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COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

April 2011

This edition covers [proposed legislation](#) to adopt the Uniform Collaborative Law Act in four states and Washington, DC, a new [mediation program](#) in New York, a [bill](#) in the US Congress proposing federal funding for foreclosure mediation, and foreclosure mediation programs in [Hawaii](#) and [Connecticut](#). The Association for Family and Conciliation Courts' [annual conference](#) and the [National Association for Community Mediation](#) are also featured, along with a Texas [study](#) that found that child protection mediation had no effect on permanency outcomes.

Have you heard about new court ADR programs, legislation, research or other news? [Let us know!](#)

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Court ADR News

Four State Legislatures and Washington, DC, Considering Uniform Collaborative Law Act

The state legislatures in [Alabama](#), [Hawaii](#), [Massachusetts](#) and [Nevada](#), and the [Council of the District of Columbia](#) are considering bills to adopt the Uniform

Collaborative Law Act. The UCLA sets requirements for the content of collaborative law participation agreements and reviews the processes required to begin and conclude a collaborative law process. The UCLA also specifies that communications made during the collaborative law process are confidential "to the extent agreed by the parties in a signed record or as provided by statute" and are privileged and not subject to discovery or admissible as evidence. The UCLA was **drafted** by the National Conference of Commissioners on Uniform State Laws in 2009. Utah is the only state that has adopted it so far.



New York County Starts Divorce Mediation Program

The trial court in Nassau County, New York, established a divorce mediation program in March. According to the **court rules** governing the program, judges may refer any "contested action" to mediation, except issues involving family or domestic violence. Parties are required to attend one hour-long mediation session, and cases are mediated by mediators on a court-approved roster. *The New York Times* **reported** that the program was developed in a partnership between the court and the New York Office of Court Administration.



US House Considering Foreclosure Mediation Bill

The US House of Representatives is currently **considering a bill** that would authorize the Department of Housing and Urban Development to provide grants to state and local governments to fund mortgage foreclosure mediation programs. The programs may or may not be managed by the court system. In order to be eligible for a grant, mediation programs must provide homeowners with referrals or contact information for attorneys or housing counselors, must include outreach efforts to raise awareness of the program, and must track mediation outcomes. The bill was introduced by Representative Steve Cohen of Tennessee and is currently in the House Committee on Financial Services.

For a further discussion of this bill, see Heather Scheiwe Kulp's **blog post** on *Just Court ADR*.



Hawaii Supreme Court Extends Foreclosure Mediation Pilot Program

The Hawaii Supreme Court **recently extended** the foreclosure mediation pilot program in Hawaii's Third Circuit Court through March 31, 2012. The program was established in November 2009. Out of 200 total foreclosure filings between then and October 31, 2010, 32 homeowners requested mediation. According to a **report** by the Chief Judge of the Third Circuit, ten of those cases were ordered to mediation, with five cases reaching agreement. The report also noted that only about half of homeowners received notice of the program, despite the fact that the original order creating the program required plaintiffs to send a notice with the foreclosure summons about the option to mediate.

Considering the small number of mediations, the Chief Judge recommended that the program only be continued if changes were made to increase utilization of the program. In its order extending the program, the Supreme Court made the requirement more explicit that plaintiffs must send homeowners notice of the program, and added a requirement that plaintiffs seeking default judgment

provide proof that they provided homeowners with notice of the program. These changes partially followed [recommendations](#) made by the Hawaii Access to Justice Commission on how to improve the program.



Connecticut Legislature Considers Extending Foreclosure Mediation Program

The Connecticut House of Representatives is currently [considering a bill](#) that would extend the statewide foreclosure mediation program until July 2014 and would suspend the litigation process for foreclosure cases until mediation is complete. The bill would also remove limits on extensions courts may grant to give parties time to complete mediation. The program was created in 2008, and was made mandatory for residential foreclosures in 2009. It is currently scheduled to end in July 2012. According to the [Connecticut Judiciary](#), the program completed 9,472 mediations from its creation until January 31, 2011, achieving a 79% settlement rate. Sixty-four percent of mediations resulted in an agreement that allowed homeowners to stay in their homes, and 50% of mediations resulted in permanent loan modifications. The program is fully funded by the a portion of the state government's [Banking Fund](#) that is appropriated to the Connecticut Housing Finance Authority, which transfers the money to the Judicial Department. The extension of the program would cost an additional \$11.8 million through 2014. [According to the Hartford Courant](#), the bill is supported by housing advocates but opposed by bankers, who argue that suspending litigation "could stretch out the foreclosure process for as much as two years."



