportion of Cases Appropriate for Mediation</th>
<th>None</th>
<th>Hardly any</th>
<th>About a quarter</th>
<th>About half</th>
<th>Most</th>
<th>Almost all</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Respondents</td>
<td>2</td>
<td>10</td>
<td>15</td>
<td>12</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

In many ways, this is a very appropriate, or at least understandable, range of responses. It would make sense that some respondents might have no cases that are appropriate for mediation, particularly those whose primary caseload is domestic violence issues. It is also possible the individuals saying none of their cases or hardly any of their cases are appropriate are simply opposed to mediation either for their clients or more generally. It would also be reasonable that almost no lawyer has a caseload where all cases are appropriate, or almost all, especially when given the option of “most” cases being appropriate.
It is also understandable that only a quarter of most lawyers’ caseloads would seem appropriate for mediation given the fact that mediation is not common practice in Illinois, especially for poor and low-income litigants, as well as the concerns voiced about client ability to participate fully in it. That 12 respondents – a quarter of the total respondents to the survey – saw about half their caseloads as appropriate for mediation is quite a strong statement in a state where mediation still has a way to go to develop into a recognized part of the way that law is practiced.

The types of cases for which respondents saw a need if there were a funded program in place followed the top three needs in the Legal Needs Study as noted above.

<table>
<thead>
<tr>
<th>Types of Cases for Which there is Need for Mediation If It Were Available</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child custody</td>
<td>36</td>
</tr>
<tr>
<td>Landlord/tenant</td>
<td>35</td>
</tr>
<tr>
<td>Consumer/business</td>
<td>25</td>
</tr>
<tr>
<td>Other housing</td>
<td>21</td>
</tr>
<tr>
<td>Education</td>
<td>20</td>
</tr>
<tr>
<td>Debt collection/repossession</td>
<td>17</td>
</tr>
<tr>
<td>Public benefits/health</td>
<td>13</td>
</tr>
<tr>
<td>Senior citizen services</td>
<td>13</td>
</tr>
<tr>
<td>Domestic violence/order of protection</td>
<td>3</td>
</tr>
</tbody>
</table>

Again, this is a strong statement from the survey results. This clearly connects legal need to the possibility of mediation helping address those needs. It may also say that the responding lawyers may accept mediation most in the areas where the legal need is the highest.

**Finding**

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

*What the legal services survey results mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:*

The survey responses point to four distinct findings related to attitudes toward mediation, education and training, use and availability of mediation services, and referral to mediation. To sum it up, they found overall generally positive attitudes toward mediation; a need for training and education regarding mediation; reported use of the mediation services that were available, but limited availability of services; and the need to improve the referral process to mediation.
Accessing Justice through Mediation

Attitudes toward Mediation
Overall, legal services providers who responded to the survey had positive attitudes toward mediation’s potential for assisting poor and low-income litigants. They saw it as good for housing and consumer disputes, and generally good for child custody disputes that do not involve domestic violence. On the one hand, some respondents had concerns about domestic violence, and about whether low-income litigants were at a disadvantage in mediation for various reasons. On the other, some had a sense that mediation empowered low-income litigants to resolve their own problems. In general, the respondents thought mediation would save time, and they did not think the disputants were going to resolve most cases on their own as compared to mediation.

One of the strongest findings from the survey was that the respondents said lack of money or free services stopped them from using mediation with their clients. Far and away the top two answers were, “My client could not afford to hire a mediator” and “There are no or too few pro bono mediators in my area.” These are questions of economics and access, and of educating the legal services providers about the availability of the programs.

Education and Training
Only 15 of the 48 respondents had any introduction to mediation through training or a law school course. While 20% of respondents took an ADR class in law school, only two have been trained to represent clients in mediation. This may hamper the ability to refer clients to mediation, prepare clients for mediation, and advocate in mediation (even if not in the actual mediation itself) which is the core of how most legal services lawyers will interact with the mediation process. This means that much could be done to increase the legal services providers’ understanding of mediation.

Survey respondents also indicated a need to educate mediators about the special concerns of working with poor and low-income disputants so that they fare equally well in mediation. There was a concern that legal services clients would not understand that reaching agreement is totally voluntary. Other concerns mentioned were problems getting time off from work, feeling buffaioed in mediations, being inarticulate about expressing points of view in mediations, low bargaining power, feeling intimidated, limited English-speaking skills, not knowing their legal rights, and getting the other side to agree.

Use and Availability of Mediation
The three types of cases for which the respondents most often indicated mediation would be appropriate – child custody and visitation, housing and consumer – are also the top case types from the Legal Needs Study.¹²³ This is a theme that keeps recurring in the Study. The Legal Needs Study found them to be the top three, the review of case types that are amenable to mediation found them to be the most amenable, and now the legal

¹²³ Legal Needs Study, supra note 9.
services providers reported that these are the kinds of cases they think are most appropriate for mediation.

While the overall availability of mediation appeared high, with 86% of respondents reporting it being available in some form in their area and the top three areas of need from the Legal Needs Study being listed as the top three kinds of cases mediated, a little digging finds the picture to be less positive. Although three out of four respondents said mediation of child custody was available in their area, only one in four had access to small claims mediation and only one in six had access to landlord/tenant mediation.

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

Referral to Mediation
The survey shows that legal services providers make substantial use of mediation. The majority have referred clients to mediation when they were representing them. This number is not as high when they are simply interviewing them. This is perhaps an opportunity missed – the lawyers appear to be open to mediation, but are less likely to refer when they do not provide full services than when they do. Since there are so many people who do not receive full representation, it is important that mediation not only be available when a lawyer sends his or her client to mediation, but also when a person receives brief service and that person is referred to mediation.

2. Mediators
Emails were sent to 200 mediators inviting them to complete the electronic surveys. (See Appendix 5, Mediator Survey.) Their names were obtained from court rosters of mediators; membership lists for the Association for Conflict Resolution in Illinois, Mediation Association of Southern Illinois, and Mediation Council of Illinois; and private mediators with listings on the Internet. The mediators received two emails. The first was an invitation to complete the electronic survey and the second was a reminder a week later. This generated 23 responses from mediators working in 15 of 23 circuits in the state. This low response rate and the fact that only lawyer-mediators responded means that the responses cannot be considered a representative sample of the mediators in the state. Nonetheless, it is worthwhile reviewing what the lawyer-mediators who responded thought about reduced-fee and no-fee mediation.

The survey was looking for information on the frequency with which mediators provided reduced-fee and no-fee services (see Appendix 7, Summary of Responses to Mediator Survey), so many of the questions asked of the mediators were different from those asked of the lawyers. Where the surveys overlapped were in the questions regarding what mediation services were available in the area they served.

a. Who the Mediators Are Who Responded
All the mediators who responded were lawyers. None of the mediators who responded were social workers or psychologists, which was surprising since many of the family
mediators in Illinois have advanced behavioral science degrees. The mediators’ practices included both family and large civil cases, typical case types for professional mediators in Illinois. The vast majority, at least 18 of 23, mediated less than once a month.

<table>
<thead>
<tr>
<th>Number of mediations conducted in the past two years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Range</td>
</tr>
<tr>
<td>Mediations</td>
</tr>
</tbody>
</table>

The respondents mediated as many large civil cases as all other case types combined. This means that the mediators are not predominantly mediating the types of cases that are of most concern to poor and low-income disputants in Illinois, but they are handling some of them.

<table>
<thead>
<tr>
<th>Types of Cases Mediated</th>
<th>Number Mediated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large civil cases</td>
<td>16</td>
</tr>
<tr>
<td>Child custody</td>
<td>4</td>
</tr>
<tr>
<td>Divorce – financial issues</td>
<td>4</td>
</tr>
<tr>
<td>Small claims</td>
<td>3</td>
</tr>
<tr>
<td>Landlord/tenant</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
</tr>
</tbody>
</table>

b. No-Fee Mediation

About one-third (7 out of 23) of the respondents said they had mediated at least one case at no charge in the past two years. The highest number of mediations without fees reported was 30-40 in the past two years, with the next highest being ten, then two. Two others reported mediating one case without charging. Four said they had mediated as private mediators when asked by the court, and one each as a volunteer for a law school clinic, as a private mediator when asked by an attorney or party, and two “others.”

When they mediated at no charge, they most often mediated small claims cases (4 responses) and child custody cases (3), which are two of the top three legal needs found in the Legal Needs Study. Other mediations were conducted without fees for large civil cases, landlord/tenant cases, and financial issues in divorce.

<table>
<thead>
<tr>
<th>Cases Types Mediated Pro Bono</th>
<th>Number of Mediators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small claims</td>
<td>4</td>
</tr>
<tr>
<td>Child custody</td>
<td>3</td>
</tr>
<tr>
<td>Large civil cases</td>
<td>2</td>
</tr>
<tr>
<td>Divorce – financial issues</td>
<td>1</td>
</tr>
<tr>
<td>Landlord/tenant</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>11</td>
</tr>
</tbody>
</table>

Those who said they were limited in the number of cases they conducted for no fee overwhelmingly said the reason they were limited was that the court did not ask them. About one-third as many said they were limited by the amount of time they had available or by the local opportunities that were available to mediate on this basis.
Section III: Experiences with, and Attitudes toward, Mediation

Factors Limiting No-Fee Mediations

<table>
<thead>
<tr>
<th>Number of Mediators Indicating this Concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of times asked by the court to mediate pro bono</td>
</tr>
<tr>
<td>Amount of time available to mediate pro bono</td>
</tr>
<tr>
<td>No opportunities to mediate pro bono in local area</td>
</tr>
</tbody>
</table>

All but one of the mediators indicated they would be willing to mediate for no fee at least once per year if unlimited opportunities were available to do so. The responses were diverse, ranging from none to once per month, although one indicated he or she would mediate “as needed” and another stated that it “depends on who is involved and case type.”

<table>
<thead>
<tr>
<th>Number of Mediations Mediators Would Be Willing to Mediate Pro Bono per Year</th>
<th>Number of Mediators with this Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>0-1</td>
<td>1</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>5-10</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
</tr>
</tbody>
</table>

This works out to be something of a bell curve, with the greatest numbers saying they would mediate at no charge either twice a year or quarterly.

The types of cases the mediators indicated a willingness to mediate at no charge are predominantly small claims and landlord-tenant, which are likely being addressed in small claims court; large civil cases, which reflect the skills and experience of the respondents more than the most pressing needs of poor and low-income disputants; and family law matters, which are of great concern to poor and low-income disputants.

<table>
<thead>
<tr>
<th>Cases Types Mediators Would Be Willing to Mediate Pro Bono</th>
<th>Number of Mediators With this Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small claims</td>
<td>13</td>
</tr>
<tr>
<td>Landlord/tenant</td>
<td>11</td>
</tr>
<tr>
<td>Large civil cases</td>
<td>9</td>
</tr>
<tr>
<td>Child custody</td>
<td>5</td>
</tr>
<tr>
<td>Divorce – financial issues</td>
<td>4</td>
</tr>
</tbody>
</table>

c. Reduced Fee Mediations

Only 3 mediators said they had provided mediations on a sliding scale in the previous two years. Those three said they had mediated one, three and ten mediations on a sliding scale, and they only mediated this way when asked by an attorney or party.
Of the 23 respondents, 20 answered the question of whether they would provide mediation services on a sliding scale if given unlimited opportunity to do so. The range of responses is wider and flatter than responses to the question regarding how many no-fee mediations they would be willing to provide. Here, the responses started at zero and went as high as 20. There were also more verbal responses, with mediators saying they would do “many,” “unknown,” or “unlimited” mediations or that they “do pro bono now.”

<table>
<thead>
<tr>
<th>Number of Mediations Mediators Would Be Willing to Mediate on a Sliding Scale per Year</th>
<th>Number of Mediators with this Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>1-4</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>5-10</td>
<td>2</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>20</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
</tr>
</tbody>
</table>

The sliding fee cases that these mediators have handled have been small claims (2 responses), landlord-tenant (1), child custody (1) and divorce – financial matters (one case.) They say that they typically discount 50% of their fees (2 responses) or do a set fee for small claims (1).

d. Available Services
The types of services the mediators said were available in their areas matched what they reported from their own experiences in that there were more cases being mediated at no charge than on a sliding scale and these mediations were being conducted most when colleagues were asking colleagues or the courts were establishing programs.

<table>
<thead>
<tr>
<th>Mediation Services Provider</th>
<th>No-Fee</th>
<th>Sliding Scale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private mediators on a court roster</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Volunteer mediators for a court program</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Community mediation center or other non-profit provider</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Law school mediation clinic</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Private mediators when asked by a colleague</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>None</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

It follows, therefore, that the kinds of cases served by these providers would follow the types of cases for which there are programs or for which colleagues ask one another to mediate.
### Case Types Being Mediated by No-Fee and Sliding Fee Arrangements

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Number of Mediators with this Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small claims</td>
<td>8</td>
</tr>
<tr>
<td>Child custody</td>
<td>8</td>
</tr>
<tr>
<td>Divorce – financial issues</td>
<td>7</td>
</tr>
<tr>
<td>Landlord/tenant</td>
<td>4</td>
</tr>
<tr>
<td>Large civil cases</td>
<td>2</td>
</tr>
</tbody>
</table>

Five mediators reported that there were no sliding fee and/or no-fee mediation efforts in their local area. This information was compared to CAADRS’ information on mediation programs in Illinois. Two of the five worked in areas that did have sliding fee and/or no-fee mediation services.

There were also some general comments made about the need to screen disputants so that when free mediation services are provided, they are provided to those who are truly in need and could not afford to pay. There also was concern expressed that mediation not be seen as a hobby for the well-to-do, but as a valued profession.

**What the mediator survey means in terms of mediation as a means of accessing justice for low-income disputants in Illinois:**

Two things to keep in mind when reviewing the results of the mediator survey are that the mediators who responded for the most part do not mediate any kind of case even once per month and they are just as likely to mediate large civil cases as they are to mediate the kinds of cases that are of critical interest to poor and low-income disputants in Illinois. No meaningful conclusions from these responses can be drawn for program design in Illinois, however, as the survey respondents are not representative of the professional mediators working in Illinois.

At least a third of the mediators have mediated without charging and one of them has mediated 30-40 cases this way in the past two years. However, the other side of this is that two-thirds did not volunteer to mediate and after a high of 30-40 cases, the next highest numbers are ten and two cases without charging in two years. Again, this does not paint a picture of a vibrant pool of active volunteers waiting for a program to be developed.

On the positive side, the no-fee mediations tend to be of cases that fall in the top three case types in terms of need and the mediators were most likely to be limited in the number of cases they mediated without compensation because they simply were not asked. This shows a decidedly positive bent toward mediating cases without compensation. However, for the most part they were not willing to mediate frequently in an unpaid status, with equal numbers saying they would mediate twice a year or less or from three times a year up to monthly. They were, however, strongly interested in mediating the kinds of cases where there is the greatest need, as compared to large civil cases.

Looking at the sliding fee side of the survey, there were only three mediators who said they had used sliding fees. In terms of whether they would mediate for a sliding fee, 20
mediators responded, with eight saying they would be willing to use them four times per year or less and six saying they would be willing to use them five times per year up to 20 per year. The others said they would do unlimited mediations or many or as needed. This response was more widely distributed than the response to the question about not charging for services, and had more vague responses, showing that there is a greater range of opinions about how often mediators would chose this option as well as less certainty.

B. Gatherings
The three gatherings held from one end of the state to the other – Carbondale, Bloomington and Rockford – helped to put a human face on many of the ideas expressed in the surveys, as well as bringing out new ideas. A total of 39 people participated, ranging from six to 19 per group, with two CAADRS staff at each gathering.

At each location a group of mediators, legal services lawyers, private lawyers, judges, academics (if there was a law school mediation clinic in town) and social service professionals (at one gathering) were invited to address the idea of poor and low-income disputants accessing justice through mediation. They came together and shared their ideas, their similarities, and their differing perspectives. Together, the three gatherings provided insight into how mediation is perceived; how legal services, the private bar, the bench, the mediation community, and the wider community interact around mediation; and ideas for mediation programming.

The following summarize the themes of those insights.

1. There is genuine interest in mediation as a way to address legal needs of low-income residents in Illinois.

a. Among the participants in the gatherings, there was universal interest in developing more mediation services in general, and a high level of enthusiasm for mediation programs that would serve poor and low-income clients in particular. The high level of enthusiasm was not completely universal, as some of the most skeptical legal services lawyers understandably wanted to be sure their clients’ interests were protected. These lawyers, however, were not opposed in theory to the creation of more mediation services, if done correctly.

b. Many ideas for mediation programs were generated during the gatherings, as well as a few for approaches other than mediation. They are described below in Section V (Service Delivery Models and Supportive Mechanisms). All in all, the participants thought mediation should primarily be provided through the courts, but should be a community-wide effort. They mainly focused on meeting the needs for custody and visitation mediation under Supreme Court Rule 905 (for dependency and never-married parent cases, as well as the usual divorce and post-decree matters), on housing matters, on small claims, and on child support arrearages. Their discussion brought out different approaches to meeting these needs, such as having law students mediate, having judges settle cases, mediator training, advocacy training, and having brief non-binding
Section III: Experiences with, and Attitudes toward, Mediation

arbitration hearings by experienced family lawyers to set temporary child support amounts.

c. One easy measure of this interest was the high level of participation in the meetings. Almost every person who was invited attended, people stayed throughout the meetings, attendees stayed on topic, and people tended to linger and talk about the ideas that were generated after the meetings were over.

2. The types of cases for which participants identified needs for services mirrored the needs in the Legal Needs Study – especially family and housing cases. There were ways in which participants saw mediation being able to meet those needs.

a. The two main types of cases that were discussed at every session were family cases and housing cases. While participants touched on other types of cases, these were consistently the top two issues. Participants discussed ways to either leverage existing mediation programs for these case types or to create new programs for them. Sometimes the ideas were as simple as a judge who said, “I have a great program. I just need to be able to pay the existing mediators to provide services to people who need them.” Other times the groups got so enthusiastic about a mediation program idea that they wanted to focus on how to plan a particular mediation program rather than staying with the original purpose of determining the possibilities for and barriers to mediation as a path to justice for poor and low-income disputants in their area.

b. While the groups were very similar in their general interests, there were interesting variations from group to group, especially when the participants talked about the types of cases and types of mediators. For example:

- Although they all talked about family cases, each group had a somewhat different approach to what the problem was: not enough mediators, expecting the mediators to mediate too many cases without compensation, or worrying about which kinds of family cases law students should mediate.

- One circuit has a small claims call two-and-a-half days a week (as compared to a larger circuit with a half-day-per-week small claims call). Participants in the circuit with the longer call discussed a particular kind of case that involves poor and low-income litigants that would be amenable to mediation, and how that might work.

As another example, two of the discussion groups have law schools involved in providing mediation services. This provides a valuable resource, and raised some unique issues, such as how to handle scheduling when the students are not at school and how to connect them with practicing mediators.
3. There is a need for technical support to help develop mediation services for low-income litigants around the state.

a. It was often difficult for the groups to focus on both mediation and the needs of low-income litigants at the same time. The groups would talk about mediation more generally, and not focus on the particular needs of poor and low-income litigants, or would talk about how to serve low-income litigants, but not how to use mediation to do so. (For example, they would talk about self-help desks or the problems of pro se litigants more generally.) This was a good indication of the need for someone to assist in focusing the discussion, and therefore the work, on this new kind of effort. It is also an indication that the needs of poor and low-income litigants cannot be dealt with as a separate category. Instead, they should be integrated into the broader workings of the justice system or the mediation system, but with special attention to their particular needs. This special attention is critical to making sure that poor and low-income litigants are not lost in the workings of the overall system, nor put in a system that becomes ghettoized.

In one gathering there was a strong interest in making mediation a valuable part of the broader community. Participants saw mediation as an essential cog in the community machinery, not just for legal issues, but for ongoing community matters as well. In the two other gatherings there was little discussion of how a mediation program for issues such as family or housing needed to be integrated into the wider social services network so that community services could be marshaled to support the parties.

While steering away from lengthy discussions of how programs would work, these conversations helped to surface some of the issues that would need to be addressed in program formation. For example, some participants said they thought mediators should be lawyers so that they could protect the interests of poor and low-income participants in mediations. This question of whether mediators need to be lawyers went to the heart of how to balance the needs of legal services attorneys to protect the interests of their clients and the needs of mediators to maintain their neutrality.

b. The legal community, as seen in these gatherings, is generally isolated from other entities in the wider community, such as social services, education, etc. In addition, there were often divides between the courts and legal services or between private lawyers and legal services. There were certainly individual exceptions, such as private lawyers who do pro bono work and judges who sit on community boards, but at every meeting there were people who mentioned what a good opportunity it was to meet with people they did not know well.

Sometimes it was surprising what a divide there was between judges and legal services lawyers when they were in the informal setting of the gatherings. They did not seem to know one another once they were outside the courtroom. A healthy mediation program thrives when there are good relationships to support it. By bringing all the participants together to develop the program, bridges would be built that would not only support the mediation efforts, but also a healthier legal community and broader community.
A well-facilitated conversation with the right participants could help local committees to identify the groups throughout the community with whom they could work to make their mediation programs effective. At every meeting there was a sense of enthusiasm for this kind of gathering.

4. There is a need for a staff infrastructure to maintain mediation programs for poor and low-income residents.

When one group was asked to brainstorm a list of barriers to mediation for poor and low-income disputants, their list applied to barriers to mediation in general, not just to mediation for low-income parties. This was often the case in discussions. The issue was not just how to provide mediation for poor and low-income litigants, but how to provide mediation in general. This is a reflection of the current state of development of mediation in Illinois. Many of the basics are in place, but the field has not developed to its potential yet.

Finding

The provision of mediation services for poor and low-income residents relies in large part on the overall availability of mediation services.

Some of the barriers that were discussed were:

- lack of information about the benefits of mediation,
- difficulty getting cases into mediation before a court filing because the responding party would not participate without the coercive power of the court case,
- difficulty getting the case and the mediator together (sometimes there are mediators but no cases, and other times cases and no mediators),
- getting pro se divorces into mediation even though mediation is supposed to be mandatory for cases with custody and visitation issues, and
- the county by county or circuit by circuit arrangement in Illinois instead of a more unified system.

Experience with existing mediation programs in Illinois has shown that successful court mediation programs need three elements: availability of quality mediators; informed, enthusiastic judges; and competent administration with sufficient time for the program. This need for some kind of staffing is true for mediation programs for poor and low-income participants. At one gathering in particular, it seemed that the greatest cry was for staff to support mediation programming. Especially in the more geographically dispersed circuits, it is difficult to

Finding

If mediation is to truly serve poor and low-income disputants in Illinois, there are many ways beyond the basic mediation model in the Illinois Equal Justice Act that must be utilized.
operate an effective mediation effort without a staff person who focuses significant effort on maintaining that mediation program. In any setting, there is a need for someone who is devoted to the health and vitality of the mediation effort. Because the needs of poor and low-income litigants can fall off the radar screen of busy professionals if not monitored, it is important that the staff person see meeting these particular needs as critical to the position if there are multiple groups of tasks required by it.

