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RESOURCES / STUDY / INNOVATION FOR COURT ADR



# COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

May 2010

The latest edition of RSI's *Analyzing the Alternatives* is featured this month. The newsletter cover story explains RSI's Model Forms Project, which RSI is undertaking in partnership with the American Bar Association Section of Dispute Resolution to create evaluation forms for use in court mediation programs.

The Court ADR News section covers a bill in the Florida Legislature involving restorative justice, as well as new foreclosure mediation programs in Maryland and Cook County, Illinois. The New Research section highlights an article by Roselle Wissler that looks at studies done on the effects of representation in mediation. She finds some possible advantages and disadvantages to representation in mediation, but ultimately concludes that more research should be done to determine how and when representation can be most effective. Finally, the Recommended Resources for this edition include the Association of Family and Conciliation Courts, the Restorative Justice Library, and a model court protocol from Michigan for use in screening parties in child custody or divorce mediation for cases of domestic violence or child abuse.

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## RSI Update

### Latest Edition of *Analyzing the Alternatives* Now Available

The Winter/Spring 2010 edition of *Analyzing the Alternatives* is now available online. The cover story for this edition discusses RSI's Model Forms Project, an initiative RSI has undertaken with the American Bar Association Section of Dispute Resolution to create professional evaluation forms for use in court mediation programs. The newsletter also reviews efforts in Cook County, Illinois, to create a foreclosure mediation program. This edition introduces RSI's newest

Executive Committee member, Frances Kao, a partner at the international law firm Skadden, Arps, Slate, Meagher & Flom.

Click [here](#) to read the full newsletter.

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## Court ADR News

### Florida Legislature Considering Restorative Justice Bill

Both houses of the Florida legislature are considering a bill that would give priority to the principles of restorative justice in the state's juvenile justice system. Among other reforms to the state's Department of Juvenile Justice, the bill instructs the department to "focus on repairing the harm to victims of delinquent behavior by ensuring that the child understands the effect of his or her delinquent behavior on the victim and the community and that the child restores the losses of his or her victim."

Click [here](#) for the full text of the bill.



### Maryland Legislature Passes Foreclosure Mediation Bill

The Maryland General Assembly passed a bill in April that establishes a statewide foreclosure mediation program. The bill will be signed into law this month, and will go into effect July 1. The bill requires lenders to give homeowners the option of requesting loan mitigation analysis prior to foreclosure. It also allows homeowners to request mediation after foreclosure is filed. Once mediation is requested, the case is referred to the Maryland Office of Administrative Hearings, where the case will be mediated by administrative law judges. According to Gazette.net, the state plans to hire five judges to handle the increased caseload. The positions would be paid for by two new fees instituted by the bill: a \$300 filing fee for foreclosure cases, as well as a \$50 fee homeowners would pay when requesting mediation.

Click [here](#) for the full text of the bill. To read the article on Gazette.net, click [here](#). Read an article about the program from the *Washington Post* [here](#).



### Chicago Court Launches Foreclosure Mediation Program

The Circuit Court of Cook County, Illinois, launched a foreclosure mediation program this week. Cook County serves Chicago and its surrounding suburbs. Under the program, homeowners who receive foreclosure summons are given the option of meeting with a housing counselor, who will work with them to identify possible alternatives to foreclosure. According to the program's website, homeowners then meet with an attorney to "discuss the housing counselor's recommendations and prepare for a court date that will determine whether the foreclosure case can be mediated with the lender.

Visit the [program's website](#) for more information.

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## New Research

### Representation in Mediation: What We Know from Empirical Research

In an era in which many courts are turning to mediation to deal with the increased numbers of unrepresented litigants, there is a great need for information on whether lack of representation poses an advantage or disadvantage for disputants in mediation. In "Representation in Mediation: What We Know from Empirical Research" (Fordham Urban Law Journal, May 2010), Roselle Wissler starts to fill that need. She pulls together the few studies that have looked at the effect of representation on outcomes and the parties' experience with mediation to gain a fuller understanding of this effect. The studies involve domestic relations, Equal Employment Opportunity Commission, special education and civil cases.

Wissler examines the impact of representation on the mediation process, procedural justice issues and fairness of the process, contentiousness, outcomes, probability of settlement, and fairness of the settlements. She finds that there are some possible advantages to being represented in mediation, but not many. Greater party preparation for mediation is related to settlement and more positive assessments of the mediation. (However, not all attorneys prepare their clients for mediation.) The studies also provide some evidence for parties achieving better outcomes when they are represented, although the question of what "better" means is problematic.

On the other hand, Wissler does not find evidence of the feared detriments of lawyer presence. There is no greater contentiousness when lawyers are involved, and the parties do not feel that they have less opportunity to express their views when they are represented at mediation. However, there is some evidence that participation and satisfaction with the amount of participation is lower for parties who have lawyers with them at the mediation. Additionally, settlement is less likely when attorneys are present. This, however, could be due more to case characteristics than to lawyer presence. Overall, the research in the area of representation is too limited and too old to provide great insight into the impact of lawyer presence on mediation. Many of the studies referenced in the article are more than ten years old. Wissler recommends further research that focuses on the ways in which representation in mediation can be most effective, as well as what circumstances lend themselves to unrepresented parties participating in the process most effectively.

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## On CourtADR.org

### Recommended Resources

» **Association of Family and Conciliation Courts**

The AFCC is an "interdisciplinary and international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict." The organization's website offers information on conferences and training opportunities, as well as a resource center featuring standards of practice and guides for professionals and parents.

» **Restorative Justice Library**

This site is a searchable, annotated bibliography of articles concerning restorative justice and related issues. This is the place to go for those looking for restorative justice information.

» **Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation**

» This is an excellent screening tool from Michigan. It is "designed to identify parties involved in divorce or child custody actions for whom mediation may be inappropriate because of domestic violence or child abuse ... ."

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