AFCC Annual Conference Set For June 1-4 in Orlando

The Association of Family and Conciliation Courts will be holding its [annual conference](#) this year in Orlando, Florida, from June 1-4. The theme of this year's conference is "Research, Policy and Practice in Family Courts: What's Gender Got to do with it?" The conference features nearly 80 workshops on a variety of topics, with a focus on the role gender plays in family conflicts and family law procedures.

New Research

Study Finds Child Protection Mediation Has No Effect on Permanency Outcomes

A study out of Texas found that child protection mediation had no effect on achievement of permanency within 18 months or on permanency outcomes. The study, *Long-Term Outcomes of Child Protection Mediation on Permanency for Children in Foster Care* by Elissa Eichel Madden (2010), examined the cases of 315 children whose cases were mediated and 315 matched children whose cases were not mediated. The timeframe was for cases in which the child was removed between 2002 and 2005. The cases originated in 43 counties throughout the state.

Madden found that permanency outcomes varied little between mediated and non-mediated cases. Mediation was slightly more likely to lead to adoption or relative placement, while children whose cases were not mediated were slightly more likely to be reunited with their families. These differences were not

statistically significant. Although there was no appreciable difference in achievement of permanency in 18 months between the two groups, Madden did find a 5% decrease in the probability of permanency with each year increase in the child's age regardless of whether mediation occurred.

Another difference was that time to permanency was adversely affected by mediation, with mediated cases that achieved permanency averaging 66 days longer to permanency than non-mediated cases. Children who had fewer than three placements had shorter time to permanency. Whether parental involvement in mediation has an effect on time to permanency is also in doubt in this study. Those children whose parents indicated a high level of involvement in mediation achieved permanency eight days earlier than those whose parents indicated a low level of involvement.

The study can be obtained on the [ProQuest database](#) (payment required for full study).

On CourtADR.org

Recommended Resource: National Association for Community Mediation

NAFCM supports the development of community-based mediation programs and processes, with the aim of influencing policy-making. NAFCM recently launched a new [website](#). The site features many resources for practitioners and the public, including an [interactive map](#) of community mediation centers in the United States. The site also has a [clearinghouse](#) of resources for community mediation centers. NAFCM is continually accepting new resources to expand its collection - click [here](#) for information about how to contribute.

From *Just Court ADR* Blog

Reporting on Reporting on Good Faith

"No one wants parties in a mediation to sit at the table with their arms crossed, refusing to talk. But who, if anyone, should tell mediators how to evaluate a party's good faith participation in mediation?" [Click to read the rest of this post by Heather Scheiwe Kulp.](#)



How the Feds Might Fund Mediation

"As state politicians argue over budget cuts, innovative programs are often the first to go. Mediation is no exception. Santa Barbara's 30-year-old [landlord-tenant mediation](#) program [was threatened](#) when the City Council couldn't figure out how to fund the part-time phone line staffer. A federal Department of Housing and Urban Development (HUD) Community Development Block Grant [saved the day](#). The landlord-tenant program in Cambridge, Massachusetts, [faced similar cuts](#). Illinois budget cuts eliminated Resolution Systems Institute's [funding for mediation program development](#) targeted to poor and low-income disputants in the courts. Thankfully, the [Skadden Fellowship Foundation](#) funded a two-year fellow to renew this program. Marin County, California, [did not have the same luck](#). The mediation office, which handled 800 cases a year, was gutted to save the County \$186,500. In at least one instance, however, the economic downturn has prompted a call for more funding - at a federal level - for

mediation." [Click to read the rest of this post by Heather Scheiwe Kulp.](#)



Judicial Champions for Court ADR

"I suspect that every state that has successful court ADR programs has a Judge Agnew. He is the judge who championed ADR when people were still confusing mediation and arbitration. He led by example, experimenting with ADR in his own jurisdiction, and led by persuasion, convincing other judges to give ADR a try in their jurisdictions. He led on a statewide level, working inside the structure of the courts and bar associations. He used the standing and relationships he had developed through years of dedicated service, to promote a new way to serve those who turn to the courts for justice, while also meeting the needs of the lawyers, judges and court personnel who work within the justice system every day." [Click to read the rest of this post by Susan Yates.](#)

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