The tasks for this position are generally seen as:

- Maintain the health and quality of ADR programs and neutrals
- Maintain statistical management information
- Provide support to neutrals, including arranging on-going mediator training and support for peer review
- Provide policy guidance to mediators and judges
- Provide continuity when judges, clerks, and other court staff change
- Network with, and promote the programs to, social service and volunteer programs throughout the circuit
- Network with other ADR, legal services, and bar-related programs in Illinois and nationally
- Upgrade programs as needs change and new ideas are developed
- Provide administrative support

5. These meetings articulated the parallel tracks that mediation and legal services had been traveling in terms of legal advice, in which mediators have taken the position that mediation is non-adversarial so parties do not need lawyers to work things out and legal services lawyers have taken the position that if the parties do not have someone to protect their rights, they could lose what they have coming to them in mediation. This generated the Stepping Stones Model.

The idea of the Stepping Stones Model is that poor and low-income disputants would use brief services as stepping stones to be better prepared before they went to the stepping stone of mediation. From there they could “step” to the courthouse. (Or they might go to brief service, then court and then mediation.)

The Stepping Stones Model integrates mediation and legal services, rather than having each one exist on its own. (See Appendix 8, Stepping Stones to Access Justice, and Section V, Service Delivery Models, below, for further explanation.) The basic idea is that a party might go to any of the brief services offered by legal services, or even full legal services representation, before mediation. A party might call a hotline, visit a helpdesk, or go on-line, get information, and then go to mediation. Because most
mediation programs are court-related and it is very difficult to get a responding party to participate in mediation without the threat of court, chances are good that the party would go to court prior to mediation as well. Then any resolution through the mediation would go most likely go back through the court system. If there were no resolution in mediation, a party would be able to step back to the court or the brief service or representation route as before.

There were extensive discussions at the gatherings about party education/legal advice and how, where and by whom it might be distributed. There were discussions about who could give information, who could give advice, what the mediator’s role was as a neutral vis a vis information and advice, etc. For the most part, the groups agreed that education/advice is important for disputants and that multiple efforts to provide it would be advisable.

6. Some participants at the gatherings stated that mediation as it is currently being practiced does not work effectively for parties living in poverty.
Mediation can be a flexible, personalized process that meets people where they are and assists them in accomplishing their goals; however, the image of mediation among those in attendance at the gatherings often was not this kind of process. Based on the issues raised about poor and low-income people participating in mediation, participants in the gatherings saw mediation as being a process that would not meet the needs of their clients that were particular to living in poverty.

When one group was asked specifically what issues they saw poor and low-income disputants facing in mediation, some of their responses were:

- The poor do not have the planning skills necessary for mediation.
- The poor do not have the resources to be able to resolve certain issues, for example, they have no way to agree to things like how to transport the kids from one parent to the other because they do not have a car.
- Poor, low-skilled people cannot work out custody because they cannot work together. There are people for whom mediation just will not work.
- Low-income people are only fighting over children (not money). Mediation is mandatory prior to the temporary hearing. This is ineffective because it makes people fight through mediation, rather than be ready to deal. Referral should be done after the temporary order is in place.
- Poor people have low communication skills. They do not know what mediation is. It is not possible to teach all that in two two-hour sessions (in parenting class).
Accessing Justice through Mediation

- Poor people have no life skills and have other concerns – people who are wondering where their next meal is coming from are not interested in mediating. Mediation will not be beneficial because they do not have skills – it is a waste of the attorney’s time.

- In forcible entry and detainer cases, one side has money and therefore attorneys, and the other is poor and thus unrepresented. Parties with attorneys do not want to mediate, so they do not reach agreement. In another circuit they cannot mediate because the program only allows for mediation when both parties are pro se.

- Most legal services family cases involve abuse, and therefore should not be mediated.

- The poor do not have money to pay for mediation.

This is a daunting list, but it is not insurmountable. Many of the barriers listed point to the inability of mediation to help because of the lack of skills on the part of low-income disputants. This indicates that both the way mediation is practiced to meet the needs of poor and low-income parents and the image of mediation need to be improved. Indeed, mediation should be a process that is client-friendly in a way that litigation and other aspects of the court process typically are not. It should be a process that empowers people to make decisions about their lives. It will not change lives overnight, but it should give a voice to poor and low-income families about what will happen to their children following a divorce. It can often level the playing field a bit between landlord and tenant when they sit down across a mediation table with a mediator to keep the discussions flowing. It can help a consumer and merchant find a creative way out of a bad bargain. Most of all, mediation should be a process that enables and assists communications, despite a lack of skills.

Other issues, such as financial barriers and abuse issues need to be addressed through program design. Some issues, such as problems with scheduling mediation sessions, will just have to be dealt with, as they are in a legal services program. The bottom line is that mediation is well-equipped to address these issues related to poverty if the program is designed that way, but if it is simply a spin-off of a program for people with means, with no attempt to adapt it for poor and low-income disputants, these listed barriers would be expected to arise. Adapting programs to meet the needs of poor and low-income disputants may require new education and training for many of the participants in the mediation programs.

7. These meetings articulated the way in which the mediation, legal services, courts, law schools, private lawyers and the broader community each have been operating in isolation from one another. There is a need to develop a more collaborative sense
among these sectors, a need that was strongly expressed by some of the participants in one of the gatherings.

For example, in terms of payment for mediation, mediators say, “I don’t mind helping out sometimes, but why should the mediator always be the only unpaid professional involved in the case?” and legal services lawyers say, “the indigent party has an absolute legal right not to pay for mediation.” Even in the space of one of the gatherings, when the facilitator simply repeated these statements back to the two proponents who had been propounding them – in a parallel way, not to one another – there was a lessening of tension. The two could see that, indeed, they were both “right,” and the answer was to find a way to pay the mediator at least some of the time so that the mediator does not feel unfairly treated and the legal services lawyer does not feel the continual need to defend the clients’ rights to services.

But this is not just about mediators and legal services lawyers. There are schisms between other sectors that seemed to run more deeply and some of the differences and expectations are more complicated. At one gathering, there was very little discussion or interaction between the judges and the legal services lawyers. This sense of “you don’t understand where I’m coming from” was playing out in a more public forum around the time of the gathering, but it certainly does not make for the kind of smooth relationship in which a voluntary mediation program thrives. Working together on mediation should help to build these other relationships as well.

There were some additional points raised at the gatherings that are worth noting:

- One very hot issue that came up at every gathering was the question of domestic violence and mediation of family cases. There were categorical statements on both extremes about whether family cases in which domestic violence is present could or should ever be mediated, but by far the predominant view, especially among legal services lawyers is that they are always inappropriate. One social services person who has worked in this area extensively voiced an opposing view, saying that because mediation gives litigants the opportunity to learn and change their attitude in addition to talking about the consequences of their actions, it is especially good for these situations.

- Another policy issue is the question of whether participation in mediation programs should be mandatory or voluntary. Some participants said mediation programs need an incentive because people are often afraid of talking to the other side. Others said that people think mediation is something that works for other people, but not for them. They do not realize they need to put effort into it. They need a little help understanding when it is in their best interest to participate voluntarily.
Sometimes the flexibility of mediation is appealing. One judge said that she asked for mediation of forcible entry and detainer cases because mediation allows for flexibility in outcome, whereas she would have to apply the law otherwise.

On the other hand, sometimes mediation programs are designed in a way that is not flexible enough. For example, pro se parties may not have access to mediation in programs where all parties must be pro se and a landlord comes in with an attorney.

Mediation was seen as being useful for people who are just above the poverty guidelines. They are seen as stuck in the middle, without a lot of time and needing to go to court pro se because they cannot afford representation. There was concern for them as they were unable to receive legal assistance and concern for the court system because they slowed the court calls because they did not know what to do in court.

Additionally, mediation programs were discussed as good pro bono opportunities for lawyers, especially corporate lawyers, who are not litigators. This was interesting, because depending on the type of case and the mediation program, mediators do not need to be lawyers at all. There was no discussion of the possibility of using a volunteer mediation program as a way to engender interest in the courts or support for the legal system or for legal aid.

**What these gatherings mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:**

Seven statements summarize the most valuable information drawn from the gatherings about how mediation should be structured to serve the interests of poor and low-income disputants in the state.

- First, there was genuine interest among the participants.
- Second, the participants focused on two of the top three issues, housing and family disputes.
- Third, there was a need for technical support around the state to develop programs.
- Fourth, the participants identified a need for staff infrastructure on the county or circuit level.
- Fifth, the participants liked the stepping stones model to connect mediation and legal services.
- Sixth, the participants were concerned that mediation as it is currently practiced is not good for poor and low-income people.
Seventh, there is a need for collaboration among the various sectors, and in return, the collaboration should assist the sectors in working together more smoothly in general.

The seven statements above provide an overall image of how mediation should be structured to serve the interests of poor and low-income disputants in the state. This genuine, overarching interest among the participants that was focused on two of the top three issues – housing and family disputes – confirmed the focus seen in the surveys. The needs for technical support around the state to develop programs and for staff infrastructure on the county or circuit level in many areas also confirmed what experts in the field have known for some time. They had a positive response to the stepping stones model to connect mediation and legal services, but also sounded a warning that mediation as it is currently practiced is not always good for poor and low-income people and that disputants’ interests in mediation need to be protected in the future.

The invaluable insight the gatherings brought to the Study was the genuine personal sense of where the legal communities were in terms of their viewpoints on mediation and how groups within the mediation and legal communities work with one another. Working with local leaders to identify the informal and the formal networks also identified some local schisms. The gatherings provided a sense of some of the enthusiasms and antagonisms, where the power lies and who is likely to pull the laboring oar. There were moments where it was clear that a few individuals had sophisticated depths of knowledge about mediation and legal services, and there were others who had very limited experience or knowledge of mediation. All in all, the gatherings were warm mixtures of good people, many of whom were looking to mediation to solve a myriad of issues.
IV. SUPPORTS FOR, AND BARRIERS TO, MEDIATION AS A MEANS OF ACCESSING JUSTICE

An essential part of this Study was the assessment of the supports for, and barriers to, mediation as a means of accessing justice for poor and low-income residents of Illinois. This assessment was made based on the underlying structure for ADR in Illinois (as seen in the presence or absence of programs, statutes, and rules); on the history of ADR in the state; and most significantly on the surveys of mediators and legal services lawyers and on the gatherings of mediators, legal services lawyers, private lawyers, judges and academics around the state.

To sum up the overall status of mediation of cases involving poor and low-income disputants in Illinois: the time is ripe, the state is fertile. This time of readiness has not been the case in the past; indeed, it has been a long time coming and is the result of years of work by many strong leaders and dedicated workers. But Illinois is ready to move from its current hit and miss approach to mediation – where some jurisdictions have well-developed programs and others have no access to mediation at all – to a situation in which mediation is a broadly available practice. Making mediation available to disputants of all income levels would help to make it more available specifically to meet the needs of poor and low-income disputants.

A. Supports

A number of factors make Illinois ready for mediation to blossom. Following are some examples:

- Supreme Court Rule 99\textsuperscript{124} legitimizes court mediation programs.
- Supreme Court Rule 905\textsuperscript{125} mandates mediation for all contested custody and visitation matters, including those involving poor and low-income parents.
- Twelve circuits have put in place major civil litigation mediation rules – a major contributor to creating a culture of mediation in a circuit. (Although not all have taken hold, and these are not typically a forum for legal services cases.)
- Legal services providers who responded to the survey for this Study were overwhelmingly positive about mediation, with only one truly negative about it.

There are five strong supports for mediation as a path to justice for poor and low-income disputants in Illinois.

\textsuperscript{124} ILL. SUP. CT. R. 99. available at http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#99.
\textsuperscript{125} ILL. SUP. CT. R. 905. available at http://www.state.il.us/court/SupremeCourt/Rules/Amend/2006/021006.pdf.
1. **Interest.** There is a genuine interest throughout the state in mediation and in the possibilities it holds for making a real difference in the lives of poor and low-income disputants in the state. This was seen in the surveys and the gatherings.

2. **Awareness of mediation and program flexibility.** There is a basic awareness of mediation across the state now. Unlike the days when mediation and arbitration were consistently confused, or even earlier when mediation and meditation were confused, there is now a baseline of understanding. At the same time, mediation has not become so institutionalized that it cannot be adapted to make it especially workable to meet the needs of poor and low-income parties. This is the time to strike while the iron is hot.

3. **The legal needs of low-income disputants and amenability of those cases to mediation intersect.** Perhaps one of the most significant supports for mediation as a path to justice is that the three types of cases – family, housing, consumer – that are cited as being most in need of assistance in the Legal Needs Study are also most amenable to mediation. The legal services providers who responded to the survey saw mediation as an appropriate response for family, housing and consumer cases, albeit with genuine concerns about family cases involving domestic violence. The top two kinds of cases discussed at all three gatherings were family and housing disputes. This match practically cries out for more mediation to be provided for poor and low-income disputants throughout the state.

4. **Illinois Supreme Court rules now provide structural support for mediation.** While mediation has not yet become well-established throughout the state, Supreme Court Rule 905 provides a skeleton for custody and visitation mediation that is to be conducted throughout Illinois.\(^{126}\) This is a rare opportunity to ensure that the needs and interests of poor and low-income parents are met during the early stages of program implementation. Supreme Court Rule 99 provides a structure for approval of court-based mediation programs.\(^ {127}\)

5. **Stepping Stones Model.** With an increasing understanding of how mediation and the brief services model of legal services might work together, the new Stepping Stones Model, described above in Section III (Experiences with, and Attitudes toward, Mediation), and more thoroughly below in Section V (Service Delivery Models and Supportive Mechanisms) and Appendix 8 (Stepping Stones Model), is a support for the use of mediation as a path to justice for poor and low-income disputants. It should overcome at least some of the barriers discussed below of concern over uninformed parties participating in mediation, although it will not address all the concerns expressed in surveys and at gatherings about parties who are unable to negotiate on their own behalf. It should also help to move toward a more integrated vision of mediation within legal information, legal advice, pro se litigation, etc.

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\(^{127}\) IL. SUP. CT. R. 905 available at http://www.state.il.us/court/SupremeCourt/Rules/Art I/ArtI.htm#99.
Section IV: Supports for, and Barriers to, Mediation as a Means of Accessing Justice

B. Barriers
To sum up the overall barrier to mediation of cases involving poor and low-income disputants in Illinois: the infrastructure is not complete, the programs are not fully in place. This may be changing with the adoption of Supreme Court Rule 905, which requires mediation for child custody and visitation disputes; however, it is still not clear how services will be provided for poor and low-income parents. Additionally, other high priority cases, such as consumer and housing, are not yet being addressed in most of the state.

There are five barriers to mediation as a path to justice for poor and low-income disputants in Illinois.

1. **Not enough technical support for the development of mediation throughout the state.** Assistance with writing rules, developing a mediator roster, organizing training, designing an evaluation system, dealing with ethical matters, etc. helps to smooth the way to a well-functioning program. In states with a greater statewide commitment to mediation, the supreme court or state judiciary has created an entity that provides this kind of support. In Illinois this has fallen to a non-profit, the Center for Analysis of Alternative Dispute Resolution Systems. Based on the interest expressed in the circuits and the finances available for the programs, most of these efforts have developed large civil case mediation programs. These programs have focused on the benefits discussed in Section II: court efficiency, time and money savings, and participant satisfaction. The circuits have not focused on programs that serve poor and low-income disputants because neither the interest in the circuits nor the funding is generally available. There are some noteworthy exceptions, such as the small claims program in the 17th Judicial Circuit. The question remains as to why this effort is privately funded instead of a state-funded activity when the assistance has supported the development of state court programs for the most part.

2. **Judicial circuits do not have staff devoted to mediation.** Without someone who wakes up every morning committed to ensuring smooth, effective mediation programming, it is sure to falter at some point. In a circuit that has adopted mediation more generally, there is usually one judge who is seen as the standard-bearer for it, and some counties or circuits that have arbitration programs have used those programs to provide some infrastructure for large civil mediation efforts, as is approved under the Mandatory Arbitration System, but there is still not enough infrastructure on the county or circuit level to work proactively to maintain quality mediation programs. At a minimum, the courts should have collection and analysis of basic statistical information about programs, collection and analysis of basic satisfaction information from participants in programs, ongoing training for mediators, maintenance of the mediator roster, opportunities for mediators to interact and learn from one another, and a grievance system for complaints about mediators. In order to accomplish that, staffing is required.

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128 See 735 ILCS 5/2-1007A and 735 ILCS 5/2-1009A (use of Arbitration Funds for Other ADR Activities). The fees received by the circuit court clerk may be authorized to fund mandatory arbitration programs, as well as other ADR programs within counties that have mandatory arbitration programs.
This is especially critical in geographically disbursed counties, but it is needed in every circuit.

3. Lack of education and training for every kind of participant in the mediation endeavor. Mediators need to be educated about the unique needs of poor and low-income litigants, all mediators need ongoing in-service training, and in many locations there is still a need for basic training of mediators. Legal services lawyers need training in what mediation really is, how to prepare clients, and how to be the most effective advocate, whether appearing at the mediation or not. Judges need training in how mediation and the mediation program work and how to discuss mediation at time of referral to make the mediation experience the most effective for participants. Disputants need education about what mediation is and how to make the most effective use of it. They may also need individual assistance preparing for it.

4. Lack of funding. All three of the barriers mentioned so far – support to get mediation programs going, staff to run programs, and training to get programs established – could be addressed in large part if sufficient funds were available. The super-barrier is a lack of funding. That is not to say that funding would fix all problems, but without it, there are no programs to serve poor and low-income disputants. While these barriers are no different for any mediation program whether or not they are targeted to poor and low-income disputants, how those other barriers are overcome would be different for programs serving poor and low-income disputants. The provision of mediation services for poor and low-income disputants, however, relies on the overall availability of mediation services, so funding for all services is important. If mediation is only provided to poor and low-income disputants, it can become stigmatized. It is important that poor and low-income disputants receive mediation services along with other disputants whenever possible.

5. Lack of coordination between legal services and mediation services. Another barrier to mediation as a means of accessing justice is that mediation and legal services generally function on mutually exclusive paths, as though there is no way to work with one another as they assist people in resolving their problems. Instead, proponents need to learn how to function together and intertwine their paths to work together to serve poor and low-income disputants. This is a difficult barrier, and well-intentioned attempts to work together in the past have not always succeeded, but if poor and low-income disputants are going to be informed participants in mediation, it is essential that legal services and mediation providers fashion ways to work together.
V. SERVICE DELIVERY MODELS AND SUPPORTIVE MECHANISMS

As used in this Study, the term “service delivery model” means a structure by which dispute resolution services might be provided. In many ways, the potential service delivery models are the heart of this Study. They are the catalog of means for poor and low-income residents in the state to access justice by using mediation. The supportive mechanisms are those additional activities that reinforce or enhance the direct delivery of services.

This section will begin by reviewing the service delivery model as described in the Illinois Equal Justice Act, before moving on to describe a variety of other models and mechanisms. They are grouped as Mediation Models, Stepping Stones Model, Supportive Mechanisms – Structural and Administrative Supports, Supportive Mechanisms – Training & Party Education, and Supportive Mechanisms – Advocacy in Mediation.

As will be shown below, there are many models beyond the basic mediation model provided for in the Illinois Equal Justice Act that can serve the needs of poor and low-income disputants. In addition, supportive activities, such as training and education, are needed to enable mediation to flourish statewide and to serve the needs of poor and low-income disputants.

A. Illinois Equal Justice Act Model

The service delivery model to which all other models will be compared for the purposes of this Study, is the model advanced in the Illinois Equal Justice Act. The foundation of the model starts in the legislative findings, Section 5(e), where the General Assembly found: “The resolution of disputes can be costly and time-consuming in the context of a formal judicial proceeding. Mediation of disputes has a potential for efficiently reducing the volume of cases in the court system in this State. There is a compelling need for dispute resolution centers to divert some matters from the court system.” This sets the IEJA model in the context of efficiency of court operations. (See Section II: Legal and Mediation Landscape, Why Mediation Is Used, for a discussion of the benefits of mediation.)

In the next section of the Act, there are three definitions directly relating to mediation:

- "Dispute resolution center" means a not-for-profit organization that is exempt from the payment of federal taxes pursuant to Section 501(c)(3) of the Internal Revenue Code and that is organized to provide mediation services at no charge to disputants who agree to use its services. Disputes handled by a dispute resolution center may include, but not be limited to, disputes referred from the court system.

129 Service delivery model does not mean the style of mediation within that structure. For example, this Study will not discuss the approaches that might be used to deliver mediation services within a model, such as a transformative approach as compared to a facilitative or evaluative approach.

130 IEJA, 30 ILCS 765.
"Mediation" means a voluntary process in which an impartial mediator actively assists disputants in identifying and clarifying issues of concern and in designing and agreeing to solutions for those issues.

"Mediator" means a person who has received at least 30 hours of training in the areas of negotiation, nonverbal communication, agreement writing, neutrality, and ethics.\(^{131}\)

Additionally, “legal information centers” and “regional legal services hotlines” are defined in part as entities that provide information about “alternatives to the court system such as mediation or social services.” And, finally, “Recipient” means a “legal information center, regional legal services hotline, self-help assistance desk, dispute resolution center, or qualified civil legal services provider receiving moneys under this Act.”\(^{132}\)

The description of how funding for dispute resolution is to be handled under the Illinois Equal Justice Act is found in Section 15 (c)(4), which states, “The Foundation shall distribute funds to dispute resolution centers that have demonstrated or demonstrate compliance with the requirements of Section 5 of the Illinois Not-For-Profit Dispute Resolution Center Act.”\(^{133}\) In brief, that section requires:

1. a center to report the number of cases which have been successfully resolved in each of the 3 preceding years,
2. all mediators to be trained in conflict resolution techniques for at least 30 hours,
3. all mediators to participate in an ongoing peer review program,
4. all mediators to perform their duties as volunteers,
5. all mediations to be scheduled within 30 days,
6. a center to 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,
7. disputants to be advised of the objectives of mediation, the function of the mediator, and the role of the disputants in the mediation process prior to mediation, and
8. a dispute to be considered successfully resolved when an agreement is written and signed by the disputants.\(^{134}\)

Additionally, the Chief Judge is to make rules about which types of cases are to be mediated and about anything else necessary to operation of the qualified dispute resolution center.\(^{135}\)

\(^{131}\) IEJA, 30 ILCS 765/10.  
\(^{132}\) Id.  
\(^{133}\) DRCA, 710 ILCS 20/1, et seq.  
\(^{134}\) DRCA, 710 ILCS 20/5.  
\(^{135}\) Id.
When taken together, the preceding portions from the Illinois Equal Justice Act, and the Dispute Resolution Center Act as referenced by it, define a mediation program that qualifies for funding as a 501(c)(3) organization that uses trained, volunteer mediators who operate within a peer review system and write up agreements at the conclusion of mediations. Further, the center maintains records about the programs, including the number of cases resolved, and ensures that the mediation process is explained prior to mediation. The center may receive cases from the court or may not.

