



December 2010

This issue highlights the latest edition of RSI's newsletter, *Analyzing the Alternatives*, which previews the upcoming launch of the "Court ADR Across the US" section of [CourtADR.org](http://CourtADR.org). The section will be a guide to court ADR systems in every state. The edition also marks RSI's 15th anniversary with a review of the organization's projects and accomplishments since 1995.

The Court ADR News section of this issue highlights a variety of topics this month, including new ADR programs in a South Carolina circuit court, a dispute in the New York State Bar Association over a proposal to require lawyers to notify clients about the option to mediate, proposed amendments to the Nevada Supreme Court's foreclosure mediation rules and two reports from the federal government and a think tank about effective ways to develop foreclosure mediation programs.

The Research You Might Have Missed section presents a study of five pilot early mediation programs in California that demonstrated benefits in cost, time and satisfaction. Finally, *Just Court ADR* blog posts from the past month discussed using mediation to help increase access to justice for poor and low-income people, the interdependence of court ADR programs on other areas of the court system, the implications of the federal government's support for foreclosure mediation programs, and the importance of setting the right goals for court ADR programs.

---

In this issue...

## RSI Update

- » [Summer/Fall 2010 Edition of \*Analyzing the Alternatives\* Now Available](#)

## Court ADR News

- » [South Carolina Judicial Circuit Adopts Family and Civil ADR Programs](#)
- » [Mediation Proposal Sparks Debate in New York State Bar](#)
- » [Nevada Supreme Court Considers Amendments to Foreclosure Mediation Rules](#)
- » [DOJ and HUD Promote Strategies for Effective Foreclosure Mediation Programs](#)
- » [DC Think Tank Releases Foreclosure Mediation Best Practices Report](#)

## Research You Might Have Missed

- » [Early Mediation in California Provides Benefits](#)

## From *Just Court ADR* Blog

- » [Our Myths About Poverty Stymie Action](#)
- » [Courts as Ecosystems](#)
- » [VP Joe Biden: Honoring a Solemn Duty to Provide Access to Justice by Supporting Foreclosure Mediation](#)

## RSI Update

### Summer/Fall 2010 Edition of *Analyzing the Alternatives* Now Available

RSI published the Summer/Fall 2010 edition of *Analyzing the Alternatives* in November. The edition previews the new "Court ADR Across the US" section of [CourtADR.org](#). The section will be a guide to court ADR systems in every state, with searchable state pages featuring statutes, court rules, studies, reports and other resources related to court ADR. This edition also includes information about new foreclosure mediation programs in Illinois. In addition, the newsletter highlights RSI's 15th anniversary with a retrospective of the organization's accomplishments and growth since 1995. Finally, the newsletter introduces one of RSI's new Executive Committee members, mediator and former judge Karen G. Shields.

To read the full edition, click [here](#).

---

## Court ADR News

### South Carolina Judicial Circuit Adopts Family and Civil ADR Programs

The 3rd Judicial Circuit Court of South Carolina adopted family and civil alternative dispute resolution programs in October. According to *The Item*, a local South Carolina newspaper, the chief judge ordered ADR referrals for family court cases to begin October 1, and referrals for civil cases to begin in January 2011. The programs are meant to help parties reach resolution more quickly than through litigation, especially in complex cases that can take many months to complete the litigation process. The 3<sup>rd</sup> Circuit comprises Sumter, Lee, Clarendon and Williamsburg counties; with the creation of these two programs, there are now 18 counties in South Carolina that offer court ADR programs.

To read more about the programs, see the [full article](#) from *The Item*.



### Mediation Proposal Sparks Debate in New York State Bar

A proposed resolution to require lawyers to notify their clients about the option of resolving their disputes through mediation met with strong opposition in the New York State Bar Association in November. According to the *New York Law Journal*, the resolution had been recommended by the Bar's Alternative Dispute Resolution Section, but it was tabled at the Bar's House of Delegates meeting on November 13. It would have required lawyers to give clients a "Notice of Mediation Alternative" after signing a retainer. The notice would have stated that the client has a right to a trial, but "mediation services are available that may help you settle your lawsuit faster and before substantial expenses are incurred." Opponents to the resolution argued that it would force attorneys to promote mediation even if they did not think it was a good option for a client or was appropriate for a dispute.

Click [here](#) to access the full *New York Law Journal* article (subscription required).



## Nevada Supreme Court Considers Amendments to Foreclosure Mediation Rules

The Nevada Supreme Court is considering the fifth round of amendments to its foreclosure mediation rules. The court has released a draft of its proposed amendments, and will hold a public hearing on December 6 for public comments on the proposals. The draft amendments change and clarify the mediation procedures, including a new provision that would allow the foreclosure mediation program administrator to stop assigning cases to a mediator for up to 60 days for good cause. They also specify that mediators must recuse themselves from cases in which they have represented lenders or homeowners in mediation.

Visit the program's [website](#) to read the full version of the proposed amendments.



