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RESOURCES / STUDY / INNOVATION FOR COURT ADR



# COURT ADR CONNECTION

The eNewsletter of *Resolution Systems Institute*

April 2009

This edition features an innovative RSI study of an Illinois civil mediation program. Taking a new approach to assessing one aspect of civil case mediation, the study found that five to six times more mediation took place in the 17th Judicial Circuit of Illinois than had been reported to the court. A further summary, and a link to the full study, is available under New Research.

Another RSI publication is also highlighted this month. The latest edition of *Analyzing the Alternatives*, RSI's semiannual newsletter focusing on court ADR in Illinois, is now available.

Foreclosure mediation dominates Court ADR News again this month. The Florida Supreme Court formed a task force to consider strategies, including mediation, to address the state's foreclosure crisis; at the same time, a district court in Florida launched its own foreclosure mediation program. The New Mexico legislature is considering a foreclosure ADR bill, and government leaders in Connecticut announced plans to make the state's existing foreclosure mediation mandatory for all cases.

In other news, a bill creating statewide mediation standards has been proposed in Missouri, the Rhode Island legislature is considering the Uniform Mediation Act, and the Texas legislature is considering a bill authorizing courts to create victim-offender mediation programs. Finally, the American College of Trial Lawyers recently released a report recommending the use of ADR before trial.

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## RSI Update

### *RSI Releases Winter/Spring 2009 Edition of **Analyzing the Alternatives***

The latest edition of RSI's *Analyzing the Alternatives* is now available online. The newsletter features an overview of a small claims mediation program in McLean County, Illinois, that RSI helped to establish last year through its Statewide Mediation Access Project. RSI's new study of civil mediation in the 17th Judicial Circuit of Illinois is also highlighted, with an article summarizing the study's findings and recommendations.

For the latest edition and information on subscribing to *Analyzing the Alternatives*, click [here](#).

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## Court ADR News

### **Florida Supreme Court Forms Mortgage Foreclosure Task Force**

The Florida Supreme Court has established a Task Force on Residential Mortgage Foreclosure Cases to develop recommendations for a statewide, coordinated response to the large number of foreclosure cases facing courts throughout the state. The order creating the task force specifically lists mediation and other forms of ADR as possible strategies the group may explore.

For the administrative order establishing the task force, click [here](#).



### **Florida Judicial Circuit Establishes Foreclosure Mediation Program**

The 19th Judicial Circuit of Florida issued an order in February establishing a foreclosure mediation program. Under the order, all foreclosure cases involving

owner-occupied properties filed after March 13 will automatically be referred to mediation. Lenders are required to notify the court as to whether a property is owner-occupied, and are responsible for paying a \$750 mediation fee. Cases will be mediated by Supreme Court-certified civil mediators who have received training in foreclosure mediation.

For more information about the program, click [here](#).



## New Mexico Legislature Considering Foreclosure ADR Bill

The New Mexico Senate is currently considering a bill that would give homeowners facing foreclosure access to a variety of alternative dispute resolution options. “The Mortgage Fair Foreclosure Act” authorizes courts to order foreclosure cases to participate in an alternative dispute resolution process to prevent foreclosure, either upon the court’s own motion or at the request of the borrower or lender. This ADR process can include loss mitigation, a court-supervised settlement conference, a settlement conference with a court-appointed special master, court-annexed mediation, or private mediation. If a homeowner chooses any of these ADR options, both the homeowner and lender are then required to participate in the process in good faith.

For the full text of the bill, click [here](#).



## Connecticut Governor, Legislators Propose Mandatory Foreclosure Mediation

The governor of Connecticut and the two legislators heading the state’s Banks Committee proposed legislation in March that would require mediation for all real estate foreclosure cases. The state established a voluntary foreclosure mediation program last year; according to a press release from the governor’s office, that program has mediated more than a quarter of the state’s foreclosure cases, with a resolution rate of 70%. By making the program mandatory, the government leaders hope to prevent a greater number of foreclosures throughout the state.

To read the full press release from the governor’s office, click [here](#).



## Uniform Mediation Act Proposed in Rhode Island Senate

The Rhode Island Senate is currently considering a bill to adopt the Uniform Mediation Act. The UMA establishes a privilege for communication in mediation and requirements for addressing conflicts of interest. Drafted by the National Conference of Commissioners on Uniform State Laws and the ABA Section of Dispute Resolution in 2001, it has been adopted by 10 other states – Idaho, Illinois, Iowa, Nebraska, New Jersey, Ohio, South Dakota, Utah, Vermont and Washington – and Washington, D.C.

For the full text of the bill, click [here](#).



## Missouri Bill Proposes Statewide Mediation Standards

The Missouri Senate is currently considering a bill that would set statewide standards for mediation. The bill essentially would apply standards already set by the Supreme Court for court programs to all other non-court programs and to private mediations required by contract. It gives mediation participants the right to select their own mediator or apply to a court to appoint a mediator. The bill also lists the duties of a mediator, and sets confidentiality rules for communications made during mediation.

To read the full text of the bill, click [here](#).



## Pre-Trial Victim-Offender Mediation Program Proposed in Texas Legislature

The Texas Legislature is currently considering a bill authorizing courts to create pre-trial victim-offender mediation programs. First-time offenders charged with misdemeanors or felony property damage would be eligible to participate in mediation. The attorney representing the state would be responsible for identifying eligible cases and securing the consent of the victim and the defendant prior to mediation. Mediations would be conducted by “any person designated by the court ... regardless of whether the designated person is a trained mediator.” Agreements would have to include an apology by the defendant and require the defendant to pay restitution to the victim or attend community service. All communications made during mediation would be confidential.

To read the full text of the bill, click [here](#).



## American College of Trial Lawyers Task Force Recommends Use of ADR

A report recently released by the American College of Trial Lawyers Task Force on Discovery includes a recommendation that courts should “raise the possibility” of pre-trial mediation and other ADR processes, and in some cases should order its use. The report, conducted in association with the Institute for the Advancement of the American Legal System, was based on a survey of ACTL members to identify perceived problems with the discovery process in the civil justice system. In that survey, 82% of respondents said court-related ADR was a “positive development,” and 72% said it led to settlements without trial. The majority of respondents also said ADR decreased their clients’ costs and led to a shorter time to disposition. These results led to the task force’s recommendation. However, the task force also noted that it hoped its other recommendations for decreasing the cost of discovery would help to increase the use of judicial trials, as opposed to ADR.

For the full report, click [here](#).

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## New Research from RSI

### More than Meets the Eye: Civil Case Mediation Usage in the 17th Judicial Circuit of Illinois

The 17th Judicial Circuit, based in Rockford, Illinois, had been reporting steadily declining numbers of mediations in its court-annexed program for large civil case mediation over the years. This was true for other court-annexed civil

mediation programs in the state as well. The 17th Circuit, having seen a reported decline from 165 mediations per year to 17, decided to see if this was because the cases being reported to the court were just the tip of the iceberg, and some larger number were being mediated without a court order. To determine this, the court collaborated with Resolution Systems Institute to collect data from judges, lawyers and mediators on settlements and mediations. Judges noted each case in which a settlement was stipulated. The lawyers for those cases were then contacted to find out which processes were used to settle the case – direct negotiation, mediation, judicial settlement or arbitration. Mediators on the court’s referral list were also contacted to find out which cases they mediated, including those conducted pre-filing. The 2008 study, *More than Meets the Eye: Civil Case Mediation Usage in the 17th Judicial Circuit of Illinois*, found that five to six times more mediations took place than had been reported to the court.

For the full study, click [here](#).

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