The description in the IEJA describes the classic community mediation center, such as the two centers that currently receive funding under the DRCA, the Center for Conflict Resolution in Chicago and the Kankakee Center for Conflict Resolution. Because of this, however, it places limits on experimentation or flexibility. There is no room for a court that wants to do a program because it is not a 501(c)(3) organization. There is no room for a not-for-profit that needs to pay its mediators to handle certain cases because programs must only use volunteers. There is no room for a program that does not encapsulate resolutions into written agreements because they are required by the Act, too. There are many models that do not quite fit the mold of the IEJA.

Interestingly, Section 20 of the IEJA says, “The Foundation may also undertake directly, or by grant or contract, the following activities to assist legal information centers, regional legal services hotlines, dispute resolution centers, self-help assistance desks, and qualified civil legal services providers:

1. provide research, training, and technical assistance; and
2. serve as a clearinghouse for information.” 

This is certainly an array of functions: research, training, technical assistance and information clearinghouse. This section of the law opens a door to other activities that may be used in support of mediation. What it does not do, however, is open the door to other types of mediation models.

B. Types of Service Delivery Models and Supportive Mechanisms

The critical question, having reviewed all the preceding information about legal needs, laws and court rules, existing services, attitudes, ideas, etc. is this:

What are the ways in which mediation may be a path to justice for poor and low-income disputants in Illinois?

When considering service delivery models and the mechanisms that support them, it is important to reflect on how they relate to the context of the legal needs of poor and low-income Illinoisans. As the following models and mechanisms are presented, each one should be considered first as to how it may be a path to resolving the most pressing issues for poor and low-income disputants – family issues, housing issues, and consumer issues – or how well it would support the models that resolve those issues. Second it should be considered as to how well it may assist in addressing those issues that fall further down the list that are particularly amenable to mediation, such as employment cases, education cases and discrimination cases related to disabilities.

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136 IEJA, 30 ILCS 765/20(b).
Accessing Justice through Mediation

The question that comes up when considering models and mechanisms is how they are funded. In Illinois the following are some answers:

- Obtain funding from the county board, as in the 3rd Judicial Circuit family program.

- Add mediation duties to ongoing duties of existing staff, as in the 2nd Judicial Circuit where judges also mediate, but mediators also could be other kinds of staff who take on mediation duties, such as probation officers who conduct [family conferences in juvenile cases.

- Add mediation administrative duties to ongoing duties of existing staff, as in the circuits that have Arbitration Centers that also help with major civil mediation efforts, or bar associations that ask staff members to assist with scheduling mediators.

- Require that mediators who want to be listed on court rosters conduct mediations without compensation for poor and low-income disputants, as some circuits do to comply with Supreme Court Rule 905.

- Follow the lead of some lawyers around the state and informally ask colleagues to mediate without compensation or for a reduced fee when a client warrants it.

- Ask vendors, such as mediation trainers, to reduce their fees.

- Request grants from the Illinois State Bar Foundation, the Illinois Equal Justice Foundation, the local United Way, other local charities, local law firms, the ABA mini-grant program, and other sources.

These sources of funding are not necessarily related to the type of mediation or type of program, and some programs have multiple sources of funding, while others have no direct funding allocation, such as a judicial mediation program where the judges do the mediation and the administration of the program.

In some states there are legislative appropriations for ADR programs, both court and non-court. For example, in Maryland the legislature provided seed money for the start up of community mediation centers, court programs, state agencies and elsewhere.\textsuperscript{137} New York state law provides for funding of community mediation centers.\textsuperscript{138}

Another legislative approach is to indicate who should pay for services or how programs should be funded, which is generally through filing fees. Tennessee is an example of the former. The state has a law that shifts the responsibility for payment for mediation to the court if the parties are indigent and authorizes the State Treasurer to establish a general

\textsuperscript{137} The Maryland ADR Commission, \textit{Join the Resolution}, December 1999. Found at \url{http://www.marylandmacro.org}.

\textsuperscript{138} NY JUD LAW § 849e.
Section V: Service Delivery Models and Supportive Mechanisms

fund to provide for this. An example for the latter is the Reviewing Court Alternative Dispute Resolution Act in Illinois, which 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 models and mechanisms below are grouped by certain characteristics:

- **Service Delivery Models** are different variations on how mediation is provided – with those differences including who mediates, how the program is supported, what kinds of cases are handled, who funds them, etc. Some follow the IEJF model rather closely and others are much further afield. Two variations on arbitration are also included.

- **Stepping Stones Model** is a system to get the mediation system working with the legal advice, representation and referral systems.

- **Supportive Mechanisms – Structural and Administrative Supports** are efforts to make mediation systems work better through staffing at the state and local levels, networking and coordinating mediation-related pro bono activities.

- **Supportive Mechanisms – Training & Party Education** is the idea of teaching all the participants in mediation about mediation’s availability and how to make the best use of it.

- **Supportive Mechanisms – Advocacy in Mediation Programs** are the programs that focus on the demand side of mediation, rather than the supply side. That is, they help those representing parties in mediation do a better job in mediation.

C. Service Delivery Models and Supportive Mechanisms

1. Service Delivery Models
The following mediation models can be distinguished from the community mediation model as described in the Illinois Equal Justice Act by at least one characteristic. For the most part, these models are in place somewhere, either in Illinois or elsewhere. Some, however, are ideas that were generated during the course of the Study. They are followed by two models that use arbitration.

To thoroughly consider each model, it can be reviewed as it relates to critical factors in model implementation:

- **Funding:** where the support comes from – both financial and in-kind, to operate the program

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139 TENN. CODE ANN. § 36-6-413.
140 Reviewing Court Alternative Dispute Resolution Act, 710 ILCS 40.
Accessing Justice through Mediation

- Case referral: how a case gets into mediation and any limitations on what cases can be referred
- Client preparation: what assistance a disputant receives in getting ready for mediation
- Case processing: how a case is managed along the way
- Mediators: who the mediators are, their skills, and how they are supported
- Program administration: who is running the program and being sure that all the pieces fit together
- Monitoring: keeping an eye on the statistics and tweaking the program as appropriate
- Evaluation: reviewing the big picture from time to time and altering the program as appropriate
Example: Pool of Funds to Pay Mediators (example “a”)

Instead of volunteer mediators in a program conducted by a not-for-profit organization, this model involves a court maintaining a roster of private mediators who are paid to mediate cases, generally only child custody and visitation cases, involving poor and low-income families. This approach is being used by one judicial circuit that is receiving funding from its county board.

Funding – The funding to pay the mediators to work with the parents who are poor or have low incomes comes from the county board, but support is also needed to maintain the core program. This is often difficult to obtain. See Program Administration below for the activities that need to be accomplished. They are often done by existing staff, and if this is the only mediation program, that is generally possible. But if this is the only mediation program, it will be more difficult to sustain because the legal culture will not support it as well.

Case Referral – The court would need to determine the basis upon which cases would be referred to this program and whether no fees were to be paid by the parties or if one or both parties were expected to pay some amount of fees.

Client Preparation – This is where the Stepping Stones model would be advantageous. If judges had somewhere they could refer parents prior to the mediation, the parents would be more well-prepared for their mediations.

Case Processing – This system, as with any mediation system, needs someone processing the cases who knows what the status is for each case at any given point.

Mediators – It cannot be emphasized enough that the mediators are the ones who determine whether the poor and low-income parents have an experience in mediation that increases their sense of self-determination, that helps them to communicate, and that helps them resolve their dispute to the best of their ability. The mediators in this program hold the key to the three goals of client satisfaction, timeliness, and cost-effectiveness, the last of which is determined by timeliness.

Program Administration – Someone needs to track the cases, collect the statistics, monitor the mediators, provide support for peer review, schedule on-going trainings, make sure new judges receive orientation and training about the program, etc. In geographically disbursed circuits, it is especially important to have someone who makes the program into a uniform whole.

Monitoring – The program needs to be monitored for number of cases resolved, not resolved, etc.; which mediators are getting assigned; which mediators are resolving cases; which judges are referring cases; if parents are satisfied; etc.

Evaluation – The program needs to be evaluated from time to time to see how it is meeting its goals. If they are to save time and money, and to satisfy the parents, then those measures need to be reviewed to see if they are being obtained. The monitoring system needs to be assessed to see if it is collecting the information to make regular evaluations possible.
The following models describe actual programs that are in place in Illinois or elsewhere, with the exception of a few programs that were conceptualized during the course of this Study. Those models are so indicated. For each model, there are five characteristics. They relate to whether the mediators are paid or unpaid, who the mediators are, where the program is housed, how it is funded and how the program differs from the model found in the Illinois Equal Justice Act. The characteristics are followed by a brief text with additional description of the model.

**Paid or volunteer mediators:** In this description, the mediators are listed as volunteer so long as they are not paid when they are mediating in this model. They may be paid when they mediate elsewhere, they may have to mediate to be on a court roster, or they may not mediate anywhere else, but if they are not paid when they mediate in the model being described, they are considered volunteers.

**Who the mediators are:** This characteristic is designed to give a little more information about the mediators. It may indicate that they are community mediators, which would mean that they come from a variety of walks of life, generally including lawyers, social workers, educators, businesspeople, other professionals and other individuals. In those models that state the mediators are “roster mediators,” the mediators have applied to and been approved to be on the court’s list of mediators.

**Where the program is housed:** This characteristic will indicate if there is a program, such as one housed at a bar association or court, or if there is simply an effort by legal services to make use of existing programs such as the EEOC and IDHR mediation programs.

**How the program is funded:** This tells the source for the money for the program in the example. It may also provide samples of funding for similar programs.

**How the program differs from IEJA model:** There are four basic elements of a program that fits the IEJA model that were tracked for this Study:

1. volunteer mediators,
2. a peer review process,
3. a 501(c)(3) tax-exempt organization, and
4. a dispute resolution center.

There are six additional elements that also are required under the IEJA:

1. mediators trained in conflict resolution techniques for at least 30 hours,
2. all mediations are to be scheduled within 30 days,
3. the center is to maintain records to demonstrate adherence to requirements,
4. disputants are to be informed about mediation, mediators and their own role in the process before mediating,
5. disputes are considered successfully resolved when written agreements are signed by disputants, and
6. the center is to report the number of cases successfully resolved in each of the preceding three years.
In the following list of models, this characteristic indicates which of the basic elements are not present in the model being discussed, thus making the model ineligible for funding through the Illinois Equal Justice Act.

Models that Utilized a Pool of Funds

a. Pool of Funds to Pay Mediators (see accompanying box)
   Paid or volunteer mediators: Paid
   Who the mediators are: Roster mediators
   Where the program is housed: Court
   How the program is funded: The pool of funds is established by the county board in this example. The court mediation program may be funded a number of ways, but in Illinois, it does not receive direct funding. Existing staff are expected administer the program.
   How the program differs from IEJA model: This model differs from the IEJA model in that the mediators are paid, not volunteers, and the sponsoring organization is the court, not a 501 (c)(3) organization.

   Instead of volunteer mediators in a program conducted by a not-for-profit organization, this model involves a court maintaining a roster of private mediators who are paid to mediate cases, generally only child custody and visitation cases, involving poor and low-income families. This approach is being used by one circuit that is receiving funding from its county board to meet the requirements for custody and visitation mediation under Supreme Court Rule 905.

b. Pool of Funds for Mediator Training
   Paid or volunteer mediators: Volunteer
   Who the mediators are: Roster mediators
   Where the program is housed: N/A
   How the program is funded: A variety of sources, such as bar foundation, law firms, training participant payment of all or part of the training fees, requesting that the trainer reduce fees
   How the program differs from IEJA model: In this model, there is no dispute resolution center.

   In a county that has not had any mediation at all, instead of a pool of funds being used to pay mediators, it can be used to supplement some of the cost of initial training for mediators in exchange for them agreeing to mediate a certain number of cases (typically custody and visitation) involving poor and low-income families. This approach was used in one circuit for family cases.

Court Models

c. Judicial Mediation Model
   Paid or volunteer mediators: Paid
   Who the mediators are: Judges
   Where the program is housed: Court
   How the program is funded: Judges mediate during regular working hours and there is no line item for this program in the budget
   How the program differs from IEJA model: In this model, the organization is the court, not a 501 (c)(3) organization, and the mediators are sitting judges, not volunteers.

   In the judicial mediation model, judges mediate cases they will not be deciding. It is a program provided by the court, with cases recommended by the court and all administration supported by the court.
This model has been used mostly for child custody and visitation, with some child support decisions as needed. It could be used for dependency cases and for never-married parent cases as well. In this model, when the parties reach agreement, the judge writes a provisional order, pending review by the judge who had referred the case to judicial mediation. A program that follows this model was started in the 2nd Judicial Circuit in southeastern Illinois for all mediation parties who did not opt for private mediation and is in the rules for use in other circuits for poor and low-income parents under Supreme Court Rule 905.

d. Court Child Protection Mediation Program

*Paid or volunteer mediators:* Paid  
*Who the mediators are:* Staff  
*Where the program is housed:* Court  
*How the program is funded:* Government (funded by court through county)  
*How the program differs from IEJA model:* This model is housed in the court, not a 501 (c)(3) organization, and uses staff, not volunteers, as mediators. Adapted from the Cook County Child Protection Mediation Program, this model has staff mediators co-mediate abuse, neglect or dependency cases. Referrals can be made at any point in a case after the temporary custody hearing, with judges having discretion as to which cases are referred. While the mission of the program is to help children reach permanency as soon as possible, many of the mediations involve disputes along the way to that goal, such as disagreements between biological and foster parents (who are often family members), services for children or parents, etc.

e. Tort Defense Cases – Required No-Fee Mediations Model

*Paid or volunteer mediators:* Volunteer, but paid when not participating in this program  
*Who the mediators are:* Roster  
*Where the program is housed:* Court  
*How the program is funded:* Court uses existing staff and volunteer services  
*How the program differs from IEJA model:* In this model, there is no dispute resolution center. The model is housed in the court, not a 501 (c)(3) organization. In this model, mediators on the court’s roster are required to conduct a certain number of mediations per year at no charge. The requirement is not based on the ability of the parties to pay, but is a way of marketing the mediation program. If a client with a tort defense case is ever represented by legal services, the lawyer could request the court appoint a mediator to provide free services.

f. Required No-Fee Mediations Model

*Paid or volunteer mediators:* Volunteer  
*Who the mediators are:* Mediators on roster  
*Where the program is housed:* Court  
*How the program is funded:* Court uses existing staff and volunteer services  
*How the program differs from IEJA model:* In this model, there is no dispute resolution center. The model is housed in the court, not a 501 (c)(3) organization. A circuit may require that mediators who wish to receive paying referrals from the court by being on the court roster also agree to conduct a certain number of mediations at no charge each year. This could be done on a case-by-case basis, or a system could be set up in which pro se or poor litigants are sent to a staff person who schedules cases to be mediated on site in time slots during which the mediators who are willing to mediate without compensation will be available. The case-by-case requirement has been used by some circuits in response to Supreme Court Rule 905’s requirement that all parents have
access to mediation for custody and visitation matters. A program housed at a legal services agency in Tennessee also uses this approach. The court-certified mediators handle cases involving domestic violence using special techniques.

**g. Mediating Divorce with FAQ Sheets**

*Paid or volunteer mediators:* Volunteer  
*Who the mediators are:* Community mediators  
*Where the program is housed:* Community mediation organization  
*How the program is funded:* State funding in Michigan  
*How the program differs from IEJA model:* This model does not differ from the IEJA model. It is included because it is an example of what a highly-evolved community mediation program can accomplish in terms of serving many needs, including those of poor and low-income disputants.

The pilot program to mediate financial aspects of divorce upon which this model is based is only possible because there is an established bank of mediators – lawyers and other community volunteers – with the skills to work with all types of disputants, as well as the credibility within the legal community to attempt this program. Community mediators receive advanced training to mediate financial aspects of divorce – not custody and visitation – among poor and low-income couples. For the most part, they mediate the allocation of debt. They use FAQ sheets on assets, pregnancy, etc. to screen the parties and then check boxes on electronic documents to avoid unauthorized practice of law issues. They have special training on screening for domestic violence and what to do when issues common in divorce come up. This approach is being tried in Michigan where there is a long-standing experience with community mediation.

**h. Lawyer-Referral Programs as Screeners for Mediation Programs**

*Paid or volunteer mediators:* Either  
*Who the mediators are:* N/A  
*Where the program is housed:* Bar association  
*How the program is funded:* Not yet established  
*How the program differs from IEJA model:* In this model, there is no dispute resolution center.

Bar association lawyer-referral programs screen clients and refer them to mediation. They can screen for income level as well as for appropriateness for mediation and whether they need to obtain legal advice or information prior to mediation. (See Stepping Stones Model, below.) This is an idea that came up during the gatherings, but it is not in place in Illinois.

**i. Mediate Child Support Arrearages**

Not in place currently  
*How the program differs from IEJA model:* This has not been developed as a model. The idea of mediating child support arrearages came out of the gatherings. If a program were established that conformed to the IEJA model, it could fit within it, but it could also be accomplished outside that model.

Child support arrearages would be amenable to mediation, especially to work out a payment schedule, but would require legal information for both parties. (See Stepping Stones Model, below.)

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141 Discussion with Marc Kadish, Chair of ABA Dispute Resolution Section Pro Bono Committee, notes on file with author.
Mixed Court and Non-Court Models

j. Small Claims Mediation Model

Paid or volunteer mediators: Volunteer
Who the mediators are: Lawyers
Where the program is housed: Bar association
How the program is funded: Day-to-day operations supported by in-kind contributions of staff time from bar association. Mediator training supported by various entities, including local bar foundation and Illinois Equal Justice Foundation.
How the program differs from IEJA model: An existing example of this model in Winnebago County only differs from the IEJA model in that it is housed at a membership organization (a bar association, which is a 501(c)(6)), rather than a 501(c)(3) organization as required by the IEJA, but many are housed in courts and 501(c)(3)s. 142 It has a peer review system in place and fits the concept of a dispute resolution center as envisioned in the Dispute Resolution Center Act.143 This program partners with the Winnebago County Bar Foundation (WCBF), which is a 501(c)(3), in order to receive funding under the IEJA. The WCBF also financially supports the training. The Winnebago County example uses only lawyers to mediate, the cases are mediated at the courthouse the same day the case would be heard, and the case is tried that day if no agreement is reached. Only cases that are pro se on both sides are eligible, but there are no income restrictions. The majority of cases mediated are landlord-tenant and small consumer cases. Mediation is conducted during one half-day small claims call per week. The program is administered by the local bar association.

k. University Mediation Clinic Model

Paid or volunteer mediators: Volunteer
Who the mediators are: Professors, university staff and professionals from the community
Where the program is housed: University
How the program is funded: Law school budget
How the program differs from IEJA model: This model only differs from the IEJA model in that it is housed at a university, rather than a 501(c)(3) organization as required by the IEJA.144 So long as the university maintains a 501(c)(3) organization to receive funding for situations like this, this model may receive funding under the IEJA. This model uses university professors and professional staff (law school professors, doctrinal professors, librarians) to mediate as well as some professionals from the community. They mediate family cases and pay for their own training so that they can have their own mediation practices, as well as this unpaid practice. The school administers the program. An example of this is the mediation program at Southern Illinois University Law School.

142 IEJA, 30 ILCS 765/15(4), based on 710 ILCS 20/2(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…”).
143 DRCA, 710 ILCS 20/5.
144 IEJA, 30 ILCS 765/15(4), based on 710 ILCS 20/2(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…”).
Section V: Service Delivery Models
and Supportive Mechanisms

I. Law School Mediation Clinic Model

Paid or volunteer mediators: Volunteer
Who the mediators are: Students and some professors
Where the program is housed: University
How the program is funded: Law school budget
How the program differs from IEJA model: This model only differs from the IEJA model in that it is housed at a university, rather than a 501(c)(3) organization as required by the IEJA.\(^{145}\) So long as the university maintains a 501(c)(3) organization to receive funding for situations like this, this model may receive funding under the IEJA.

There is a big resource available in law students as mediators, which this model uses to advantage. In this model, law students mediate pro se court cases – typically small claims and housing cases, although some mediate visitation issues in never-married parent cases. Students are usually closely supervised. The students are not available all year, which can be an issue for the court. Therefore, combining this model with another model that provides mediators on a full-year basis might be a good idea. An example of this is the never-married parents mediation program at Northern Illinois University Law School.\(^{146}\) There is also a program housed at Loyola Law School in Los Angeles that mediates cases referred from Neighborhood Legal Services (a Legal Services Corporation agency).\(^{147}\) These are cases that are not eligible for legal services for various reasons, such as because not enough lawyers are available, or because the cases do not meet priorities, such as the presence of domestic violence in divorce cases.

m. Rural Oklahoma Mediation Model

Paid or volunteer mediators: Volunteer
Who the mediators are: Community members
Where the program is housed: Non-profit
How the program is funded: Only filing fees from the state per Oklahoma law
How the program differs from IEJA model: This model differs from the IEJA model in that there is no peer review.

In a very geographically dispersed area, the critical aspect for a successful mediation program is outreach. Through outreach, the program finds potential mediators from a variety of locations and identifies locations to hold mediations throughout the service area. New mediators are often found by conducting outreach at organizations where people are already volunteering, such as SCORE or the local Rotary club. Additionally, in a program serving a broad geographic area, this array of mediators can be trained first in basic mediation skills and, after they become experienced, in particular kinds of cases, such as family, dependency, special education and parent-teen, so that those other kinds of cases can also be mediated across the area. Examples of this model are found throughout Oklahoma.

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\(^{145}\) IEJA, 30 ILCS 765/15(4), based on 710 ILCS 20/2(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…”).

\(^{146}\) See [http://www.caadrs.org/adr/NIUClinic.htm](http://www.caadrs.org/adr/NIUClinic.htm).

\(^{147}\) See [http://www.lls.edu/ccr/](http://www.lls.edu/ccr/).
n. Community Mediation Model
Paid or volunteer mediators: Volunteer
Who the mediators are: Community members – some lawyers, some others
Where the program is housed: Some non-profits, some within government entities or courts
How the program is funded: Various, including foundation and corporation grants; gifts from law firms and individuals; government contracts; and contractual income from mediation and training services
How the program differs from IEJA model: In some locations this model is very close to the IEJA model, with the usual exception that there is no peer review. Some community mediation programs are housed in organizations such as bar associations, religious organizations, courts or other government entities that are not 501(c)(3) organizations, but some community mediation models are free-standing 501(c)(3)s or housed at larger 501(c)(3)s.

