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RESOURCES / STUDY / INNOVATION FOR COURT ADR



COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

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This edition of *Court ADR Connection* features a new section highlighting resources in the CourtADR.org [Research Library](#). Each month, RSI staff members will select resources – both new and old, covering a variety of important topics – that represent some of the best thinking on issues related to court ADR. This month's selection includes an article on survey design, as well as databases on mediation case law and mediator ethics decisions. If you would like to suggest topics or resources for future editions, please contact [Connection Editor Jessica Glowinski](#).

The Court ADR News section covers a restorative justice bill that was recently introduced in the Virginia Legislature, as well as new foreclosure mediation programs launched in Florida and New Hampshire. The New Research section highlights a study on the effect of attorney participation in mediation on mediation outcomes.

In this issue...

Court ADR News

- » [Virginia Legislature Considering Restorative Justice Bill](#)
- » [Florida Supreme Court Adopts Foreclosure Mediation Model](#)
- » [New Hampshire Launches Foreclosure Mediation Program](#)

New Research

- » [The Negative Impact of Attorneys on Mediation Outcomes: A Myth or a Reality?](#)

On CourtADR.org

- » [Recommended Resources](#)
-

Court ADR News

Virginia Legislature Considering Restorative Justice Bill

A bill recently introduced in the Virginia legislature would formalize the structure of restorative justice programs in the state court system. The bill authorizes courts to order an offender to a court-approved restorative justice program, and specifies that victim participation in the restorative justice process is voluntary. The bill also sets confidentiality guidelines for communications made during the process and establishes civil immunity for court-approved restorative justice program providers.

Click [here](#) for the full text of the bill. Click [here](#) for more information on existing restorative justice programs in Virginia.



Florida Supreme Court Adopts Foreclosure Mediation Model

The Florida Supreme Court adopted in December a model foreclosure mediation program to be established in each state circuit court. Under the model, all foreclosure cases involving homestead residential properties will be referred to mediation, unless the borrower and lender agree otherwise or have already attempted pre-suit mediation. Borrowers must attend foreclosure counseling, and both borrowers and lenders must provide financial information pertinent to the case, prior to mediation. Lender representatives may participate in the mediation over the telephone, but borrowers, their counsel, and counsel for the lenders must attend all mediation sessions in person. Lenders will be responsible for paying a mediation fee of up to \$750. If more than two mediation sessions are held, lenders will be charged an additional \$350 per session.

Click [here](#) to read the full Supreme Court administrative order, which includes a model order for the state circuit courts, model forms, training standards for foreclosure mediators and general requirements for mediation program managers.



New Hampshire Launches Foreclosure Mediation Program

New Hampshire's Judicial Branch Office of Mediation and Arbitration (OMA) launched a foreclosure mediation program in January, giving homeowners in foreclosure and those at risk of foreclosure the option of requesting mediation with their lenders. To qualify for mediation, homeowners must submit a [mediation screening form](#) to their lender and the OMA. The lender reviews the form to determine if the borrower is a good candidate for a loan modification. If so, the case is scheduled for mediation. In an email correspondence with *Court ADR Connection*, OMA Director Karen Borgstrom said the screening form is available to borrowers online through the New Hampshire Judicial Branch and Governor's web sites, and is also sent to each homeowner in foreclosure by the New Hampshire Housing Authority. Seven days prior to mediation, borrowers must submit to their lenders relevant financial information and verification that they have met with a housing counselor. Lenders may attend the mediation session electronically, and borrowers and lenders must participate in mediation in good faith.

Click [here](#) for more information about the program.

New Research

The Negative Impact of Attorneys on Mediation Outcomes: A Myth or a Reality?

Studies have been conducted of the differences in attorney and party perspectives on mediation, but little has been done to determine what effect attorney participation in mediation has on mediation outcomes. Jean Poitras et al. have addressed this gap in knowledge in a recent study, which they discussed in "[The Negative Impact of Attorneys on Mediation Outcomes: A Myth or a Reality?](#)" in the January 2010 edition of *Negotiation Journal*.

The researchers asked 36 mediators of workplace disputes in eight regions of Quebec to distribute questionnaires to parties after mediation. In all, 145

unrepresented parties and 32 represented parties returned the questionnaire to the researchers in a pre-paid envelope. The questionnaires looked at seven factors that could be affected by the participation of attorneys: whether the case settled, how long it took to settle, the parties' impression of the effectiveness of the mediator, the parties' satisfaction with the mediation process, their satisfaction with the agreement, their confidence in the agreement, and whether mediation led to reconciliation between the parties.

The researchers found attorney participation had no impact on five of the seven factors. The two in which there was a difference were the parties' impression of the effectiveness of the mediator and whether mediation led to reconciliation between the parties. In the article, the researchers argue that the former does not have an impact on the effectiveness of the mediation, but that the latter needs to be addressed. They provide recommendations to mediators on how to improve the possibility of reconciliation when attorneys participate in mediation.

On CourtADR.org

Recommended Resources

» **What's Your Survey Telling You?**

A short, informative article that provides tips on how to write and design survey forms. This is a valuable resource for anyone involved in monitoring and evaluating ADR programs.

» **Committee on Mediator Ethical Guidance**

This ABA Section of Dispute Resolution advisory committee provides opinions on ethical issues to those who request them. Basing their opinions on the ABA Model Standards of Conduct for Mediators, the committee has addressed confidentiality, mediator fees, a mediator's role in settlement discussions, and other concerns. Any individual or organization with a question concerning ethical issues in mediation may request an opinion from the committee. **RSI Executive Director Susan M. Yates** became a member of the committee in January.

» **Mediation Case Law Project**

This site contains a database of more than 2,000 federal and state court cases involving disputed issues about mediation, written summaries of the most important of those cases, and instructive videos to illustrate what went wrong in particular cases. The cases cover a wide variety of issues, including confidentiality, enforcement of mediated settlements, and mediator malpractice.

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