



November 2008

Welcome to Resolution Systems Institute's November *Court ADR Connection!* The theme of the month is mortgage foreclosure mediation, with new court programs recently launched in New Jersey, Ohio and Florida. A study on the impact of pre-mediation caucuses is also highlighted. In addition, be sure to check out RSI's annotated bibliography on evaluations of court-related mediation programs, available on the Court ADR Resource Center.

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## Court ADR News

### New Jersey Supreme Court Announces Statewide Mortgage Foreclosure Mediation Program

The Chief Justice of the New Jersey Supreme Court announced the statewide roll-out of a mandatory mortgage foreclosure mediation program this month. Based on a successful pilot project in one of the state's district courts, the program will require mediation for all foreclosure cases contested by homeowners involving owner-occupied properties. Where cases are uncontested, courts will contact homeowners about the mediation program and encourage them to participate; in these cases, homeowners will still have the option to mediate even after a default judgment has been entered. Mediations will be conducted by court volunteers. The program will be implemented in six more counties by mid-November, and will be expanded to the rest of the state's 21 counties by the end of the year.

To read the New Jersey Judiciary's press release on the mortgage foreclosure

mediation program, click [here](#).



## Ohio County Court Adopts Foreclosure Mediation Program

Sandusky County Court in Ohio launched a mortgage foreclosure mediation program at the beginning of October, in response to a substantial increase in foreclosures in the county. According to an article in *The News-Messenger*, the program allows homeowners to request mediation if they also agree to participate in a credit counseling program and allow a certified appraisal of their home. Mediations are conducted by the county's staff attorney.

The program is based on a model developed by the Ohio Supreme Court earlier this year. Chief Justice Thomas Moyer has called on all Ohio judges with jurisdiction over foreclosure cases to use mediation to resolve those disputes. Mortgage foreclosures in Ohio increased 40% between 2003 and 2007.

For more information about the Sandusky County foreclosure program, click [here](#). For more information about the Ohio Supreme Court mediation program model, click [here](#).



## Florida County Court Launches Mortgage Foreclosure Mediation Program

Responding to a 200% increase in the number of mortgage foreclosures in the county in 2008, Seminole County Court in Florida launched a mortgage foreclosure mediation program in July. Mediation is mandatory for all owner-occupied residential mortgage foreclosure disputes. The lender's counsel is required to coordinate the mediation session and the lender is responsible for paying the \$200 mediation fee. Mediations may be conducted by a Supreme Court-certified mediator, or through the county's mediation department. A representative for the lender with full authority to settle may attend the mediation by telephone, but lender's counsel, the defendant and defendant's counsel must attend in person.

To read the court order establishing the mediation program, click [here](#). To read an article about the program from the *Orlando Sentinel*, click [here](#).

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## Research You Might Have Missed

### Study Finds Pre-Mediation Caucuses Increase Probability of Settlement When Used for Trust-Building

In a study by Roderick Swaab and Jeanne Brett of Northwestern University, pre-mediation caucuses were found to increase the probability of settlement if the focus of the caucus was on building trust and not on getting the parties to accept a settlement proposal. For the study, *Caucus with Care: The Impact of Pre-Mediation Caucuses on Conflict Resolution*, Dutch mediators in 1,381 labor and family cases completed questionnaires immediately after mediation. The questionnaires focused on the use of caucus before and during mediation, and on three outcomes at the end of mediation: whether agreement was reached, whether interpersonal conflict was reduced, and whether goal compatibility between the parties was increased.

The study found that pre-mediation caucusing was used more often for labor mediations than family mediations. Further, when goal conflict in labor mediation was greater, the mediators were more likely to use pre-mediation caucuses. In family mediation, the mediators were less likely to use such caucuses when the interpersonal conflict was higher. Despite these practices, pre-mediation caucusing was shown to have no impact on goal conflict, while reducing interpersonal conflict between the parties.

Pre-mediation caucuses were most successful when they focused on building trust between each party and the mediator because doing so reduced interpersonal conflict. On the other hand, using caucuses to push parties to accept a settlement proposal led to increased post-mediation conflict and had no impact on settlement. From these findings, Swaab and Brett concluded that pre-mediation caucuses can have a positive impact in the outcome of mediation, but that mediators should use them as an opportunity to build rapport with the parties and not as a vehicle for advancing settlement.

To download the study, click [here](#).

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## On CourtADR.org

### Tip of the Month: Annotated Bibliography of Court-Related Mediation Program Evaluations

The most sought-after resource on RSI's CourtADR.org is a compilation of more than 70 studies of pace, cost and satisfaction in court mediation programs. This annotated bibliography by RSI Director of Research Jennifer Shack, updated in 2007, provides information on the methods and findings of each study, covering civil, family, small claims, workers' compensation, appellate, victim-offender, and bankruptcy mediation programs. With information presented in a clear, easily accessible format, the bibliography provides readers with a broad overview of whether mediation delivers on its most widely touted benefits of decreasing time and costs and increasing satisfaction. To download the bibliography, click [here](#).

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