This model focuses on integrating mediation deeply into the community for all uses, so that it is thought of for all kinds of disputes – such as peer mediation in school and disputes over whether a coach did something inappropriate and should be fired – as well as traditional legal disputes. It assumes that the core of the caseload will be court-referred, but looks to a much broader involvement in the academic, spiritual, financial, recreational and transportation life of the community. This approach is used in communities across the country and was strongly advocated in one of the gatherings in this Study.

o. Corporate Mediation Model
Paid or volunteer mediators: Volunteer
Who the mediators are: Corporate employees
Where the program is housed: Partnership between corporation and another entity
How the program is funded: Corporation
How the program differs from IEJA model: This model would differ from the IEJA model if it was actually housed at the corporation.

This model would look a lot like a community mediation center, but it would rely heavily on one corporation for support. In a smaller community with a few large employers, one of those large employers may sponsor a mediation program for the community. It can be led by the corporation counsel’s office – especially one that has been a leader in using mediation for their large civil litigation – with volunteer opportunities for mediations to be scheduled by corporate staff. This would be coordinated with a court program so that there is a steady flow of cases matched with a flow of mediators. This idea came up at one of the gatherings where there is a large farm machinery manufacturer in town.

Non-Court Models
p. Use of Existing Mediation Programs Model
Paid or volunteer mediators: Volunteer or paid
Who the mediators are: Mediators at EEOC or IDHR mediation programs
Where the program is housed: Legal Services Provider Organizations
How the program is funded: This program is not established, so no funding sources have been identified.
How the program differs from IEJA model: In this model, there is no dispute resolution center.
State and federal government mediation programs can be useful for some disputes, but only if disputants, including poor and low-income disputants, take advantage of them. For example, mediation services are available through the Illinois Department of Human
Rights and the Equal Employment Opportunity Commission for employment and public accommodation discrimination claims and the Illinois State Board of Education provides mediation services for problems because of denial of services or inappropriate special education services. In this model, legal services providers would advise clients of how to make use of these programs. (See Stepping Stones Model below.)

q. Use of Existing Settlement Conference Programs Model

Paid or volunteer mediators: Paid
Who the mediators are: Federal magistrate judges
Where the program is housed: Law firm and non-profit
How the program is funded: Law firm pro bono activities
How the program differs from IEJA model: In this model, there is no dispute resolution center, and the mediators are not volunteers.
In this model, lawyers from a large law firm volunteer to assist pro se litigants in their settlement conferences before federal magistrates in the Northern District of Illinois. They only represent them for purposes of the settlement conference; if the case is not settled then, the litigant goes on without the lawyer. The cases are screened by the Lawyers Committee for Civil Rights Under Law.

r. State Agency (Public Benefit or Utility) Mediation Program Model

Paid or volunteer mediators: Paid
Who the mediators are: Private mediators
Where the program is housed: State agency
How the program is funded: Through agency funds
How the program differs from IEJA model: This model involves paid mediators and is housed in a state agency or corporation, not a 501 (c)(3) organization.
The program upon which this model is based is a utility mediation program housed in the Illinois Commerce Commission. This program seems to be little used, as would be expected because the agency handles a large volume of disputes and because it is not able to be flexible in the ways in which they resolve disputes (two issues that go hand in hand). A true mediation process is likely to be reserved for cases that cannot be resolved at the simple complaint level. That way it would be reserved for fewer cases and for those that would receive attention from staff who have authority to be more flexible in their responses. In any case, building a dispute process like this would have to be undertaken in response to a problem that was seen by the agency, as well as one that was perceived from the outside. This idea is presented as a possibility, but one that is more difficult to implement elsewhere because of the design issues.

s. Nursing Home Refusal Mediation Model

Not in place currently
How the program differs from IEJA model: This model would probably involve paid mediators and would probably be housed in a state agency or corporation, not a 501 (c)(3) organization.
Along the same lines as the agency model, a model to address disputes where patients were refused admission to a nursing home or were involuntarily discharged from one

Finding
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.
would have to be the product of a need by both the nursing home industry and the legal services community. This would likely be developed on a statewide level and likely run by a state agency. This idea is presented as a possibility, but one that is more difficult to implement because of the design issues. It could also be operated on a local level, but would be dependent on obtaining buy-in from local nursing homes willing to participate in mediation on a regular basis.

**t. Property Tax Mediation Program**
Not in place currently

*How the program differs from IEJA model:* This model would probably be housed in a state agency, not a 501 (c)(3), and would probably use paid staff, not volunteers, as mediators.

This program would be modeled on the IRS mediation program. It could be used as a way to maintain homeownership among low-income property owners. This would need to be created on a statewide basis.

**u. Attorney General’s Office/Consumer Services Office/Etc. Model**

*Paid or volunteer mediators:* Paid

*Who the mediators are:* Staff

*Where the program is housed:* Existing programs

*How the program is funded:* Government

*How the program differs from IEJA model:* This model uses paid staff, not volunteers; and is housed in government offices, not 501(c)(3) organizations.

Some attorneys general or other government offices at the state or local level offer mediation or conciliation services to consumers who have complaints about goods or services. Sometimes they are focused on seniors or on particular areas such as housing. These services are not typically formal mediation services, but more likely to be telephone conciliation efforts, where staff from the office call the provider of the goods and services and attempt to reach a reconciliation with the consumer or senior concerning the dispute.

**v. Social Services/Housing Office/Etc. Model**

*Paid or volunteer mediators:* Paid

*Who the mediators are:* Staff

*Where the program is housed:* Existing programs

*How the program is funded:* Government and various sources

*How the program differs from IEJA model:* This model uses paid staff mediators, sometimes within government offices, although sometimes housed in 501 (c)(3) entities. Some non-profit social services or housing offices offer mediation or conciliation services to tenants, landlords, consumers, seniors, students, or other groups about issues such as housing, education, community issues, policing, etc. These services are not typically formal mediation services, but more likely to be telephone conciliation efforts, where staff from the office call and attempt to reach a reconciliation concerning the dispute.

**Two Models Utilizing Arbitration**

a. One idea that was developed at one of the gatherings, with input from a family lawyer who mediates and a legal services lawyer was to get time-sensitive cases, like establishing child support amount, resolved through a med-arb process. An attorney-mediator suggested local lawyers would do this at the courthouse at 4:00
or 4:30, which would be a more workable time for more parties to get off work, too. A legal services lawyer liked the idea of clients getting child support established more quickly than it usually is through the court. The idea would be to get the issue settled more quickly, in a less formal setting, with review by the court at the regular court date. An opt-out option could be built in, but if the system resulted in reasonable outcomes, the gathering participants believed it would be accepted by most participants.

b. Another idea was to use binding arbitration for housing cases involving injunctive relief (such as having landlords make repairs). An issue raised regarding this idea was what incentive to offer to incite the landlords to arbitrate.

2. Stepping Stones Model
Access to mediation for poor and low-income residents has been limited, in part because mediation and legal services have been running along on parallel tracks for as long as they have both been in existence. There certainly have been instances when they have worked together, but there has not been a concerted, statewide effort to study the situation and see what could work. One new model to emerge from this Study in an attempt to address this issue is the Stepping Stones Model. As described briefly above (under Gatherings), the idea of the Stepping Stones Model is that poor and low-income disputants would use brief services as stepping stones to acquire legal information before they went to the stepping stone of mediation. A party might call a hotline, visit a helpdesk, go on-line to get information, or even receive full legal services representation, prior to mediation. Because most mediation programs are court-related and it is very difficult to get a responding party to participate in mediation without the threat of court, the mediation would most likely be preceded by a “step” to the courthouse. Following mediation, there would most likely be a step back to the courthouse with a finished agreement.

In this service delivery model, the mediators and the legal services providers would establish a genuine collaborative relationship where they each understand and respect the unique services that the other can bring to poor and low-income disputants and they all have a well-rounded understanding of the challenges and strengths that the clients bring to the process. Together, within the program, they would provide access to legal information and support and guidance about how to negotiate in mediation.

The Stepping Stones Model locates mediation within the legal services arena, rather than off on its own. (See Appendix 8 – Stepping Stones to Access Justice for a graphic representation.) It addresses the concern of legal services lawyers that parties might unknowingly give up rights they do not have to give up. It does not address the concern about whether poor and low-income disputants have the ability to negotiate on their own behalf in mediation.

Importantly, the Stepping Stones Model treats mediation and the other approaches to accessing justice as a whole, rather than as separate ideas. Someone with a legal problem might go to any one of these sources and then through mediation to access justice and resolve their problem. The participants at the gatherings responded positively to this idea,
but there was not enough experience with mediation to go further in terms of working out quite how such a program would operate. Significant work would need to be done to plan how this would be attempted, to monitor it, and to evaluate its effectiveness.

Some of the critical factors noted above (funding, case referral, client preparation, case processing, mediators, program administration, monitoring and evaluation) that seem mundane in other settings, such as client preparation and case processing, are at the heart of the Stepping Stones Model. The challenges are to administer the program in such a way that participants are as well prepared as possible to take full advantage of mediation and do not fall between the cracks in moving from one step of the model to another. Because this model is new, monitoring and evaluation are important, to see if the disputants feel that their needs have been met, and to see if the overall goals of justice have been served.

**Two-Party Version of Stepping Stones Model**

This Stepping Stones Model could be especially useful when both parties are poor or low-income and in need of assistance. They could each obtain information through a service such as going on-line or going to a helpdesk. Then they could work with a mediator to resolve their issues. This would work especially well if they were not terribly confrontational – for example if they wanted to divorce and simply needed help working out the details, but it would also work if the parties were oppositional and needed the skills of a mediator.

**3. Supportive Mechanisms – Structural and Administrative Support**

Some ideas do not involve directly providing mediation or other dispute resolution services, but instead provide structural and administrative support for those services. They do not fall within the funding guidelines for the IEJA, but they do assist in the development or provision of those services. There are also two ideas for arbitration programs, which are described at the end of this subsection, which also fall outside the IEJA because they involve arbitration, rather than mediation. These programs are a little more difficult to consider as a group as they relate to the critical factors – funding, case referral, client preparation, case processing, mediators, program administration, monitoring and evaluation – because some vary from the others so greatly.

The factor the first four models below – circuit program manager, statewide coordinator, data monitor and the network – share is that funding would need to be developed. CAADRS has conducted some of the activities for the statewide coordinator, the mediation data monitor and the network with funding from a Chicago-based foundation, but those activities do not reach the much greater extent conceived of here. No other funding is in place for any of these activities and the funder for CAADRS has reached the limit of its funding ability. The two statewide positions and the statewide network do not have the direct client responsibility related to some of the factors critical to program implementation: case referral, client preparation, case processing, program administration, etc. They do have some responsibility for establishing an environment that enables those to be accomplished. They all relate to getting the information gathered...
so that these programs can be assessed and decisions can be made about what is effective and what is not.

The need for volunteer involvement in mediation programs is strong. This is where critical factors such as mediators, program administration and evaluation come together. Providing quality mediation is an ongoing task for a mediation program. It requires constant nurturing and monitoring - and sometimes a willingness to tell volunteers that their services would be better appreciated in the office than in the mediation room.

The last two ideas outlined below, which incorporate arbitration concepts, were generated during gatherings. They represented ways in which the groups were looking to address the need for speed in reaching resolutions, while still respecting the role of the court in making final decisions – and raised some issues that combined ADR ethics with case processing questions.

a. Court ADR Program Manager
This person would manage all of a circuit’s ADR programs and would be most beneficial in circuits that have several programs. States that have well-developed mediation cultures, such as California, Florida, and New York, typically have someone in each jurisdiction who is responsible for the well-being of the mediation programs. Duties of the program manager would include:

- Maintaining the quality of ADR programs and neutrals
- Maintaining statistical management information
- Providing support to neutrals, including on-going mediator training and support for peer review
- Providing policy guidance to neutrals and judges
- Providing continuity when judges, state’s attorneys, and other court staff change
- Upgrading programs as needs change and new ideas are developed
- Networking with other ADR, legal services, and bar-related programs in Illinois and nationally
- Networking with, and promoting the programs to, social service and volunteer programs throughout the circuit
- Providing administrative support
b. Statewide Mediation Program Coordinator

This person would provide technical assistance to aid people around the state in developing, monitoring and assessing mediation programs. States that have well-developed mediation cultures, such as California, Florida, and New York, typically have state court offices of ADR with multiple staff members who provide the type of support this Coordinator would provide throughout the state for the mediation programs. The Coordinator’s duties would include:

- Develop relationships with judges, lawyers and mediators throughout the state
- Develop top echelon leadership across the state
- Respond to requests for assistance with ADR program development
- Develop interest in court ADR programs around the state
- Provide expert assistance during program development, including
  - rule writing,
  - planning and implementing case referral systems, and
  - establishing policies for providing legal information to parties
- Assist programs with identifying and reaching out to referral sources
- Administer neutral training programs
- Provide ongoing support of new and existing programs
- Coordinate development of supportive relationships among programs around state

c. Statewide Mediation Data Monitor

This person would collect and disseminate reliable information about the performance of mediation programs around the state in meeting established goals such as aiding poor and low-income litigants in resolving their disputes; providing services that meet procedural justice standards for all mediation participants, especially poor and low-income litigants; and aiding disputants in general in resolving their disputes. States that have well-developed mediation cultures, such as California, Florida, and New York, typically have state court offices of ADR with multiple staff members who provide the type of support this Monitor would provide throughout the state for the mediation programs. Duties of the Data Monitor would include:

- Develop and install a statewide statistical monitoring system for
  - Referral and use data
  - Resolution data
  - Participant satisfaction data
  - Resources expended by both litigants and courts
Section V: Service Delivery Models and Supportive Mechanisms

- Respond to requests for assistance with statistical monitoring
- Assist local programs with adaptation and implementation of monitoring program
- Collect, analyze, and disseminate data from all mediation programs
- Create and support a web site with data from all mediation programs, as well as interactive capability for programs to download their statistics to the Mediation Data Monitor
- Provide data to the Illinois Supreme Court

d. Statewide Network
As mediation develops around the state, a network is needed to support everyone involved with mediation for poor and low-income disputants in the state. Activities such as a newsletter, a listserv, training events, somewhere to turn for advice, and somewhere to share ideas would support those engaged in mediation in this area.

e. Lawyers’ Pro Bono Opportunities
Opportunities for lawyers to volunteer in mediation need to be developed locally and publicized. Because of the training and oversight required for quality mediation, these opportunities require a commitment that is different from the typical pro bono endeavor. At the beginning, for both the organization and the volunteer, there is a heavy investment in training, but because of the typically short timeframe of an actual mediation for the volunteer (as compared to ongoing representation), mediations demand less during the actual service from a volunteer than representation. Volunteer mediation also can be a good match for corporate pro bono efforts. The time spent developing cases and maintaining the quality of mediators can be quite demanding for the pro bono agencies.

4. Supportive Mechanisms – Training and Education
Another area that would support development of mediation services is training and education. There was, for example, a suggestion at two of the gatherings that all lawyers could benefit from introductory training in mediation, especially mediation advocacy training. These efforts at training and education fall into two groups: those for the professionals (mediators, legal services providers and judges) and those for the participants. These also fall outside the IEJA because they do not involve establishing a dispute resolution center and all that goes with it.

These programs do not relate to many of the critical factors – case referral, client preparation, case processing, mediators – but should be considered in relation to others – funding, program administration, monitoring and evaluation. One question is how essential these efforts are as they stray further from providing direct services to disputants. The answer often depends on how well-formed a local mediation program is. If it is just getting started, there will be a need to train legal services providers and judges,
and to at least educate mediators about how to participate in the program and about the unique needs of poor and low-income disputants, if the mediators are already trained and experienced mediators. To truly inculcate mediation across the state, the education, marketing and outreach methods outlined below will be needed – but only when there are mediation programs to promote.

**a. Mediator, Legal Services Provider and Judge Training**

The idea behind some of the training for the mediators and legal services providers is to establish a genuine collaborative relationship between legal services and mediators where mediators understand and respect the unique needs of poor and low-income disputants, as well as the legal underpinnings of their cases, and legal services providers understand and respect the unique service that mediators can provide to poor and low-income disputants, as well as how the mediation process works. Training for judges in how the mediation process works is invaluable in making the process work smoothly, too. These are all relatively short-term trainings of two hours to a half-day as compared to full mediator training that is covered below.

**b. Mediator Training**

Sometimes especially geographically dispersed circuits or counties need to provide initial mediator training in order to have enough mediators for the basic needs in their jurisdictions. This initial training – usually 40 hours – is often undertaken by the individual mediator him- or herself in a jurisdiction where the investment will pay off in mediation income. Additional training is needed, however, for mediators to have a better understanding of the issues facing poor and low-income disputants and the particular substance of the conflicts they face. Also, family mediators receive additional training in areas such as screening for domestic violence and substance abuse.

**c. Educational Video/DVD**

This video/DVD would be made especially for parents about the mediation of custody and visitation cases and focus on the effect of divorce on kids. The video/DVD would be produced on a statewide level and could be adapted by each circuit with a judge introducing the video/DVD discussing the benefits of mediation. This would help to standardize what lawyers and judges say to parties.

**d. Party Education and Marketing of Mediation**

Party education is a multi-faceted approach to helping parties understand what mediation is and getting them to use it. Ways this is accomplished include:

- Train staff in self-help centers to educate mediation participants.
- Make brochures available everywhere: self-help centers, courtrooms, etc.
- Education, outreach and training should be done at every step along the litigation path (from pre-filing to referral to mediation).
Let people know that mediation is available well before they go to court. Marketing should be more community-based instead of just focused on current litigants.

Get input from the potential consumer as to why they do not trust or use the current process, how their trust can be gained and what they need from the process.

e. Explanatory Brochures
Provide explanatory brochures – thorough, on-line and in-print guides to all the services available in the state, that also include information about what mediation is, how to find and select a mediator, how to decide whether to mediate a case, etc. – that are targeted to poor and low-income litigants. The back page of the print version would be left blank so local jurisdictions could print information about who to contact locally for help.

5. Supportive Mechanisms – Advocacy in Mediation
Most mediation efforts focus on the supply side, that is, offering mediation services. But some efforts can also focus on the demand side by improving the use of or increasing the demand for mediation services. The following programs relate to some of the critical factors – case referral, client preparation, case processing and mediators – but not as much to others – funding, program administration, monitoring and evaluation. (They fall outside the IEJA because they do not involve establishing a dispute resolution center.) One important element is that legal services providers who are going to refer disputants to mediation have good knowledge of mediation in general and the available programs in particular and prepare the disputants as well as they can for it. They need to develop relationships with the mediators so they know what is happening in the program and how to interpret that to the disputants in the most helpful way. In the rare cases where a legal services lawyer is going to represent a client in a mediation, the lawyer needs to develop the somewhat different set of lawyering skills needed for advocacy in mediation. In the more likely situation where a disputant has been referred to mediation, the critical factor of case processing comes into play. The program must be established in such a way that referred parties are tracked and supported in their mediation endeavors.

a. Limited Appointment Settlement Project
In a Limited Appointment Settlement Project lawyers work pro bono only for the purposes of attempting to help pro se disputants settle their cases in settlement conferences before judges. This assists the parties in getting a realistic view of their cases and assists the courts and opposing counsel in making settlement conferences run more efficiently. This type of program currently is being piloted in the U.S. District Court for the Northern District of Illinois.

b. Mediation Advocacy Training – Legal Aid Lawyers
Mediation advocacy training for legal aid lawyers assists them in knowing when and how to utilize existing services. If it is presented in part by local mediators, it can be an avenue for clarifying questions outside of individual cases and making the mediation system operate more smoothly. It can be adapted for use in situations where lawyers do
or do not actually attend mediations (since they do not usually attend family mediations.) Lawyers are being trained as mediation advocates in some law schools now. Northwestern Law School, for example, has an advanced program in this area.

c. Mediation Advocacy Training – Private Lawyers
Free mediation advocacy training in exchange for private lawyers agreeing to represent poor or low-income clients in mediations is a way to develop more, better-quality services. It would work best in the context of an existing program so that the lawyers continue to provide services following the agreed upon duration of their service.

The preceding are some of the many service delivery models and supportive mechanisms. Some are direct mediation services and others support the delivery of direct mediation services. Together, they address the critical factors of funding, case referral, client preparation, case processing, mediators, program administration, monitoring and evaluation. And together they paint a colorful picture of what mediation could be beyond the simple black and white model that is described in the Illinois Equal Justice Act.

Finding
If mediation is to truly serve poor and low-income disputants in Illinois, there are many ways beyond the basic mediation model in the Illinois Equal Justice Act that must be utilized.
VI. BLUEPRINT – TYING IT ALL TOGETHER

This final section will bring together the earlier sections of the Study, present Study findings, and provide a blueprint of key considerations for the Foundation to use when determining whether, and if so how, to expand beyond the current model of mediation services for poor and low-income disputants in the state.

A. Review of Study
This Study reviewed the legal needs of poor and low-income disputants in Illinois and found that many of those needs, including some of the most pressing (e.g., family, housing and consumer) are particularly amenable to being addressed through mediation. It has reviewed the statutory and court rules for ADR in Illinois and found that while there are laws and court rules that provide for mediation programs, especially for family mediation, they have limited provisions for exactly how poor and low-income disputants will be served. In general, there are still some gaps in the overall legal structure for mediation in the state. Nonetheless, there is sufficient structure that, were funding available, almost any program could be implemented thanks in large part to a combination of the Uniform Mediation Act and Supreme Court Rule 99.148

Surveys of legal services providers found that while there is not a high level of education, training or experience with mediation among their ranks, there is sufficient acceptance of and even enthusiasm for mediation that programs that include education and training of legal services staff could be attempted with reasonable expectation of success. The enthusiasm of the participants in the gatherings around the state – legal services lawyers, private sector lawyers, judges, mediators, and academics or social service professionals – certainly bears out the belief that communities across the state are interested in developing programs, if supported with enough expertise and financial backing.

Based on the list of service delivery models and supportive mechanisms presented above, there are many creative ways that mediation can be a path to justice for poor and low-income disputants in Illinois. There are some barriers to that effort that would need to be addressed, but there are also several significant factors that stand in support of it.

B. Study Findings
The Study findings are as follows:

Finding 1
Mediation provides many viable paths to justice for poor and low-income residents in Illinois.
This central finding is the heart of the study.

Finding 2
Provision of mediation services to poor and low-income disputants across Illinois is uneven.
This finding reflects the nature of actual provision of services. While there are many examples of mediation, there are few examples of the depth of services needed or of the many types of possible services discussed in this Study to serve the specific needs of poor and low-income disputants.