## DOJ and HUD Promote Strategies for Effective Foreclosure Mediation Programs

The US Departments of Justice and Housing and Urban Development released a report in November on “emerging strategies for effective foreclosure mediation programs.” The report, announced by Vice President Joe Biden, encourages program leaders to involve stakeholders in the design and development of the program, and to implement outreach and education efforts to ensure homeowners facing foreclosure are aware of the program. The report also says that homeowners are better prepared for mediation when they are assisted by a housing counselor and represented by an attorney. It also encourages programs to implement accountability measures for mediation participants, and to monitor and evaluate program performance.

Click [here](#) to read the full report. For further discussion of the report, see Heather Scheiwe Kulp's [Just Court ADR blog post](#).



## DC Think Tank Releases Foreclosure Mediation Best Practices Report

The Center for American Progress (CAP) released a report in November that details “best practices” for creating foreclosure mediation programs. The report is based on research done for two past CAP publications on foreclosure mediation programs currently in place throughout the country. Among many suggestions, the report encourages the development of programs that automatically send foreclosure cases to mediation. It also discusses the importance of engaging all stakeholders and incentivizing them to fully participate in the program. CAP is a liberal think tank based in Washington, DC.

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

---

## Research You Might Have Missed

### Early Mediation in California Provides Benefits

[Evaluation of the Early Mediation Pilot Programs](#), a 2004 study of five court-annexed civil mediation programs in California - three mandatory programs

(Fresno, Los Angeles, and San Diego counties) and two voluntary programs (Contra Costa and Sonoma counties), evaluated the programs in five areas: trial rate, time to disposition, litigant satisfaction, litigant costs, and court workload. The study included 23,792 eligible cases of unlimited jurisdiction, of which 6,320 were mediated, and 7,727 eligible cases of limited jurisdiction (under \$25,000, excluding small claims), of which 1,570 were mediated.

Authors Heather Anderson and Ron Pi found that 58% of unlimited cases and 71% of limited cases settled as a result of mediation. The trial rate was reduced 24 to 30 percent, resulting in substantial savings to both litigants and the court. Savings were also realized by a decrease in the number of motions and/or pretrial court events for program cases. There was also a positive impact on the time from filing to disposition for mediated cases, and attorney satisfaction was higher in program cases than non-program cases.

---

## From *Just Court ADR* Blog

### Our Myths About Poverty Stymie Action

"When middle and upper class people think of poverty, the mental image is often of the scruffy middle-aged man wrapped in dirty clothing, begging for a dime on a bustling downtown street. The word 'suburb' conjures images of smooth paved streets and well-kept single family homes with two-car garages. 'Rural' evokes even more pristine pictures: fields of healthy crops, tanned farmers smiling next to tractors, families gathering around a table giving thanks over heaping plates of home-cooked food. These archetypes are simply that: Platonic forms that do not reflect reality. I hope this recession changes our image of poverty. Poverty is not confined to the grit of city life, and **it never has been**. But the picture is even more different today." Click [here](#) to read the rest of this post by Heather Scheiwe Kulp.



### Courts as Ecosystems

"Earlier this week at a gathering in Baltimore where administrators, program evaluators and researchers provided input on Maryland's plan for a comprehensive study of court ADR in the state, Heather Anderson commented that the court system resembles an ecosystem. (Heather is a brilliant staffer for the Judicial Council of California, Administrative Office of the Courts, and an incredibly dedicated, knowledgeable worker in the court ADR field.) This idea of the court system as an ecosystem makes good sense." Click [here](#) to read the rest of this post by Susan Yates.



### VP Joe Biden: Honoring a Solemn Duty to Provide Access to Justice by Supporting Foreclosure Mediation

"On Friday, United States Vice President Joe Biden **announced** fresh support for foreclosure mediation programs. The official plan flows from recent work of the Department of Justice's **Access to Justice Initiative**, which focuses on increasing lower and middle class citizens' ability to understand and effectively employ the law to protect their rights. Since the project began in March 2010, the Initiative has explored foreclosure mediation as a possible solution to 'leveling the playing field in high-stakes civil cases.' Friday's Middle Class Task Force announcement secures mediation's place as a public priority for ensuring that more citizens have improved access to justice." Click [here](#) to read the rest of this post by Heather

Scheiwe Kulp.



## Keeping Our Eyes on the Prize

“The setting of goals or benchmarks is an essential component for a quality ADR program. Without those, a program can lack clarity of purpose and have no ability to gauge its impact on those it is serving. When we set those goals, however, it is important to ensure they are the right ones.” Click [here](#) to read the rest of this post by Jennifer Shack.

---

### Resolution Systems Institute

11 E Adams Street · Ste 500 · Chicago, IL 60603

P 312.922.6475 · F 312.922.6463

[visit us online](#) | [send us an email](#)

Court ADR Connection made possible by the JAMS Foundation



[Subscribe](#) | [Forward](#) | [Unsubscribe](#)