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.
Whether it is scheduling mediations for a time of day when fewer poor and low-income parties need to take time from work, educating mediators about the life issues facing poor and low-income residents, or designing programs to address the most pressing needs of poor and low-income disputants, there are ways to make mediation programs more responsive to the needs of this group of disputants.

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.
With the plethora of service options, the goal is to find what is best for a given community and its needs and local resources.

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.
Numerous models for delivering mediation services and services that support mediation have been presented in this Study. Clearly there is a match between many of the most pressing kinds of problems poor and low-income residents face and the kinds of issues mediation is most well-suited to address. Nonetheless, given that environment and that match, there are not abundant mediation services in place and being utilized by poor and low-income disputants. In large part, mediation is not being used extensively by people of means in Illinois, either.

Finding 6
Most mediation programs for poor and low-income disputants should be focused on family, housing and consumer cases.
These are the types of cases for which there is a high correlation between a high level of need for assistance among poor and low-income disputants and cases being highly amenable to mediation. Therefore, these are the cases upon which most of the resources should be focused.
Finding 7
If there are other case types for which mediation can be provided efficiently, then programs for them also should be considered.
   Certain local factors can support the efficient provision of mediation services for particular types of case.

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.
   The new ways to think about how mediation and legal services can work together are increasingly sophisticated and demanding of participants from both the legal services perspective and the mediation perspective, but they have the potential of providing a new depth of services that can meet the needs of poor and low-income disputants in a more complete way.

Finding 9
If mediation is to truly serve poor and low-income disputants in Illinois, there are many ways beyond the basic mediation model in the Illinois Equal Justice Act that must be utilized.
   Along with working more effectively with legal services, there are other ways in which mediation models can and should expand beyond the model found in the Dispute Resolution Center Act. For example, some will pay mediators instead of using volunteers, some will be housed in courts or other venues rather than 501(c)(3) organizations, while some will provide services that support mediation, such as education or training, instead of direct mediation services.

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.
   Assuming that this new approach of helping more programs to bloom across the state is implemented, the next logical question will be why they bloom. Naturally some will not bloom, and it will make sense to ask why they have faltered. In order to be able to answer these questions, the programs must be monitored and compared.

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.
   A looming question is what it would take for these new programs to be implemented. If they are a good idea and they have not happened before, there must be reasons. The barriers found in the Study are a lack of technical support, staffing, education & training, funding, and legal services and mediation working
together. The latter was discussed above. With funding and leadership, many of the others can be addressed.

Taken together, these findings sum up the importance behind what is happening in Illinois and around the country and what possibilities exist in Illinois to use mediation more wisely in the cause of justice for poor and low-income disputants. The next question is what would need to be considered if that were to happen.

C. Vision
To develop key considerations for the future based on these findings, those considerations must be set in the context of a vision for how mediation could serve poor and low-income disputants in the state. That vision could be:

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.

The success of this vision would be based upon a number of factors:

- In most circuits the vision may require two programs: one for family issues and one for small claims issues, which may or may not be conducted by the same entity.

- Disputants using these services would be supported with legal advice or information as needed so that poor and low-income disputants could participate in them meaningfully.

- Legal services providers, mediation services providers and courts would work together to provide seamless services to poor and low-income disputants.

- Legal services providers would receive training in mediation advocacy approaches to make best use of mediation services for their clients.

- Marketing and education processes would be used to ensure that poor and low-income disputants were made aware of mediation services and best prepared to use the services.

- These programs would be guided and supported in their monitoring and evaluation of their activities.

- There would be sufficient financial support on a statewide basis to develop and sustain these mediation services and supportive activities.
Implementing that vision would also require a significant shift from the current situation where:

- Six of 102 counties in the state have small claims programs (one of which is small claims and eviction) that address some consumer and housing issues (see Appendix 9, Family and Small Claims Mediation Programs Listed by Circuit).

- Twenty of 23 circuits (including Cook County) have rules for custody and visitation mediation programs in place, but about half those are newly created under Supreme Court Rule 905, the various plans to meet the needs of poor and low-income families to address those needs are untested, and there are no monitoring systems in place to determine if they do meet the needs of poor and low-income families.

- There are no systematic linkages between mediation programs and legal advice and information systems – although there are legal advice and information systems in place in many areas around the state.

- There are extremely limited monitoring and evaluation systems in place for just a few of the existing programs – although some information systems have been piloted and there is nationally-recognized expertise available in this area in the state.

- There is not sufficient funding available to develop the programs that would implement this vision.

D. Key Considerations for a Plan to Implement the Vision

If the vision were to be implemented and poor and low-income disputants were to be enabled to access mediation to resolve their legal problems, certain key considerations would be involved in that process.

The key considerations can be grouped in three general areas:

1. How to build **statewide capacity** to support a culture of mediation
2. How to build **local capacity** to deliver mediation services
3. How to **evaluate** these efforts to assess their effectiveness

All of these would work together to build and assess a system of mediation services circuit-by-circuit and statewide to meet the needs of poor and low-income disputants.

Carrying out this vision would depend on leadership teams at the statewide and circuit levels.

- On a statewide basis, there would be a leadership team responsible for coordinating, promoting, supporting and evaluating the mediation activities of all the circuit programs around the state. Membership in the statewide leadership
team would be drawn from top leaders among judges, legal services providers, bar associations, mediators, court ADR professionals, funders and others. This team would have a special evaluation component to assist and track the local teams in their monitoring and evaluation efforts and to produce statewide evaluations of the effort.

- On a local basis, each of the 22 circuits outside of the Circuit Court of Cook County (which is not addressed in this study and so would need to be addressed separately) would establish a leadership team responsible for the planning, promotion, implementation and evaluation of its mediation programs. These teams would be composed of leaders from courts, legal services, bar associations, social service agencies, law schools, other academics, mediator organizations, and other potential participants in the mediation program. They would research program options, make connections for the program, ensure that commitments were made and followed through, write court rules, make contacts with funders, prepare for trainings, promote the program in the community, and more. Each circuit’s leadership team also would be responsible for ensuring that the local program was monitored and evaluated and for working with the statewide evaluation effort to collect comparable data from around the state.

1. Key Considerations in Building Statewide Capacity

   The provision of mediation services for poor and low-income residents relies, to some extent, on the overall availability of mediation services. Implementing this would be the overall responsibility of the statewide leadership team.

a. Statewide Planning and Evaluation

   The statewide leadership team would have four sets of responsibilities. One would be to represent the interests of mediation for poor and low-income disputants throughout the state and especially to those with power and influence. The next two would be to design a vision for the state and then to be the guiding, directing force for local mediation activities that serve poor and low-income disputants throughout the state. The fourth would be to lead the evaluation effort for the state and to provide expertise to the local programs in their evaluation efforts.

   **Representing Mediation**

   While mediation has enjoyed dedicated and recognized leaders over the years, there have been no “marquee names” that have lent their power and stature to mediation of cases involving poor and low-income disputants. If the statewide leadership team were to be led by someone with high name recognition who was dedicated to seeing the vision of access to justice through mediation become a reality, it could improve the likelihood of success of this venture. The team itself would need to have people with dedication and power to enable change to happen, as well as the ability to motivate others in the state to change the way that law is practiced. Importantly, the team also would need individuals with operational expertise about how mediation and legal services work, as well as well-developed evaluation expertise.
**Vision**
The statewide leadership team would create a vision for the state of what is to be accomplished through mediation to meet the needs of poor and low-income disputants. It would take into consideration the needs of poor and low-income litigants, the barriers to mediation, the various models of mediation, the geographic variation throughout the state, the statutes and rules that are in place, the types of support that are available, etc.

**Guiding and Directing Local Initiatives**
To accomplish the vision, the statewide implementation plan would be developed based on the collected assessments from the circuits, an assessment of the attitudes toward mediation as a path to justice for poor and low-income disputants among judicial leaders at the top of the judiciary in the state, and the statewide leadership team’s own knowledge and expertise. The statewide leadership team also would work to ensure that the statewide support efforts, such as marketing or training, were cost-effective and that they were cost-effective relative to the cost and effectiveness of local efforts. The statewide leadership team also would be responsible for motivating and following up with every circuit to review its progress toward attaining the vision.

**Statewide Evaluation**
The evaluation component of the statewide leadership team would design a plan to monitor what was happening in every one of the 22 circuits in the state outside Cook County and assist each circuit in implementing that plan so that there would be statewide monitoring of the overall effort. This monitoring would produce regular reports on what was happening in each circuit. There also would be a more complete evaluation of information, which would review gathered information, collect additional data, analyze the data and determine the effectiveness on several measures of program performance. The main responsibility for designing these tools and measures and for conducting analysis would be on the statewide level, while the responsibility for data collection would be on the circuit level.

**b. Key Considerations**
To develop statewide capacity to provide mediation services to poor and low-income disputants, the key considerations would be the following:

- Who the statewide leaders to champion mediation would be
  - Who the court leaders would be and what roles they would play
  - Who the other civic and political leaders calling for mediation would be and what roles they would play
  - Who the legal services leaders would be and what roles they would play
  - Who the bar leaders would be and what roles they would play

- Where funding would come from
  - Whether the Illinois Equal Justice Act needs to be amended to allow for more flexibility in what types of mediation programs are funded
  - What role the court might play in funding
  - Whether there are other sources of funding and, if so, what they are
What staffing is needed to inculcate mediation more thoroughly and give it a sound structure in the state
  o Whether there is a need for a Statewide ADR Coordinator to provide technical assistance to aid people around the state in planning, developing, monitoring and assessing their ADR programs
  o Whether there is a need for a Statewide Mediation Data Monitor to collect and disseminate reliable information about the performance of mediation programs around the state, assist local programs with statistical monitoring, conduct statewide evaluations of the mediation efforts, and create a web site with data from all the mediation programs.

How statewide or regional advocacy training would be provided to develop awareness of mediation and how best to utilize mediation

What roles legal services would play in reaching their staff members

What these key considerations mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:
Only with a statewide support system can the vision of the State of Illinois filled with opportunities for poor and low-income residents to mediate their disputes in every circuit be realized. These key considerations would shape that system to make it efficient and viable long-term.

2. Key Considerations in Building Local Capacity
The provision of mediation services relies on local resources as well. There must be a local leadership team in the circuit that is responsible for carrying out the vision in the circuit.

a. Local Planning and Evaluation
Each local leadership team would begin with a series of assessments. The first would assess what mediation and legal services resources are available in the circuit to meet the most pressing legal needs of poor and low-income disputants and what is available on a statewide basis to assist in meeting those needs. The next assessment would determine where the local legal community stands in terms of mediation culture and what steps should be taken to shift to a more mediation-focused legal culture. This would be focused not only on poor and low-income disputants, but on all disputants, so mediation becomes an integral part of the way law is practiced and is not stigmatized as just something for poor people. The third assessment would be a determination as to what partnerships are in place or should be established between key stakeholders, e.g., courts, legal services, social service agencies, law schools, bar associations, mediator organizations and other potential participants in the mediation program, to support mediation. This would include a determination as to whether the circuit is a good candidate for a Stepping Stones Model experiment.

Based on those assessments, the next step would be to decide which type of local service delivery model would be most effective in the circuit in addressing the legal needs of
poor and low-income disputants and making use of available resources in realizing the vision of providing accessible mediation services to poor and low-income disputants. This decision would be based on a thorough review of the service delivery models, the available resources (human, financial, legal, etc.) and the sense of what needs are being met and what needs still are the greatest in the local area.

One of the keys to success would be the partnerships that sustain the mediation programs – both the maintenance of existing partnerships and the development of new partnerships. Successful programs would exhibit genuine partnerships among multiple entities with a high priority on establishing and nurturing:

- new partnerships, as well as those already in place
- partnerships with those outside the usual legal services/court/bar universe, as well as the legal base
- partnerships between mediation providers and brief service providers, e.g., self-help desks, phone hotlines, and on-line providers to develop informed referrals, as well as those who provide more traditional legal representation

The local leadership team, with advice from the statewide team as desired and needed, would design the local program plan. An integral part of that plan would be the program monitoring and evaluation systems, which would also be locally adapted versions of the statewide program. This local adaptation would be accomplished with assistance from the statewide leadership team’s evaluation component.

b. Key Considerations
To develop local capacity to provide mediation services to poor and low-income disputants, the following would be key considerations:

- How to implement the most effective forms of local mediation programs for the most pressing types of cases – family, consumer and housing
- How to utilize existing mediation programs for cases for which there are available mediation services, such as special education and discrimination
- How to develop and assess an experimental implementation plan for the Stepping Stones Model
- How other efforts supportive of mediation, such as a marketing plan, party education videos, and brochures, should be developed in each circuit
- Whether other dispute resolution efforts, such as med-arb for setting child support amounts, should be adopted in specific locations based upon need and resources, and if so, how
What the relative amount of efforts are for direct mediation services as compared to supporting services, such as education and training

How well a local vision is developed to implement the statewide vision

**What these key considerations mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:**

The local services are the heart of the realization of the vision of each circuit offering opportunities for the most pressing legal needs of poor and low-income disputants in Illinois to be addressed in part through mediation. These key considerations would determine how that vision is realized.

3. **Key Considerations in Evaluating the Efforts**

Each of these efforts to build statewide and local capacity should be monitored and evaluated so that its impact could be assessed and a determination made as to whether to continue, amend or stop the project. Some of these are focused for use at the statewide or the local level and some can be used for both, especially when local information is consolidated.

- Key considerations for how mediations would be evaluated would be procedural justice measures for the participants (e.g., whether they feel that they had a voice in the process), as well as efficiency measures for entities such as courts and legal services (e.g., whether the process was effective in terms of time and cost).

- Key considerations for evaluating statewide coordination activities would be how many activities were accomplished and how many new mediation programs were implemented. Mediation programs can take one to three years to launch, so evaluation criteria would need to be based on activities in preparation for new programs, as well as new programs established.

- Key considerations for evaluating advocacy in mediation, training, and party education would be whether the participants felt that they had learned new skills that would assist them in the tasks before them (e.g., lawyering and parenting), whether the professional participants were better able to work together following the training (e.g., how to use the Stepping Stones Model), and whether they had a better grasp of mediation (if judges were better able to refer parties to mediation.) Assessments could also be made as to whether these skills and abilities actually improved, too.

- Key considerations for evaluating partnerships between mediation programs and legal services programs in the Stepping Stones Model would be how many cases were referred to mediation, how many were mediated, how well-prepared the disputants felt, how smoothly the mediation and legal services entities assessed the program as operating, and perhaps the outcomes of mediation compared to outcomes of other processes, such as pro se litigation.
What these key considerations mean in terms of mediation as a means of accessing justice for low-income disputants in Illinois:

By incorporating assessment into the life of the mediation activities for poor and low-income disputants in Illinois, the integrity of the system is protected and its ability to be responsive and flexible is enhanced.

Taken together, a statewide effort that supports local programs to provide a range of services that are predominantly focused on direct mediation services to resolve disputes involving poor and low-income residents could be a powerful partner with legal services in the state, especially when paired with an evaluation component to assess how effective the programs are.

E. Key Considerations for the Development of Service Delivery Models

The local leadership teams, and the statewide leadership team to a lesser extent, would accomplish much of their work through the use of service delivery models. For the development of each group of service delivery models – mediation models, supportive mechanisms, the Stepping Stones Model, models other than mediation, training & education models, and advocacy in mediation models – there is a set of key considerations. They are outlined below. The most important consideration for any activity is how effective and efficient it is in accomplishing the vision.

1. Mediation Models

Some of the mediation models are much like the IEJA model, but differ in at least one key respect, such as whether mediators are paid. Others are different in many respects, such as not being administered by a 501(c)(3), not utilizing volunteers and not having a peer review program. Some models will fit the needs and circumstances of a particular locality, while others may be more appropriate in another. In all cases, a number of questions should be asked prior to implementing a program to make it the most effective and efficient possible.

What would be the key considerations for implementing mediation programs?

- What type of program should be selected for a particular circuit, e.g., if a location has a strong mediator roster, a system that requires some unpaid mediations from roster mediators might work, or if a location has a strong helpdesk and phone help for legal information, a Stepping Stones Model might be a good idea

- How effective and efficient the program would be in accomplishing the vision

- What resources would be required for mediation to be an effective vehicle for poor and low-income residents to access justice in a particular setting

- For what types of cases there is the most need for assistance, how many parties have this need on a regular basis and whether mediation is the best tool in this situation
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- Whether the program would mediate enough cases relative to the investment of resources to make the programs worthwhile
- Whether the program would have access to enough quality mediators to provide mediation services
- How the program would assure the mediations would follow the requirements of confidentiality, voluntary resolution, party self-determination, informed decision-making, etc.
- How the program would nurture the skill development of the mediators
- How the programs would make meaningful connections between mediation providers, legal services providers, courts and the wider community that allow full participation in the mediation program
- How the programs would provide information to poor and low-income disputants in order to enable them to participate meaningfully in mediation

After a program is established, these questions would be used as guides for maintaining and assessing the program. Instead of asking how something would be done, the question would be whether it has done so. For example, an assessment of the program would include whether the program has provided sufficient information to poor and low-income disputants for them to participate meaningfully in mediation, or whether the program has nurtured the skill development of the mediators in a significant way.

2. Stepping Stones Model
The Stepping Stones Model seeks to combine the best of legal services and mediation. Ensuring that this model best serves poor and low-income disputants, a number of issues should be addressed.

What would be the key considerations for the Stepping Stones Model?

- How the model as adopted would work toward accomplishing the vision
- How effective and efficient the program would be in accomplishing the vision
- How the program would establish meaningful connections between mediation providers, legal services providers, courts and the wider community
- In what way the program would provide information to poor and low-income disputants that enable them to participate meaningfully in mediation
- In what way the program would create a system that assists parties, and tracks them, as they navigate between receiving brief service, mediating and dealing with the courts
In what way mediators would be given roles that allow them to remain neutral in the midst of a process that provides legal information to disputants

How to assure that the two-party stepping stones model works equally well for both parties

After a pilot program has been established, it will be essential to maintain and assess its effectiveness. The above questions would be used as guides to do so.

3. Ideas and Processes Other Than Mediation
Some ideas and processes are not mediation, such as med-arb, or are in support of mediation, such as technical advice, evaluation or staffing support for mediation throughout a circuit or a county. Nonetheless, they can be crucial to the access to justice for poor and low-income disputants.

What would be the key considerations for these ideas and processes other than mediation?

- How the programs would support accomplishing the vision
- How effective and efficient the programs would be in supporting the vision
- How the programs would establish meaningful connections between mediation providers, legal services providers, courts and the wider community
- How the programs would provide information about mediation within the legal community (e.g., courts, legal services, etc.)
- How new mediation programs or the foundation for new mediation programs would be developed
- How existing mediation programs and the people who participate in them would be supported and/or increased
- How qualified staff would be identified, hired and evaluated
- How mediation programs would be monitored to gather meaningful information
- How information would be disbursed from mediation programs so that it can be used by other mediation programs in the most useful manner
- How approaches other than mediation to resolve disputes involving poor and low-income disputants would be developed, maintained and/or expanded

After a program is established, these questions would be used as guides for maintaining and assessing the program.
4. Training and Education
Mediation on its own, without educating those who would use it as parties, advocates, referring judges or neutrals, is not going to succeed. Mediation must take place in an environment of informed participation.

What would be the key considerations for training and education programs?

- How would the programs support accomplishing the vision
- How effective and efficient the programs would be in supporting the vision
- How all participants (legal services and mediation providers and judges) would be taught to respect each part of the process (legal advice, mediation, court)
- In what way legal services clients would be enabled to make informed decisions
- In what way legal services clients would be empowered to act with self-determination
- Whether the financial outlay would be worthwhile
- How effective a statewide marketing effort for mediation would be as compared to local efforts and how this would be determined
- How the skills and substance would be taught
- What qualifications would be required for trainers who conduct complete mediation training as compared to brief training sessions for judges and parties
- How a marketing plan would be developed and implemented and by whom

After a program is established, these questions would be used as guides for maintaining and assessing the program.

5. Advocacy in Mediation
Learning how to advocate in mediation, or even how to prepare a client to attend a mediation without representation, is a different set of skills from other kinds of advocacy.

What would be the key considerations for advocacy in mediation programs?

- How the programs would support accomplishing the vision
- How effective and efficient the programs would be in supporting the vision
- What experience and credibility trainers would have in both mediation and legal services for these programs
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- How mediation providers and legal services providers would work together in a meaningful manner based on this program
- How legal services clients would be enabled to make informed decisions
- How legal services clients would be empowered to act with self-determination
- Whether sufficient actual mediation clients would benefit from these programs
- Whether the settings in which advocates are using the skills from these programs would be those of significant need
- Whether there would be any ethical concerns related to limited appointment lawyers for settlement conferences
- What credentials would be needed to train lawyers to advocate in mediation
- What resistance might arise to advocating in a different way in mediation

After a program is established, these questions would be used as guides for maintaining and assessing the program.

F. Successful Implementation

The goal of these key considerations and implementation steps is to determine which activities make significant contributions to the resolution of the legal issues of poor and low-income disputants relative to other activities. Together, these actions will build toward the realization of the vision of a state where poor and low-income disputants have access to mediation services that allow them to resolve their disputes in humane, timely, cost-effective and sometimes creative ways.
VII. CONCLUSION

One participant in a gathering for the Study quite eloquently said: “We, as society, take away people’s responsibility to self. There are people who do not know how to become responsible for their own welfare, to take control, but want to. Mediation would really help them do this.” After everything that has been said in this Study about the legal landscape, experiences and attitudes toward mediation, key considerations, and so on, that point may have gotten lost, but that is the gist of this Study. Mediation does not just offer another way to make a legal problem go away. Sometimes for parties it offers the opportunity to take responsibility. Sometimes it offers the chance to sit down face-to-face with the person they feel has wronged them. Sometimes it’s the chance to work out the times when they’ll see their kids. In any of these situations, it can be the chance to take control of their own lives.

At its core, mediation is an effective way to resolve legal issues for poor and low-income disputants, but there are many more ways to get that done than by opening and supporting community mediation centers alone. Mediation is being provided through courts, bar associations and law schools across the state, but much more needs to be done if the vision of mediating the cases for which there is great legal need and that are most amenable to mediation – family, housing and consumer – is to be attained. More programs, more staff, and more training and marketing. Strong support so that everyone in the state has expert guidance. An interplay between legal services and mediation so that disputants have an opportunity to gather legal information before they go to 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.
Appendix 1

Notes on Gatherings around the State

- Carbondale – 14 participants, 2 CAADRS staff – July 25, 2006
- Rockford – 19 participants, 2 CAADRS staff – November 1, 2006
- Bloomington – 6 participants, 2 CAADRS staff – January 4, 2007

GATHERING PROCESS
The lists for each gathering were created from a base of people Susan Yates, the CAADRS Executive Director, knew over the years in each location. She then asked key people to help add names in categories (judges, lawyers, mediators, and academics) to round out the list. For the most part, everyone attended if they were in town. In one circuit there was some trouble getting return calls from some of the judges, so former Judge Harris Agnew made calls to them. With his assistance, there was almost 100% turnout. Making personal calls also provided input before the meetings. After each meeting, the executive director wrote to each of the participants to thank them; this generated yet more information after each meeting.

These notes summarize the input received from the three gatherings. Some are nearly direct quotes while others are simply summaries. They have not been edited for whether CAADRS agrees with them. They are simply an organized presentation of our best recollection of the highlights of what was said. A few clarifications or observations are added in [brackets.]

IDEAS FOR MEDIATION PROGRAMS
Because Rule 905 requires that all family cases go to mediation, one circuit required mediators on their roster to do pro bono work beginning January 1, 2007. To accommodate this, one idea was to set up a system in which pro se/poor litigants get sent to staff person who schedules cases to be mediated on site. There will be time slots during which pro bono mediators will be available. The cases are inserted into the open time slots. This might be an opportunity for law students to observe experienced mediators.

Have law students mediate. There is a big resource in law students. Currently, students from NIU are only mediating visitation issues in never-married parent cases. They could do the same thing in divorce court as they do in family court — mediate visitation. There are a lot of pro se cases that take up a lot of judicial time. (But there was some concern about how many cases involve custody as well as visitation.)
All three gatherings suggested a pool of funds to pay their existing panels of mediators to mediate custody and visitation cases with indigent clients. As one Chief Judge put it, I have a program (for custody and visitation) with trained mediators and an established system. I just need money to pay mediators (for poor and low income clients.) Neither county board nor Supreme Court is going to pay for it, and I can’t raise filing fees enough to pay for it.

- In one circuit a mediator pointed out that they might need to grow their mediator roster to be able to address all the cases under Rule 905.

Small claims mediation programs for the usual types of cases such as housing (e.g., minimum rent obligations, violations of leases, and domestic violence concerns involving landlord/neighbors) and consumer and senior disputes (e.g., issues with contractors and seniors), but also for special types of cases such as the circuit that has a small claims call two and a half days a week, mostly for collections disputes involving hospitals.

Integrate mediation in the community for all uses (in the same way the local help-line in Bloomington (PATH) is), so that it is an option/or people think of it for all kinds of disputes, like school disputes, as well as traditional legal disputes.

Look at processes other than mediation.

- One idea was to get time-sensitive cases, like establishing child support amount, resolved through med-arb. Attorney mediator thought local lawyers would do this at 4:00 or 4:30, which would be more workable time for parties, too. Legal services lawyers liked the idea of clients getting this established more quickly. Mediator thought low income parties would like this because they would be less rushed in the process, and also get their case dealt with sooner. There could be some kind of opt-out clause, too.
- An idea from another gathering was to use binding arbitration for housing cases involving injunctive relief (such as getting landlords to make repairs). Problem: how to get the landlords to arbitrate.

Judicial mediation was suggested for dependency cases and maybe for never-married parent cases as well.

Stepping stone: [During the course of the three gatherings, I developed the idea that mediation and the other approaches to accessing justice — direct representation, self-help desks, call-in assistance, and on-line assistance — could be considered as a whole, rather than as separate ideas. So, someone with a problem might go to any one of these sources and then through mediation to access justice and resolve their problem. The question remains how to connect the resources.] They all thought my stepping stone idea made sense, but no one had ideas about how exactly it would work.
Need someone who can really manage the ADR program – who is both case manager and administrator. Duties would include coordinating CLEs for mediators, manage process for cases, debrief mediators, ensure that all reporting is done, track statistics, and so on.

Legal services could create a pro bono roster made up of private bar attorneys who mediate. This is a lot of training – would be hard to get private bar to go through 40 hours of training for pro bono work. Might be expanded to be lawyers and others.

Use small claims mediation, in which mediation is on site and at the time of call, as a model for other types of cases. This would be more likely to get people to participate.

Mediate child support arrearages. These are already being facilitated. Difference: facilitators can give legal advice and mediators cannot (although this was disputed).

Mediator training was suggested, especially in terms of training to have a better understanding of the substance of conflicts.

Advocacy training was suggested for all lawyers. A few hours of when and how to use mediation would be good training for any lawyer. It could be CLE. [Training could be adapted especially for legal services lawyers who would not be accompanying their clients about how to prepare them.]

General consensus in one gathering was that educating the parties about mediation prior to mediation was really necessary and that a video was a good way to do that.

- Need to have a video that talks about the mediation of custody cases and on the effect of divorce on kids. Video could be by the state, with adaptation for each circuit w/ judge saying how good mediation is.
- Education re child rearing is important, too.
- Lawyers and judges are the ones who talk about mediation to the parties- there is great difference in what they say and how much education is involved.

Another gathering also discussed party education extensively with the goals of getting parties to use it and having them understand what it is before they get to mediation. Ways to accomplish this included:

- Expecting the Self Help Center to educate mediation participants.
- Making brochures available everywhere: Self-Help Center, courtrooms, etc.
- Education, outreach and training should be done at every step along the litigation path (from pre-filing to referral to mediation).
- Need to let people know that mediation is available well before they go to court. This is marketing issue – the market is the world because everyone is a potential litigant.
- The court has a potential consumer who doesn’t trust the product. Have to build the trust. Can’t just do that by saying “this is what mediation is and this is how you get there.” Need to get input from the potential consumer as to why they don’t trust, how their trust can be gained and what they need from the process.
One idea was to have someone give legal information to parties before they went into mediation about what income they did not have to give up in a judgment so they did not give up something they did not have to give up.

One group defined the types of cases that should be mediated as: custody and visitation (including post-divorce); landlord/tenant — eviction, lockouts, shutting off utilities, habitability, pre-filing; small claims/consumer — car loans, car repairs, rental of furniture or appliances, predatory lending; elderly — guardianship, breach of fiduciary duty, property disputes; financial issues in divorce; and education issues — expulsion, suspension, provision of services.

Mediation programs should primarily be provided through the courts. They could work with bar associations and law schools and with state agencies like DCFS or Health and Human Services, but the court will have to be the primary source of most cases. The legal services providers will also have to be on board, but they will have to have an indirect role because they are advocates. They could not house a program.

[Talking with people who were responsible for trying to implement mediation programs, it was clear that they would benefit from technical assistance to aid them in areas such as planning and implementing case referral systems, maintaining relationships with referral sources, and establishing policies for providing legal information to parties.]

**Barriers to Mediation**
The unfunded mandate of Rule 905 requiring mediation for all custody and visitation cases is a burden, even for those courts that support mediation, because they don’t have the money for mediators.

(A) Many, if not most, of the custody and visitation cases involve domestic violence, so many legal services lawyers see mediation as inappropriate for the vast core of legal services family cases.

Need to figure out how to do mediation in really rural counties.

(B) One judge said that mediation program works very well in the civil area because money is involved, but it is not as good in the family area [because there are additional issues.]

Whatever kind of mediation program is in place, there is some staff time needed to run it.

(C) What about all the cases that never reach the courthouse? They won’t get to mediation either because the other side won’t come.
[There are barriers not just to mediation, but between the groups represented at the gatherings. While for the most part people knew one another, at all three gatherings, people said that they appreciated the opportunity to spend time with people with whom they do not usually work and to get to know others better. Sometimes there was even a subtle lack of warmth or collegiality between the legal services lawyers and the judges. Overcoming these barriers in building mediation programs would be good for the overall health of local communities.]

Judges have identified family law as the area of greatest need for mediation. This is also the area that requires the greatest amount of time, skill and training to mediate.

One gathering brainstormed a list of barriers to mediation. [Interesting, the list is barriers to mediation in general, not just to mediation for low income parties.]

- People who would benefit from mediation don’t know what it is. Don’t know how it would benefit them, so they reject the opportunity to mediate.
- Many said it would be best to divert cases to mediation before they’re filed. However, others noted that the problem is getting people, especially the second party, to mediate if there is no coercive power, as there is in the court.
- Need to get the case flow and the mediators together. Often, the mediators are available, but there are no cases.
- Many pro se divorce cases are not getting to mediation even though mediation is mandatory.
- Everything in Illinois seems to be set up county by county. This seems inefficient and ineffective.

**Support for Mediation**

There were positive attitudes toward mediation as a good way to resolve the top kinds of cases in the Legal Needs Study.

One judge said she asked for mediation of forcible entry and detainer cases because mediation allows for flexibility, whereas she would have to apply the law.

At two of the meetings there was an expression that there was a “culture of mediation” in the local circuit, at least in terms of divorce mediation in one circuit, and more broadly in another. This means there is something strong to build on in some places.

(A)Because mediation is so well-evolved in family cases, and those are the biggest burden on legal services, there is a real potential for mediation to assist legal services. That might be in cases that do not involve domestic violence, or through some specialized program for cases that do.
Accessing Justice through Mediation

(B) Judges refer all issues in divorce cases to mediation in the same circuit as the judge above under “Barriers” who doesn’t believe family mediation is effective. And in another county in the circuit, they have tried some child dependency mediation.

Because mediation gives litigants the opportunity to learn and change their attitude in addition to talking about the consequences of their actions, it is especially good for situations involving domestic violence, according to one social services person who has worked in this area extensively.

Mediation can provide immediacy that litigation cannot.

Mediation is useful because parties learn from it and it can help reduce the court’s backlog.

(C) The cases that don’t reach the courthouse are often the perfect ones for mediation, if there is a sufficiently well-respected, well-known mediation program in place that both parties will respect and try (for cases such as small claims.)

A participant said: We, as society, take away people’s responsibility to self. There are people who don’t know how to become responsible for their own welfare, to take control, but want to. Mediation would really help them do this.

ISSUES RAISED

By designing a mediation program focused specifically on low income participants, will community services unwittingly become even more fragmented instead of pulling efforts together, as they should?

How mandatory versus how voluntary should mediation programs be? This included the question of incentives to participate.

- One judge said that in civil cases he left the question of whether to mediate up to the lawyers, whereas in another county in the circuit everything went to mediation.

How is a balance struck between mediators not being asked to mediate for free very often (how are they supposed to make a living?) and the indigent parties’ right not to pay for mediations? Some mediators strongly believe all parties should pay something if they can so that they value the service even though they have a right to pay nothing. In another circuit, a mediator (with a well-established practice) made the point that it was difficult to get mediators to do pro bono work when they were not even getting paid to mediate because mediation was not part of the culture yet. Someone else mentioned that sometimes parties who are represented by paid counsel are being sent to mediators for pro bono services.
Legal services lawyers were often concerned with their clients giving up their rights in mediation. They wanted programs that protected those rights. This led to discussions of whether mediators needed to be lawyers and the neutral roles of mediators. There was generally no resolution about how rights would be protected and neutrality maintained, but ideas about mediation programs that incorporated giving legal information outside the mediations were discussed.

- One idea was to have someone give legal information to parties before they went into mediation about what income they did not have to give up in a judgment so they did not give up something they did not have to give up.
- Another group did not look at the issue this way, but was clear that they wanted to have community members who were not lawyers (because they valued a wide range of community participation and saw mediation as an extra-legal approach to dispute settlement), as well as law students and lawyers, all volunteer in their mediation programs. They also thought some mediators should be paid to provide services.

What about the people who are just above the poverty guidelines? They are stuck in the middle, they don’t have a lot of time, and an on-going relationship is involved. They must go pro se. What can be done for them? There was real concern for them as they were unable to receive assistance and that they slowed the court calls because they did not know what to do in court.

Apart from mediation, sometimes pro se clients need more information about the case and the outcome because they leave the system thinking they’ve been taken advantage of because they don’t have a lawyer to explain what just happened in a ruling.

There are some issues with mediation and family law practice that relate not only to low income parties:

- Mediation has become a fact of life in family cases, but counsel still can’t or don’t explain what mediation is.
- Finality of some custody and visitation mediation agreements may be hampered by counsel not signing off.

In landlord/tenant cases, the landlords come in with an attorney, so the cases don’t get placed into the mediation program, which is only for pro se cases in that circuit.

**Other Points Participants Made**

Mediation programs need an incentive because people are often afraid of talking to the other side.

People think mediation is something that works for other people, but not for them. They don’t realize they need to put effort into it.

Mediation programs were discussed as good pro bono opportunities for lawyers (especially corporate lawyers) who are not litigators.
Parenting agreements are [sometimes] undone soon after mediation – before they are entered into the file. This is most likely lawyers nixing the agreement the parties reached. [This is not unique to low income cases.]

Mediation relates to parenting education:
- Article IX doesn’t require mediation to be part of parent ed class. People have to hear info on mediation more than once for it to sink in. Need to have multiple entry points for people to get into mediation because people don’t go to mediation unless they have to, which is generally after the dispute explodes.
- Parties don’t know how to communicate. Parenting classes only teach people how to fight.
- In one circuit there was great interest in using videos to educate parties about mediation.

Sometimes the gatherings got into the nitty gritty of program design, like where a mediation program should be located. Issues to think about: security, time the space is available (courts only open 8-4), authority or credibility site lends to mediation. What about a church basement, community center?

Mediation center in Minneapolis reached out to immigrant communities: trained community members to mediate cases of conflict in the community – neighbor cases, post-decree. This program recognized that immigrants often feel alienated from the court system, and mediation enhanced the capacity of the community to resolve its own problems.

**Special Issues Facing Low Income Disputants**

One group was asked specifically what issue they saw poor and low income disputants facing, especially in mediation.
- Poor people have low communication skills. Don’t know what mediation is. Can’t teach all that in two 2 hour sessions (parenting class).
- Poor don’t have planning skills necessary for mediation.
- Poor also don’t have phones, which makes scheduling mediation very difficult.
- In forcible entry and detainer cases, have one side that has money and therefore attorneys, and another that is poor and thus unrepresented. Parties with attorneys don’t want to mediate, so don’t reach agreement.
- The poor don’t have resources, no way to agree to things like how to transport the kids from one parent to the other because they don’t have a car.
- More difficult to schedule low income cases, but otherwise no difference between poor and non-poor.
- Poor have no life skills and other concerns — people who are wondering where their next meal is coming from are not interested in mediating. Mediation won’t be beneficial because they don’t have skills — is a waste of attorney’s time. Also, most legal services family cases involve abuse, and therefore should not be mediated.
Accessing Justice through Mediation

- Poor don’t have money to pay for mediation.
- Poor, low skilled people can’t work out custody — can’t work together. There are people for whom mediation just won’t work.
- Low income people only fighting over children (not money). Mediation is mandatory prior to temporary hearing. This isn’t good because it makes people fight through mediation, rather than be ready to deal. Need to wait until temporary order is in place.

**Other information**

In one circuit, the following information was reported:

- In custody and visitation cases, the court is ordering mediation on a sliding scale when appropriate. Sometimes mediators slide their fees on their own.
- Some custody and visitation cases with orders of protection are being mediated.
- About half of all mediations in small claims are for landlord/tenant cases. Other types are consumer and contract.
- DCFS does some mediation of appeals — but not tied to court.
Appendix 2
Gathering Participants

Carbondale Gathering Participants

Dee Blair
Southern Illinois University School of Law

Ann Coward
Legal Aid Attorney
Land of Lincoln Legal Assistance Foundation

Honorable Kimberly L. Dahlen
Circuit Judge
1st Judicial Circuit

Lynn M. Malley
Visiting Clinical Assistant Professor
Southern Illinois University School of Law

Michael W. Maurizio
Attorney, Michael W. Maurizio
Mediator, Mediation Association of Southern Illinois

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Attorney, O’Neill & Proctor
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Coordinator of Academic Success Program
Southern Illinois University School of Law

Honorable William G. Schwartz
Circuit Judge
1st Judicial Circuit

Andrew M. Weaver
Legal Aid Attorney
Land of Lincoln Legal Assistance Foundation, Inc.

Honorable William H. Wilson, Jr.
Circuit Judge
First Judicial Circuit
## Rockford Gathering Participants

<table>
<thead>
<tr>
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<th>Title and Details</th>
</tr>
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<tbody>
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<td>Director of Mediation Services, Center for Analysis of ADR Systems</td>
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<td><strong>Stephen Balogh</strong></td>
<td>Attorney, WilliamsMcCarthy, LLP, Mediator, U.S. District Court for Northern District of Illinois</td>
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<tr>
<td><strong>Honorable Joseph Bruce</strong></td>
<td>Circuit Judge, 17th Judicial Circuit</td>
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<td><strong>Honorable Rosemary Collins</strong></td>
<td>Circuit Judge, 17th Judicial Circuit</td>
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<tr>
<td><strong>Joe Dailing</strong></td>
<td>Executive Director, Illinois Coalition for Equal Justice</td>
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<tr>
<td><strong>Dennis Dorgan</strong></td>
<td>Consultant, Prairie State Legal Services</td>
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<td><strong>Lu Jenkins</strong></td>
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<td><strong>Honorable John Kennedy</strong></td>
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<td><strong>Keith Morse</strong></td>
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<td><strong>Mike O’Connor</strong></td>
<td>Executive Director, Prairie State Legal Services</td>
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<tr>
<td><strong>Leo H. Orban</strong></td>
<td>Deputy Administrator of Court Projects, 17th Judicial Circuit</td>
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<td><strong>LeRoy Pernell</strong></td>
<td>Dean and Professor of Law, Northern Illinois University School of Law</td>
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<td><strong>Linda Rothnagel</strong></td>
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<td><strong>David Taylor</strong></td>
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<td><strong>Wally Werderich</strong></td>
<td>Staff Attorney, Zeke Giorgi Legal Clinic, Northern Illinois University College of Law</td>
</tr>
<tr>
<td><strong>Honorable Kathryn Zenoff</strong></td>
<td>Chief Circuit Judge, 17th Judicial Circuit</td>
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</tbody>
</table>
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George Boyle
Managing Attorney
Prairie State Legal Services

Justice Jim Knecht
Appellate Justice
4th District Appellate Court

Cheryl Gaines
President/CEO
Collaborative Solutions Institute

Carol Reitan
Executive Director
Collaborative Solutions Institute

Don Hammer
Attorney, Hayes Hammer Miles Cox & Ginzkey
Family Mediator, 11th Judicial Circuit

Honorable Elizabeth Robb
Chief Circuit Judge
11th Judicial Circuit
Appendix 3
Illinois Mediation Programs with Reduced-Fee or No-Fee Services

Major Civil Litigation:

1st Judicial Circuit (Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, and Williamson Counties): The 1st Circuit Rule for Court Ordered Mediation provides that if “any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the court shall appoint a mediator who shall serve without compensation from any party to the action.”

12th Judicial Circuit (Will County): Rule 23.03(B) mandates that court-assigned mediators “perform one pro bono mediation per year.”

14th Judicial Circuit (Henry, Mercer, Rock Island, and Whiteside Counties): Part 25, Rule 4(B)(1) states that “each mediator shall agree to mediate two cases per year without compensation.”

16th Judicial Circuit (DeKalb, Kane, and Kendall Counties): Rule 12.03(B) states that “each mediator shall agree to mediate three (3) cases without compensation.”

18th Judicial Circuit (DuPage County): Rule 14.17(c) states “if any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the Court shall appoint a mediator who shall serve pro bono without compensation from any party to the action.”

19th Judicial Circuit (Lake County): Rule 20.03(b) mandates that each mediator “agree to mediate two cases without compensation.”

Domestic Relations:

Illinois Supreme Court Rule 905 mandates mediation for all contested custody and visitation cases. In response, almost all circuits have made provisions for no-fee or reduced-fee services for those who qualify.

Cook County: Marriage and Family Counseling Services provides mediation mandated by the court for contested custody and visitation disputes. Mediation is provided free of charge to the parties.

Families may also access mediation services free of charge through the Unified Family Court Pilot Project in the 5th District.

The Illinois Department of Public Aid has provided a grant to the Cook County Circuit Court for a program to mediate access and visitation disputes between never-married parents. Mediations are provided free of charge to the parties.
The Cook County Circuit Court and The Chicago Bar Association have enlisted the aid of matrimonial lawyers in informally facilitating the resolution of family disputes during three court calls per week, including those involving custody, visitation, child support, and property settlements.

The Center for Conflict Resolution mediates post-decree visitation disputes free of charge to the parties.

The Chicago Bar Association and the Center for Conflict Resolution have collaborated on a mediation program for fee disputes between attorneys and their clients in domestic relations cases. Mediation is provided free to the parties.

1st Judicial Circuit (Saline and Williamson Counties only): The Southern Illinois University School of Law ADR Clinic provides free mediation services for contested custody and visitation cases.

Additionally, mediators in the court's family mediation program are required to accept one no-fee case per year.

2nd Judicial Circuit (Crawford, Edwards, Lawrence, Richland, Wayne, and White Counties only): Sitting judges provide mediation services for custody, visitation, and removal disputes that they will not hear. Services are provided without cost to the parties.

3rd Judicial Circuit (Bond and Madison Counties): Parties who qualify are provided mediation of contested custody, visitation, and removal issues free of charge.

4th Judicial Circuit (Christian, Clay, Clinton, Effingham, Fayette, Jasper, Marion, Montgomery, and Shelby Counties): Mediation of contested custody, visitation, and removal issues is provided to qualified parties on a reduced-fee or no-fee basis.

5th Judicial Circuit (Clark, Coles, Cumberland, Edgar, and Vermilion Counties): Qualified parties may be provided mediation of contested custody, visitation, and removal issues. The cases are mediated at a reduced fee or no charge.

7th Judicial Circuit (Green, Jersey, Macoupin, Morgan, Sangamon, and Scott Counties): Mediators are required to conduct reduced fee custody and visitation mediation when parties are unable to pay the full fee.

(Sangamon County only): The Illinois Department of Public Aid has provided a grant to the Sangamon County Circuit Court for a program to mediate access and visitation disputes between never-married parents. Mediations are provided free of charge to the parties.

8th Judicial Circuit (Adams, Brown, Calhoun, Cass, Mason, Menard, Pike, and Schuyler Counties): Local Rule 7.4 provides for cases involving custody and visitation to be mediated at a reduced fee or no charge if the parties are unable to pay the full fee.
Accessing Justice through Mediation

10th Judicial Circuit (Marshall, Peoria, Putnam, Starke, and Tazewell Counties): Mediators are required to provide reduced-fee or no-fee services for custody, visitation, and removal cases when the parties are unable to pay the full fee.

11th Judicial Circuit (Ford, Livingston, Logan, McLean, and Woodford Counties): According to the Standards and Procedures for Court-Referred Matrimonial and Family Mediation, fees for court-referred mediation of child custody and visitation issues may be on a sliding scale based upon the income of the parties.

According to the Standards and Procedures for Court-Referred Financial Issues Mediation, the court shall designate whether a case should be considered a reduced-fee or no-fee case.

12th Judicial Circuit (Will County): Rule 8.17(B)(1)(f) states that mediators "shall agree to mediate at least two (2) reduced fee or pro bono cases per year as identified by the Court."

13th Judicial Circuit (Grundy and LaSalle Counties): Local Rules 8.15-8.24 require each mediator to conduct one reduced-fee or no-fee mediation of custody and visitation issues per year.

16th Judicial Circuit (Kane County only): Northern Illinois University College of Law’s mediation clinic provides free mediation for pro se custody and visitation cases.

17th Judicial Circuit (Boone and Winnebago Counties): Rule 14.08, Rule 4(A)(1), pertaining to mediation of contested child custody and visitation issues, states: "The court shall designate in its order what percentage of the mediation fee should be paid by the party and/or whether the case should be considered a reduced fee or pro bono case."

Rule 14.09, Rule 4(A)(1), pertaining to the mediation of contested financial issues, contains the same language as above.

18th Judicial Circuit (DuPage County): The Illinois Department of Public Aid has provided a grant to the 18th Circuit for a program to mediate access and visitation disputes between never-married parents. Mediations are provided free of charge to the parties.

Additionally, mediators on the court roster for the Mediation & Evaluation Program must agree to mediate at least four reduced-fee or no-fee cases per year.

19th Judicial Circuit (Lake County): Rule 11.13(d)(6) states that "a mediator shall mediate two low-income cases, as identified by the Court, per year, at a reduced fee."
Accessing Justice through Mediation

21st Judicial Circuit (Iroquois and Kankakee Counties): Part 9, Rule 9(e) mandates that court approved mediators “serve on a no fee or reduced fee basis on a rotating schedule for those cases in which the court determines that mediation would otherwise be unavailable for financial reasons.”

In addition, the Kankakee Center for Conflict Resolution provides free mediation services for family cases.

22nd Judicial Circuit (McHenry County): Rule 18.13(d) mandates that each mediator “pledge to provide services at a reduced fee for a reasonable share of referrals from the Court involving parties with financial hardship.”

Child Protection and Dependency:

Cook County: In the Juvenile Court mediation program for child protection and dependency cases staff mediators provide services free of charge to the parties.

Small Claims and Landlord/Tenant:

Cook County: The Center for Conflict Resolution in Chicago provides free mediation services through the courts for small claims cases at the Daley Center, Bridgeview, Markham, Maywood, Rolling Meadows, and Skokie courthouses. In addition, services are provided to self-referring parties.

The Evanston Commission on Human Rights provides mediation free of charge for self-referred or police-referred disputes between neighbors, businesses, or landlords and their tenants.

The Interfaith Housing Center of the Northern Suburbs provides mediation and telephone conciliation for disputes between landlords and tenants.

1st Judicial Circuit (Jackson and Williamson Counties only): The Southern Illinois University School of Law’s ADR Clinic provides mediation services free of charge in the Jackson County and Williamson County Courthouses for small claims and landlord/tenant cases.

17th Judicial Circuit (Winnebago County only): Winnebago County Bar Association members mediate small claims cases free of charge at the Winnebago County Courthouse. The cases are primarily pro se.

21st Judicial Circuit (Kankakee County only): Volunteer mediators at the Kankakee Center for Conflict Resolution provide free services for small claims and landlord/tenant cases.

22nd Judicial Circuit (McHenry County): Free mediation services are provided by volunteer mediators at the McHenry County Courthouse for pro se small claims cases.
Accessing Justice through Mediation

**Juvenile and Adult Misdemeanor:**

*Cook County:* The Center for Conflict Resolution in Chicago provides mediation services for juvenile and branch court misdemeanor cases that are referred by the State’s Attorney. All services are free of charge to the parties.

*1st Judicial Circuit (Williamson County only):* The Williamson County Probation Department has established a Family Group Conferencing program for first-time juvenile offenders who have accepted responsibility for their actions. All services are free of charge to the parties.

*6th Judicial Circuit (Champaign County only):* The Champaign County Victim-Offender Reconciliation Program provides free mediation services for cases involving juvenile offenders.

*11th Judicial Circuit (Ford County only):* The Ford County Probation Department has established a Family Group Conferencing program for first-time juvenile offenders who have accepted responsibility for their actions. All services are free of charge to the parties.

*11th Judicial Circuit (Woodford County only):* The Woodford County Victim-Offender Reconciliation Program provides free mediation services for cases involving juvenile offenders.

*15th Judicial Circuit (Lee County only):* The Lee County Probation Victim Offender Conferencing Program offers services without charge to first-time and non-violent juvenile offenders.

*15th Judicial Circuit (Stephenson County only):* The Stephenson County Probation Department established the Restorative Justice Program for juvenile offenders with first-time or minor offenses. All services are free to the parties.

*21st Judicial Circuit (Kankakee County only):* The Kankakee Center for Conflict Resolution provides mediation services at no charge for criminal misdemeanor cases referred by the State’s Attorney.

**Employment:**

The Illinois Department of Human Rights has instituted a mediation program for employment discrimination cases. Mediations are conducted in Chicago by IDHR staff and are available to all Illinois residents free of charge.

The *Equal Employment Opportunity Commission* has instituted a similar program in which parties are provided mediation services free of charge.

The *United States Postal Service* has created its own internal mediation program, REDRESS, which is available free of charge to postal employees.
Federal:

U.S. Bankruptcy Court for the Northern District of Illinois: Mediation is available at no charge for those parties who qualify.

U.S. Court of Appeals for the 7th Circuit: Through the Settlement Conference Program, cases falling under Rule 33, either through notice or party request, will have their cases mediated by staff mediators without cost to the parties.

Other Programs:

Center for Conflict Resolution: Besides the attorney-client fee dispute, small claims, landlord/tenant, and juvenile and adult misdemeanor mediation programs mentioned above, the Center for Conflict Resolution provides mediation services to Cook County residents free of charge on a wide range of disputes.

Cook County Circuit Court: The Probate Division of the Cook County Circuit Court provides for mediation by judges of cases filed in the Division.

Illinois Attorney General: This office provides mediation free of charge for disputes involving consumer fraud and health insurance complaints.

Illinois Foundation for Quality Health Care: This organization offers mediation of quality of care complaints under Medicare.

Illinois State Board of Education: The ISBE administers a program in which issues surrounding special education are mediated free of charge to the parties.

Illinois Department of Agriculture: A program has been established by the Southern Illinois University College of Agriculture to conduct mediations between Illinois USDA Program participants who have received an adverse determination on a contract and the Illinois Department of Agriculture. Mediation is provided free of charge to the parties and is available throughout Illinois.
Welcome

Thank you for your participation in the survey.

Your anonymous input will provide important information on the potential use of mediation to resolve the legal problems of poor and low income residents of Illinois.

Mediation Views

Please answer the following questions about your views on the use of mediation for resolving the legal disputes of the poor and those with low income.

1. Mediation can be a good method for resolving housing disputes of low income clients.
   SA  Agree  Neutral  Disagree  SDA

2. Mediation can be a good method for resolving disputes between low income consumers and businesses.
   SA  Agree  Neutral  Disagree  SDA

3. Absent allegations of domestic violence, mediation can be a good method to resolve child custody disputes between low income parents.
   SA  Agree  Neutral  Disagree  SDA

4. Cases in which allegations of domestic violence are present can be mediated.
   SA  Agree  Neutral  Disagree  SDA

Pros and Cons of Mediation

The following statements reflect the sentiments that some people have expressed about mediation in the context of low income litigants. Please indicate how often you think they are true.

5. Low income litigants are at a disadvantage in mediation
   SA  Agree  Neutral  Disagree  SDA

6. Mediation empowers low income litigants to resolve problems themselves.
   SA  Agree  Neutral  Disagree  SDA
7. Poor communication skills hamper low income litigants in mediation.  
SA Agree Neutral Disagree SDA

8. Mediation saves lawyers time in dealing with individual cases.  
SA Agree Neutral Disagree SDA

9. Mediation isn’t useful because attorneys can resolve the problem on their own.  
SA Agree Neutral Disagree SDA

**Role of Mediation**

Please answer the following questions about the role of mediation in your cases.

10. Have any of the following prevented you from using or recommending mediation in cases? (Please check all that apply)  
   - There are no mediation programs in my area
   - There are no or too few pro bono mediators in my area
   - My client could not afford to hire a mediator
   - My client did not agree to mediate
   - The opposing party/attorney did not agree to mediate
   - Judges do not encourage mediation
   - Other (please specify)

11. Which answer most closely matches how many of your cases would be appropriate for mediation?  
   None Hardly any About ¼ About half Most Almost All All

12. What benefits does mediation present for legal services clients?

13. What problems does mediation present for legal services clients?

14. Please check the case types, if any, for which you believe there is a use for mediation, if funding were available to establish a program:  
   - Landlord/Tenant
   - Other housing
   - Consumer/business
   - Debt collection/repossession
   - Child custody
   - Domestic violence/Order of protection
   - Senior citizen services
   - Public benefits/health
   - Education
   - Other (please specify)
Mediation Availability

Please answer the following questions about the availability of mediation in your area.

15. Is any mediation available in your area?
   Yes  No

16. If so, through what type of organization? (Please check all that apply.)
   ___ Court
   ___ Community mediation center
   ___ Law school clinic
   ___ Other (please specify)

17. What case types can be mediated in your area? (Please check all that apply.)
   ___ Child custody
   ___ Divorce – financial issues
   ___ Small claims
   ___ Landlord/tenant
   ___ Large civil

Mediation Use

18. In the past 2 years, how many times have you referred to mediation clients you have interviewed?
   0  1-5  6-10  >10  N/A

19. In the past 2 years, how many times have you referred clients you represented to mediation?
   0  1-5  6-10  >10  N/A

20. For how many cases have you attended a mediation as an advocate for your client in the past 2 years?
   0  1-5  6-10  >10  N/A
Experience

Please answer the following questions about your background and experience.

21. In what counties do you work? (Please list the top countries up to 6)
   County 1 _______________
   County 2 _______________
   County 3 _______________
   County 4 _______________
   County 5 _______________
   County 6 _______________

22. How many years have you been a legal services attorney?

23. What is your position in legal services?
   __ Director
   __ Managing Attorney
   __ Staff Attorney
   __ Telephone Counselor
   __ Other (please specify)

24. What are the two case types that reflect the highest percentage of your case load for the past two years?
   __ Landlord/tenant
   __ Other housing
   __ Consumer/business
   __ Debt collection/repossession
   __ Child custody
   __ Domestic violence/order of protection
   __ Senior citizen services
   __ Public benefits/health
   __ Education
   __ Other (please specify)

Mediation Training

25. Have you attended any training regarding mediation?
   Y     N
26. If so, what type of training did you attend? (Please check all that apply)

- < 1 day
- 1 day
- 2 days or more

Basic mediator skills training
Advanced mediator skills training
Training on representing clients in mediation

27. Did you take a course in law school that had a focus on mediation?

- Y
- N

Comments

28. Please feel free to make further comments on the use of mediation to increase access to justice for poor or low income residents of Illinois.

Thank you!

Thank you for taking the time to complete this survey. Please feel free to contact CAADRS (jshack@caadrs.org) if you have any questions.
Welcome

Thank you for your participation in the survey.

Your anonymous input will provide important information about the mediation landscape in Illinois, especially for poor and low income residents.

Mediation Services

1. What is your professional background?
   ___ Attorney
   ___ Mental health professional
   ___ Other (please specify) __________

2. In what counties do you provide mediation services? (Please enter up to the five in which you most often provide services.)
   County 1 ________________
   County 2 ________________
   County 3 ________________
   County 4 ________________
   County 5 ________________

3. How many mediations have you conducted in the past two years?
   0  1-5  6-10  11-20  More than 20
   □  □  □  □  □  □

4. For what types of cases have you mediated in the past two years? (Please check all that apply.)
   ___ Child custody
   ___ Divorce – financial issues
   ___ Small claims
   ___ Landlord/tenant
   ___ Large civil cases
   ___ Other (please specify) __________
5. Have you provided pro bono (no fee) mediation services in the past two years?
   ___ yes
   ___ no

   Yes – continue
   No – go to Question 16

**Pro Bono (No Fee) Services**

6. How many mediations have you conducted for no fee in the past two years?
   _______

7. In what capacity have you mediated for no fee in the past two years? (Please check all that apply.)
   ___ As a volunteer for a community mediation center or other non-profit provider
   ___ As a volunteer for a law school clinic
   ___ As a private mediator when asked by the court
   ___ As a private mediator when asked by an attorney or party
   ___ Other (please specify) __________

8. For what types of cases have you mediated for no fee in the past two years? (Please check all that apply.)
   ___ Child custody
   ___ Divorce – financial issues
   ___ Small claims
   ___ Landlord/tenant
   ___ Large civil cases
   ___ Other (please specify) __________

9. Were you limited in the number of mediations you conducted for no fee by any of the following? (Please check all that apply.)
   ___ Number of times you were asked by the court to mediate for no fee
   ___ Amount of time available to you to mediate for no fee
   ___ You agreed to mediate for no fee, but the mediation did not take place
   ___ Other (please specify) __________

10. What motivates you to mediate cases for no fee?
11. What can someone creating or running a mediation program do to enhance the experience of mediators providing services for no fee?

12. If a mediation program offered you unlimited opportunity to mediate for no fee, how many would you be willing to conduct per year?

13. For what types of cases would you be willing to mediate for no fee? (Please check all that apply.)
   ___ Child custody
   ___ Divorce – financial issues
   ___ Small claims
   ___ Landlord/tenant
   ___ Large civil cases
   ___ Other (please specify) __________

14. Have you provided sliding scale services in the past two years?
   ___ yes
   ___ no

15. If a mediation program offered you unlimited opportunity to mediate on a sliding scale, how many would you be willing to conduct per year?

   If Yes to Question 14, go to Question 21
   If no to Question 14, go to Question 26

No Services

16. What has prevented you from providing services for no fee? (Please check all that apply.)
   ___ I am available to mediate for no fee as an approved court mediator or volunteer, but have not been asked.
   ___ I have been scheduled to mediate for no fee, but the mediation did not take place.
   ___ There are no opportunities to mediate for no fee in my area.
   ___ I have no time to mediate cases for no fee.
   ___ Other (please specify) __________
17. If a mediation program offered you unlimited opportunity to mediate for no fee, how many would you be willing to conduct per year? 

_______

18. For what types of cases would you be willing to mediate for no fee? (Please check all that apply.)
___ Child custody
___ Divorce – financial issues
___ Small claims
___ Landlord/tenant
___ Large civil cases
___ Other (please specify) __________

19. Have you provided sliding scale services in the past two years?
___ yes
___ no

20. If a mediation program offered you unlimited opportunity to mediate on a sliding scale, how many would you be willing to conduct per year? 

_______

If Yes to Question 19, continue
If No to Question 19, go to Question 25

Sliding Scale Mediation

21. How many sliding scale cases have you mediated in the past two years? 

_______

22. In what capacity do you mediate on a sliding scale? (Please check all that apply.)
___ As a volunteer for a community mediation center or other non-profit provider
___ As a volunteer for a law school clinic
___ As a private mediator when asked by the court
___ As a private mediator when asked by an attorney or party
___ Other (please specify) __________

23. For what types of cases have you mediated for a sliding scale? (Please check all that apply.)
___ Child custody
___ Divorce – financial issues
___ Small claims
___ Landlord/tenant
___ Large civil cases
___ Other (please specify) __________
24. In general, what percent of your normal fee do you discount for sliding scale cases? 

25. What best describes the provider of pro bono (no fee) or sliding scale services available in your area? (Please check all that apply.)

<table>
<thead>
<tr>
<th>No Fee</th>
<th>Sliding Scale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private mediators on a court roster</td>
<td>☐</td>
</tr>
<tr>
<td>Volunteer mediators for a court program</td>
<td>☐</td>
</tr>
<tr>
<td>Community mediation center or other non-profit provider</td>
<td>☐</td>
</tr>
<tr>
<td>Law school mediation clinic</td>
<td>☐</td>
</tr>
<tr>
<td>Private mediators when asked by a colleague</td>
<td>☐</td>
</tr>
<tr>
<td>Other</td>
<td>☐</td>
</tr>
<tr>
<td>None</td>
<td>☐</td>
</tr>
</tbody>
</table>

26. What types of cases are served by these providers? (Please check all that apply.)

- ☐ Child custody
- ☐ Divorce – financial issues
- ☐ Small claims
- ☐ Landlord/tenant
- ☐ Large civil cases
- ☐ Other (please specify) __________
Comments

27. Please feel free to make further comments about pro bono or sliding scale mediation for low income litigants.

Thank you!

Thank you for taking the time to answer this survey. Your participation is much appreciated.
Please answer the following questions about your views on the use of mediation for resolving the legal disputes of the poor and those with low income.

1. Mediation is a good method for resolving housing disputes of low income clients.
   - SA  Agree  Neutral  Disagree  SDA
     - 6  28  9  3  1

2. Mediation is a good method for resolving disputes between low income consumers and businesses.
   - SA  Agree  Neutral  Disagree  SDA
     - 5  28  9  4  1

3. Absent allegations of domestic violence, mediation can be a good method to resolve child custody disputes between low income parents.
   - SA  Agree  Neutral  Disagree  SDA
     - 13  23  9  2  1

4. Cases in which allegations of domestic violence are present can be mediated.
   - SA  Agree  Neutral  Disagree  SDA
     - 0  14  2  21  11

5. Low income litigants are at a disadvantage in mediation.
   - SA  Agree  Neutral  Disagree  SDA
     - 7  18  14  9  0

6. Mediation empowers low income litigants to resolve problems themselves.
   - SA  Agree  Neutral  Disagree  SDA
     - 2  23  11  10  1

7. Poor communication skills hamper low income litigants when negotiating in mediation.
   - SA  Agree  Neutral  Disagree  SDA
     - 5  28  11  3  0

8. Mediation saves lawyers time in dealing with individual cases.
   - SA  Agree  Neutral  Disagree  SDA
     - 2  25  9  10  1

9. Low income litigants are at a disadvantage in mediation.
   - SA  Agree  Neutral  Disagree  SDA
     - 0  0  9  33  5
12. Have any of the following prevented you from using or recommending mediation in cases? (check all that apply)
   __ There are no mediation programs in my area  
   __ There are no or too few pro bono mediators in my area  
   __ My client could not afford to hire a mediator  
   __ My client did not agree to mediate  
   __ The opposing party/attorney did not agree to mediate  
   __ Judges do not encourage mediation  
   __ Other (please describe and be specific)  

13. Which answer most closely matches the percent of your cases for which mediation would be appropriate?

<table>
<thead>
<tr>
<th>None</th>
<th>Hardly any</th>
<th>About 1/4</th>
<th>About half</th>
<th>Most</th>
<th>Almost All</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>10</td>
<td>15</td>
<td>12</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

14. What benefits does mediation present for legal services litigants?

15. What problems does mediation present for legal services litigants?

16. If funding were available and a program in place, please check the case types for which you believe there is a need for mediation, if any:
   __ Landlord/Tenant  
   __ Other housing  
   __ Consumer/business  
   __ Debt collection/repossession  
   __ Child custody  
   __ Domestic violence/Order of protection  
   __ Senior citizen services  
   __ Public benefits/health  
   __ Education  
   __ Other  

17. Is mediation available in your area?
   Yes  No
   42   5

18. If so, through what type of organization?
   __ Court  
   __ Community mediation center  
   __ Law school clinic  
   __ Other  

   (all private mediators, but one – non-profit legal org)
19. What case types can be mediated in your area?

- Child custody 35
- Divorce – financial issues 19
- Small claims 12
- Landlord/tenant 8
- Large civil 9

Please answer the following questions about your background and experience:

20. In the past 2 years, how many clients that you have interviewed have you referred to mediation?

<table>
<thead>
<tr>
<th>0</th>
<th>1-5</th>
<th>6-10</th>
<th>&gt;10</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td>7</td>
</tr>
</tbody>
</table>

21. In the past 2 years, how many clients that you represented have you referred to mediation?

<table>
<thead>
<tr>
<th>0</th>
<th>1-5</th>
<th>6-10</th>
<th>&gt;10</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>12</td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

22. How many mediations have you attended as an advocate for your client in the past 2 years?

<table>
<thead>
<tr>
<th>0</th>
<th>1-5</th>
<th>6-10</th>
<th>&gt;10</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
</tbody>
</table>

23. In what counties do you work?

24. How long have you been a legal services attorney?

25. What is your position in legal services?

- Director 1
- Managing Attorney 5
- Staff Attorney 26
- Telephone Counselor 5
- Other 7

26. What are the two case types that reflect the highest percentage of your case load for the past two years?

- Landlord/tenant 18
- Other housing 6
- Consumer/business 3
- Debt collection/repossession 3
- Child custody 17
- Domestic violence/order or protection 14
- Senior citizens services 3
- Public benefits/health 8
- Education 0
- Other ________________________ 11
27. Have you attended any training regarding mediation?
   Y   N
   8   36

28. What type of training was it?
   Basic mediator skills       6 – 1 less than 1 day, 5 more than 2
   Advanced mediator skill     0
   Training on representing clients 2 less than 1 day

29. Did you take a course in law school on mediation?
   Y   N
   9   35
### Appendix 7

#### Summary of Responses to Mediator Survey

**Mediation Services**

1. What is your professional background?
   - ___ Attorney 22
   - ___ Mental health professional 0
   - ___ Other 0
   - No answer 1

3. How many mediations have you conducted in the past two years?
   - 0  1-5  6-10  11-20  More than 20
   - 4   10   2     2          5

4. For what types of cases have you mediated in the past two years? (Please check all that apply.)
   - ___ Child custody 4
   - ___ Divorce – financial issues 4
   - ___ Small claims 3
   - ___ Landlord/tenant 2
   - ___ Large civil cases 16
   - ___ Other (please specify) __________ 3
   - No answer 3

**Pro Bono Mediation**

5. Have you provided pro bono (no fee) mediation services in the past two years?
   - ___ yes 7
   - ___ no 16

6. How many mediations have you conducted for no fee in the past two years?
   - 5 answers: 1(2), 2, 10, 30-40

7. In what capacity have you mediated for no fee in the past two years? (Please check all that apply.)
   - ___ As a volunteer for a community mediation center or other non-profit provider 0
   - ___ As a volunteer for a law school clinic 1
   - ___ As a private mediator when asked by the court 4
   - ___ As a private mediator when asked by an attorney or party 1
   - ___ Other (please specify) __________ 2
   - No answer 17
8. For what types of cases have you mediated for no fee in the past two years? (Please check all that apply.)

___ Child custody 3
___ Divorce – financial issues 1
___ Small claims 4
___ Landlord/tenant 1
___ Large civil cases 2
___ Other (please specify) 0

No answer 17

9. Were you limited in the number of mediations you conducted for no fee by any of the following? (Please check all that apply.)/16. What has prevented you from providing services for no fee? (Please check all that apply.)

___ Number of times you were asked by the court to mediate for no fee 13
___ Amount of time available to you to mediate for no fee 4
___ There are no opportunities to mediate for no fee in my area. 4
___ You agreed to mediate for no fee, but the mediation did not take place 0
___ Other (please specify) 0

No answer 2

12./17. If a mediation program offered you unlimited opportunity to mediate for no fee, how many would you be willing to conduct per year?

20 responses: 0, 0-1, 1, 2(6), 3, 4(4), 5(if parties truly indigent), 5-10, 10, 2/month, as needed, depends on who involved and case type

13./18. For what types of cases would you be willing to mediate for no fee? (Please check all that apply.)

___ Child custody 5
___ Divorce – financial issues 4
___ Small claims 13
___ Landlord/tenant 11
___ Large civil cases 9
___ Other (please specify) 5

No answer 3
Sliding Scale Mediation

14./19. Have you provided sliding scale services in the past two years?
   ___ yes 3
   ___ no 18
   No answer 21

15./20. If a mediation program offered you unlimited opportunity to mediate on a sliding scale, how many would you be willing to conduct per year?
   18 responses: 0, 2(4), 1-4, 4(2), 5(2), 5-10(2), 12, 20, many, unknown, unlimited, do pro bono now

21. How many sliding scale cases have you mediated in the past two years?
   3 responses: 1, 3, 10

22. In what capacity do you mediate on a sliding scale? (Please check all that apply.)
   ___ As a volunteer for a community mediation center or other non-profit provider 0
   ___ As a volunteer for a law school clinic 0
   ___ As a private mediator when asked by the court 0
   ___ As a private mediator when asked by an attorney or party 3
   ___ Other (please specify) __________ 0
   No answer 20

23. For what types of cases have you mediated for a sliding scale? (Please check all that apply.)
   ___ Child custody 1
   ___ Divorce – financial issues 1
   ___ Small claims 2
   ___ Landlord/tenant 1
   ___ Large civil cases 0
   ___ Other (please specify) __________ 0
   No answer 20

24. In general, what percent of your normal fee do you discount for sliding scale cases?
   3 responses: 50%, 50%, and set fee (for small claims)
Available Services

25. What best describes the provider of pro bono (no fee) or sliding scale services available in your area? (Please check all that apply.)

<table>
<thead>
<tr>
<th>Provider</th>
<th>No Fee</th>
<th>Sliding Scale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private mediators on a court roster</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Volunteer mediators for a court program</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Community mediation center or other non-profit provider</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Law school mediation clinic</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Private mediators when asked by a colleague</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>None</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

26. What types of cases are served by these providers? (Please check all that apply.)

___ Child custody                                    8
___ Divorce – financial issues                        7
___ Small claims                                      8
___ Landlord/tenant                                   4
___ Large civil cases                                 2
___ Other (please specify)                             3
No answer                                              9
The goal of the Stepping Stones Model is to get legal information into the hands of poor and low-income disputants so that they can exercise informed self-determination in mediation. The idea behind the model is that if mediation becomes a coordinated function within the services that are offered to assist poor and low-income disputants in resolving their legal problems, this group will be better able to resolve these matters.

The model adds mediation as one more stepping stone across the stream of conflict, along with the stepping stones of legal representation and brief services (e.g., telephone counseling, on-line assistance, and helpdesks), as ways in which poor and low-income disputants in Illinois can step across the waters of conflict and reach the shores of resolution. Instead of mediation being in a separate stream from all other approaches, the Stepping Stones Model brings it together with the other approaches and contemplates how they would all work together so that disputants could move more comfortably and effectively from stone to stone — from service to service — as they work to attain just outcomes.

A. Description
Access to mediation for poor and low-income residents has been limited, in part because mediation and legal services generally have not been coordinated. There have certainly been instances when they have tried to work together, but there has not been a concerted, statewide effort to study the situation and see what could work. One new model to emerge from this Study in an attempt to address this issue is the Stepping Stones Model. As described briefly in the Study (under Gatherings), the idea of the Stepping Stones Model is that poor and low-income disputants would use brief services as stepping stones to acquire legal information before they went to the stepping stone of mediation. A party might call a hotline, visit a helpdesk, go on-line to get information, or even receive legal services representation, prior to mediation. Because most mediation programs are court-related and it is very difficult to get a responding party to participate in mediation without the threat of court, the mediation would most likely be preceded by a “step” to the courthouse. Following mediation, there would most likely be a step back to the courtroom with a finished agreement.

In this service delivery model, the mediators and the legal services providers would establish a genuine collaborative relationship where they each understand and respect the unique services that the other can bring to poor and low-income disputants and they all have a well-rounded understanding of the challenges and strengths that the clients bring to the process. Together, within the program, they would provide guided access to legal information and support and guidance about how to negotiate in mediation.

Importantly, the Stepping Stones Model treats mediation and the other approaches to accessing justice as a whole, rather than as separate ideas. The model locates mediation within the legal services arena, rather than off on its own. By having mediation follow legal assistance and information and by having mediators be trained in the special challenges faced by poor and low-income disputants, it attempts to address the concern of legal services lawyers that parties might
Accessing Justice through Mediation

unknowingly give up rights they do not have to give up. The additional training for mediators on
dealing with poor and low-income disputants, and education sessions for legal services lawyers about
the mediation process would address some concerns about whether poor and low-income disputants
have the ability to negotiate on their own behalf in mediation. Mediation preparation training sessions
could even be offered to disputants. The participants at the gatherings responded positively to this
model, but there was not enough experience with mediation to go further in terms of working out quite
how such a program would operate.

B. Development of the Environment for the Model

On the next pages, the development of the Stepping Stones Model is graphically depicted in three-
stages. In the past, the predominant form of assistance through legal services was direct legal
representation. The idea was that every legal problem demanded a lawyer. To use a river as a
metaphor, a legal dispute would be a river with poor or low-income disputants on one bank and justice
or resolution on the other. When only representation was used, no matter whether the legal issue was a
meandering stream or a raging river, the goal was to get each poor or low-income disputant to a
broad, flat rock in the middle of the water where there were lawyers for every issue. The problem was
that there was not enough money to maintain that rock full of lawyers, and not every issue needed the
same level of representation.

In the next stage, additional, smaller rocks were placed in the river. These new rocks are collectively
called brief services. They include telephone counseling services, online assistance, and helpdesks in
courthouses and libraries. These services are intended to assist poor and low-income disputants in
protecting themselves and their own interests by increasing their access to information.

Also in the current stage, but on a separate rock, people who were interested in the benefits of
mediation established mediation programs and provided services, some to poor and low-income
disputants. Small claims mediation programs and eviction court mediation programs, for example,
naturally serve poor and low-income disputants. They often are able to help disputants address all the
issues in their disputes (such as long-standing neighborhood problems or emotional aspects of
disputes), not just the legal problems, so they often helped truly resolve entire disputes, not just settle
legal complaints. In mediation, neutrality is valued because it means that parties retain self-
determination in the voluntary process of mediation, so mediation programs do not focus on providing
legal advice or information for participants.

For the most part, the mediation stone remains separate from the legal assistance stones in the river.
There have been some attempts at cooperation, but generally mediation and legal services operate in
different parts of the river. There is little coordination.

That is where the third stage comes in: the Stepping Stones Model. This stage is the new idea that
emerged from the discussions around the state. Instead of looking at each of these processes as
individual efforts, they would be seen as a whole, with mediation part of the whole. Each of the
approaches would be potential stepping stones toward justice, and they could work together.
Disputants might go to one of the brief service providers and then to mediation. The disputants would
then have more legal information in the mediations. Also, their lawyers might send them to mediation as is already happening in some family cases, although not in a systematic way. Following mediation, parties might return to helpdesks or go on-line to get assistance with enforcing judgments or other actions.

C. Examples
The following are two examples of how the Stepping Stones Model might operate, followed by another version of the model.

Housing Example
When a low-income renter calls a hot-line with a problem with conditions in his apartment, the telephone counselor might recommend two steps: first to go to the courthouse and get particular forms from the helpdesk to file his case in court. Second, when he is in court and the case is called, ask to be referred to the court mediation program. At the end of the mediation, the agreement, if one is reached, will be written up and entered as a court order. This assumes the caller lives in an area with both a helpdesk and a mediation program, but the goal of the Stepping Stones Model is to operate in areas where these programs are in place and can function collaboratively.

Family Example
When a woman who has been abused by her husband is being represented by legal assistance, the court would expect her to mediate custody and visitation issues with her husband — as is the case with all divorcing parents — under Illinois Supreme Court Rule 905. There could be an exception to this under the local circuit court rules if the rules state that abuse is an impediment to mediation and in her case there has been a finding of abuse. Nonetheless, the woman and her legal services lawyer may choose to participate in mediation so that she can be empowered and take advantage of mediation to work out details of her divorce with her husband. They would then work with the local mediation program to ensure that the woman can participate in mediation in a safe manner. She would arrive at and leave the mediation before her husband. She would have her social worker with her for emotional support and would not meet face-to-face with her husband unless she felt ready to do so. During the two weeks between the two mediation sessions and following the final session, the woman would return to her lawyer for advice and then to have the final settlement drafted.

Two-Party Version of Stepping Stones Model
This Stepping Stones Model could be especially useful when both parties are poor or low-income and in need of assistance. They could each obtain information through a service such as going on-line or going to a helpdesk. Then they could work with a mediator to resolve their issues. This would work especially well if they were not terribly confrontational — for example if they wanted to divorce and simply needed help working out the details, but it would also work if the parties were oppositional and needed the honed communication and facilitated negotiation skills of a mediator.

D. Conclusion
While participants in the gatherings liked the idea of combining processes, it would require substantial work to identify a pilot site, gather commitments from those who would participate, refine
the concept, implement the program and conduct a thorough evaluation. Nonetheless, if mediation is to serve the needs of poor and low-income disputants, a way must be found to get legal information into their hands so that they can exercise informed self-determination in their mediations.
Stage 1 – Focus on Direct Legal Representation

In the first stage (for the purposes of this discussion), there was only one way: legal representation. This is the traditional way in which justice was accessed, Lawyers held the keys to access the justice system, so anyone who had a legal problem needed a lawyer and then the lawyer dealt with the legal problem for the person.
Stage 2 – Brief Services and Mediation
In the second stage, brief service and mediation are added to direct legal representation, but mediation is not generally coordinated with the legal services system.
Stage 3 — An Integrated System – The Stepping Stone Model of the Future

In this stage, all the options from previous stages are coordinated and assistance for each disputant is more tailored so that those who are more likely to be able to resolve their disputes through mediation are made aware of the option and prepared for participation in the process.
Appendix 9
Family and Small Claims Mediation Programs Listed by Circuit

- 1st Judicial Circuit
  *Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, and Williamson Counties*
  - Family Mediation Program
    - The rule provides for mediation to be referred for all cases arising from family law.
  - Southern Illinois University School of Law ADR Clinic - Jackson County only
    - Small claims mediation

- 2nd Judicial Circuit
  *Crawford, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jefferson, Lawrence, Richland, Wabash, Wayne, and White Counties*
  - Judicial Mediation Program for Family Cases - Crawford, Edwards, Lawrence, Richland, Wayne, and White Counties only
    - The rule lays out the procedures for a pilot judicial mediation program in which judges conduct mediation of contested custody and visitation issues.

- 3rd Judicial Circuit
  *Madison and Bond Counties*
  - Family Mediation Program*
    - The court is to maintain a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the court will pay the mediators at a much reduced rate through funds provided by the county.

- 4th Judicial Circuit
  *Christian, Clay, Clinton, Effingham, Fayette, Jasper, Marion, Montgomery, Shelby Counties*
  - Family Mediation Program*
    - Makes court policy the mediation of all cases involving disputed child custody, parenting plan, child visitation, and removal. Mediators are approved by the court and required to comply with the Model Standards of Conduct for Mediators. The court determines whether a case is considered a low income case and thus eligible for mediation for a reduced fee or at no charge. If ineligible, the parties are responsible for the mediator’s full fee.

- 5th Judicial Circuit
  *Clark, Coles, Cumberland, Edgar, Vermilion Counties*
  - Family Mediation Program*
    - At the time of the study, the rule had been submitted to the Supreme Court for approval, but not yet approved. Mediators would be required to provide pro bono services.
Accessing Justice through Mediation

- **6th Judicial Circuit**  
  *Champaign, De Witt, Douglas, Macon, Moultrie, and Piatt Counties*  
  - Family Mediation Program – Champaign County only  
    - The rule provides for confidentiality of communications made in mediation conferences and requires mediators to remain impartial and to protect the best interests of the children.

- **7th Judicial Circuit**  
  *Greene, Jersey, Macoupin, Morgan, Sangamon, and Scott Counties*  
  - Small Claims/Eviction Mediation Program - Sangamon County only  
  - Family Mediation Program*  
    - The rule outlines mediation standards and procedures for three contexts: custody, visitation, and financial issues in matrimonial and family cases; custody and visitation disputes in cases governed by Supreme Court Rule 905 other than dissolution and paternity; and visitation and access for paternity cases. The rule also outlines the procedures for judicial mediation of these issues. Qualification and compensation of the mediator are covered (including the requirement that mediators agree to conduct reduced fee or pro bono mediations as requested by the court), and the duties of the attorneys.

- **8th Judicial Circuit**  
  *Adams, Brown, Calhoun, Cass, Mason, Menard, Pike, Schuyler Counties*  
  - Family Mediation Program*  
    - The rule requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children” unless the case is determined to be ineligible due to concerns about safety or competency. The court is to maintain a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the mediator will provide services on a reduced-fee or pro bono basis. Each mediator shall accept such cases as assigned by the court.

- **9th Judicial Circuit**  
  *Fulton, Hancock, Henderson, Knox, McDonough, Warren Counties*  
  - Family Mediation Program*  
    - At the time of the study, the rule had been approved by the Supreme Court, but had not yet been voted on by the Circuit Judges. When passed, the rule would call for a roster of attorneys from around the circuit who had been trained as mediators. Nothing was in place for indigent parties.
10th Judicial Circuit  
*Marshall, Peoria, Putnam, Stark, Tazewell Counties*
- Family Mediation Program*
  - At the time of the study, the rule had been submitted to the Supreme Court for approval, but not yet approved. It called for roster mediators who had law or behavioral science backgrounds. Training was being provided by Bradley University. A board that includes a judge and a representative from Bradley had been set up to determine who is qualified to attend the training. Mediators would be required to provide reduced fee and pro bono services.

11th Judicial Circuit  
*Ford, Livingston, Logan, McLean, and Woodford Counties*
- Family Mediation Program - Livingston, McLean and Woodford Counties only
  - The rule requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children”. The mediators are required to provide “some minimal mediation service in the community for nominal or no fee for individuals meeting the relevant poverty guidelines in the community.”

12th Judicial Circuit  
*Will County*
- Family Mediation Program*
  - The rule mandates mediation for all custody, visitation, and other non-economic child-related issues. Mediators are required to provide reduced fee or pro bono services at most twice per year.

13th Judicial Circuit  
*Bureau, Grundy, LaSalle Counties*
- Family Mediation Program*
  - The rule requires the designated judge to order mediation of “any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children” unless the case is determined to be ineligible due to concerns about safety or competency. The court is to maintain a roster of mediators whom the parties pay, unless they are found to be unable to do so. In that case, the mediator will provide services on a reduced-fee or pro bono basis. Each mediator is required to accept one such case per year.

14th Judicial Circuit  
*Henry, Mercer, Rock Island, Whiteside Counties*
- Family Mediation Program*
  - At the time of the study, the rules were being reviewed by the Supreme Court for approval.
Accessing Justice through Mediation

- **15th Judicial Circuit**
  *Carroll, Jo Daviess, Lee, Ogle, Stephenson Counties*
  - Family Mediation Program*
    - At the time of the study, the rules were in the process of being written.

- **16th Judicial Circuit**
  *DeKalb, Kane, and Kendall Counties*
  - Family Mediation Program
    - The rule limits court-referred mediation to issues of child custody, visitation, removal, or other non-economic issues relating to the child or children, and excludes any cases in which an impairment of one of the parties is found to exist. Mediators are required to conduct at most two mediations per year at a reduced fee.

- **17th Judicial Circuit**
  *Boone and Winnebago Counties*
  - Family Mediation Program
    - The rule authorizes the referral of all issues of child custody, visitation, and removal to mediation except when one of the parties is unable to participate competently. Mediators are required to provide reduced fee and pro bono services when asked by the court.
  - Never-Married Parents Mediation Program - Winnebago County only

- **18th Judicial Circuit**
  *DuPage County*
  - Family Mediation & Evaluation Program
    - The rule authorizes the referral of all issues of parental responsibility, child custody, visitation, removal, access or other non-economic issue to mediation and excludes cases in which an impediment to mediation is found to exist. The rule also authorizes the order to evaluation of any of the issues eligible for mediation once mediation has been completed. Mediators are required to provide reduced fee or pro bono services at most four times per year.
  - Never-Married Parents Visitation Mediation Program
    - The 18th Judicial Circuit has received a grant from the Illinois Department of Public Aid to create a program to provide mediation for disputes between never-married parents regarding access and visitation. Mediations are conducted by two part-time staff mediators and are free of charge to participants.
Accessing Justice through Mediation

- 19th Judicial Circuit
  
  *Lake County*
  
  - Family Mediation Program
    - The rule orders court-referred mediation for issues of child custody, visitation and removal except where an impairment exists. It also authorizes the court to order mediation for economic issues. Mediators are required to conduct at most two mediations per year at a reduced fee and to volunteer to staff a room at the courthouse that is available one morning per week for immediate referral by the judge.

- 20th Judicial Circuit
  
  *Monroe, Perry, Randolph, St. Clair, and Washington Counties*
  
  - Family Mediation Program - St. Clair County only
    - The rule limits court-referred mediation to issues of child custody, visitation and removal.

- 21st Judicial Circuit
  
  *Iroquois and Kankakee Counties*
  
  - Family Mediation Program – Kankakee County only
    - The rule limits court-referred mediation to issues of child custody, visitation, and removal and excepts cases in which one of the parties is unable to participate competently. The mediators are assigned on a rotating basis, with the judge deciding which cases will be conducted pro bono.
  
  - Kankakee Center for Conflict Resolution - Kankakee County only
    - Small claims mediation

- 22nd Judicial Circuit
  
  *McHenry County*
  
  - Family Mediation Program
    - The rule orders court-referred mediation for issues of child custody, visitation and removal except where an impairment exists
  
  - Small Claims Mediation Program

* Indicates programs that have recently been developed or are in the process of being developed in accordance to Rule 905
Susan M. Yates – Project Director and Author

Ms. Yates became Executive Director of the Center for Analysis of Alternative Dispute Resolution Systems (CAADRS) in January 1997. As Executive Director, Ms. Yates promotes more effective court use of ADR by educating bar and bench leaders about ADR options, providing technical assistance in the development of court ADR programs, designing ADR systems, providing training, creating management information systems and conducting research.

Ms. Yates is a former Executive Director of the Center for Conflict Resolution, the not-for-profit mediation organization with which CAADRS is affiliated. In this role, she oversaw the enactment of the Illinois Not-for-Profit Dispute Resolution Center Act. She has trained hundreds of lawyers, judges and others to mediate. She has written training manuals for major civil case mediation and for community mediation, designed competency-based training and evaluation instruments, and documented the community mediation model for the Center for Conflict Resolution.

Ms. Yates has been a mediator since 1983, and currently focuses her practice on employment discrimination disputes. She also has been an adjunct faculty member in the schools of law at DePaul University, Hamline University, Loyola University and Northwestern University.

Ms. Yates is co-editor of ADR Handbook for Judges, published by the ABA, and the first Illinois Institute for Continuing Legal Education ADR Handbook. She also serves on the editorial board of the national journal, Conflict Resolution Quarterly. In addition to this, Ms. Yates has served on many court, non-profit, and bar association committees, including chairing the American Bar Association Dispute Resolution Section Associates Committee, which involves service on the Section Council. Recently, she served as one of two ABA representatives to the Joint Committee to revise the Model Standards of Conduct for Mediators.

Jennifer E. Shack – Senior Researcher and Editor

Ms. Shack joined the Center for Analysis of ADR Systems (CAADRS) in March 1999 and is currently Director of Research. She has been involved in a number of ADR research projects, including evaluations of mediation programs in Illinois, one of which led to the co-authored publication of “Mediating Lanham Act Cases: The Role of Empirical Evaluation” in the Spring 2002 edition of the Northern Illinois University Law Review. Another research project led to the article, “Efficiency: Mediation in Courts Can Bring Gains, But Under What Conditions?” published in the Winter 2004 issue of the American Bar Association’s Dispute Resolution Magazine.

Ms. Shack also is in charge of CAADRS’ Resource Center database, which contains more than 2500 resources regarding ADR, with a particular focus on court-related issues. She utilized these resources when writing the “Alternative Dispute Resolution Resources” chapter in the Illinois Institute for
Continuing Legal Education’s *Handbook on ADR* and again for her “Bibliographic Summary of Cost, Pace, and Satisfaction Studies of Court-Related Mediation Programs.” To assist courts in maintaining the quality of their mediation programs, Ms. Shack has created a monitoring and evaluation system for courts to use to track essential program data. The system includes reporting forms, participant questionnaires and a database. She is currently involved in conducting an evaluation of the Cook County Child Protection and Dependency Division’s mediation program through a grant from the court.

Ms. Shack received her B.A. in Political Science from Loyola University of Chicago and her M.A. in International Studies from the University of South Carolina. In between, she spent two years as a Peace Corps Volunteer in Benin, West Africa, where she was district coordinator for the nationwide Guinea Worm Disease Eradication Program.

**Jennifer Spagnolo – Researcher**

Ms. Spagnolo joined the CAADRS staff in October 2001 as Director of Administration. She maintains the Resource Center database and is author of many of the abstracts of the resources in the Resource Center. She responds to inquiries to the Resource Center and assists in research projects, such as gathering federal, state and local court ADR rules from around the country. Ms. Spagnolo received her Bachelor of Arts degree in Religious Studies from Saint Mary's College in Notre Dame, Indiana, in May 2001.

**Lindsey Green – Researcher**

Ms. Green joined CAADRS in June 2006 as a Research Intern. She works mainly with CAADRS’ Resource Center, collecting and analyzing rules and articles related to ADR. She also researches ADR court programs in Illinois and around the country. She is a third year law student at DePaul University College of Law and graduates in May, 2007. Ms. Green received her Bachelor of Arts degree in Psychology at Oakland University in Rochester, Michigan, in May 2003.