



January 2009

Happy New Year, and welcome to the first *Court ADR Connection* of 2009! Mortgage foreclosure mediation programs dominate the news again this month, with a new program in Ohio and proposed programs in Wisconsin and Minnesota. There are also updates on existing programs in New Jersey and Connecticut. The ABA Dispute Resolution Section's new web page monitoring state foreclosure mediation programs is also highlighted. In other news, a study on how conflict asymmetry in mediation influences parties' experiences is featured in the New Research section. Finally, January's Tip of the Month highlights CourtADR.org's guide on the elements of a successful court mediation program.

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Court ADR News

New Jersey Allocates \$60 Million for Foreclosure Prevention Programs

The New Jersey governor recently signed legislation allocating \$60 million in state and federal funds to support foreclosure prevention programs. The state court system will receive \$500,000 to support its statewide mortgage foreclosure mediation program. The program, established in October, requires mediation for all foreclosure cases contested by homeowners.

For more information on the program funding, click [here](#). For more information on the program itself, click [here](#).



Ohio County Court, University Create Mortgage Foreclosure Mediation Program

Officials in Putnam County, Ohio, are working with mediators from a local university to provide mediation services for foreclosure cases in the county court. According to the *Putnam County Sentinel*, the Putnam Foreclosure Task Force, established in 2007 and made up of county officials, is working with Bluffton University to provide mandatory mediation for all foreclosure cases. The county and university have previously worked together to provide juvenile court victim-offender mediation services.

To read the article from the *Putnam County Sentinel*, click [here](#). For more information on the mediation program at Bluffton University, click [here](#).



Mixed Results for Connecticut Mortgage Foreclosure Mediation Program

Five months after its launch, Connecticut's mortgage foreclosure mediation program has helped hundred of homeowners prevent foreclosure. However, officials involved with the program are concerned that it is being underutilized. The program requires lenders to participate in mediation upon request of the borrower. According to the *Hartford Business Journal*, between July and early December only 5,513, or 28%, of eligible homeowners requested mediation. Of those, 361 reached a settlement allowing them to stay in their homes, and 116 who left their homes reached an agreement to pay the balance on their mortgages. The Connecticut governor has proposed making mediation mandatory for all foreclosure cases in order to increase participation in the program.

For the *Hartford Business Journal* article about the program, click [here](#). For information about the program from the Connecticut General Assembly web site, click [here](#).



Minnesota Attorney General Proposes Mortgage Foreclosure Mediation Act

The Minnesota attorney general proposed legislation in November to provide mediation services for homeowners facing foreclosure. Modeled after the state's Farmer-Lender Mediation Act from the 1980s, the proposal would require lenders to offer homeowners the option to mediate prior to foreclosure. If requested by the homeowner, mediation would occur within 20 days, with both the homeowner and lender required to participate in good faith. If the lender does not act in good faith, the homeowner could request court-supervised mediation.

For more information about the attorney general's proposal, click [here](#).



Wisconsin State Senator Proposes Foreclosure Mediation Bill

A Wisconsin state senator will propose new legislation to allow homeowners to

request mediation to prevent or delay foreclosure. According to WisPolitics.com, Sen. Lena Taylor's proposed Mortgage Mediation Act would require lenders to notify borrowers of their right to mediate. If borrowers request mediation, they would have 20 days from the date of the request to mediate with their lenders. Foreclosure proceedings would be postponed for 90 days. According to the *Wisconsin Journal-Sentinel*, the director of the state courts would run the program.

For the article at WisPolitics.com, click [here](#). For the *Wisconsin Journal-Sentinel* article, click [here](#).



ABA Web Site Monitors State Mortgage Foreclosure Programs

The ABA Section of Dispute Resolution has developed a new section on the ABA web site to monitor the creation of mortgage foreclosure mediation programs around the country. The section provides brief descriptions of current programs, as well as links to dozens of resources on foreclosure mediation.

Click [here](#) to visit the site.

New Research

Crooked Conflicts: The Effects of Conflict Asymmetry in Mediation

In *Crooked Conflicts: The Effects of Conflict Asymmetry in Mediation*, researchers Jehn, Rupert, et al. hypothesized that most mediations are characterized by an asymmetry of conflict and that this asymmetry has an impact on the participants' experience of mediation. Parties to mediation who experience different levels of conflict are less satisfied with the process and outcome of mediation.

To test these hypotheses, the researchers distributed questionnaires to 27 pairs of participants in mediations of workplace disputes in the Netherlands. They found that in 10 of the 27 mediations the participants perceived different levels of task conflict (disagreement over the task being performed), and in 20 of the mediations the participants perceived different levels of relationship conflict (disagreement about personal issues). This translated into lower levels of satisfaction with the mediation caused in part by a greater sense of mediator bias. The researchers also found that in those mediations in which the participants experienced different levels of task conflict, those who perceived a lower level of conflict were less satisfied with both the process and the outcome.

On CourtADR.org

Tip of the Month: Elements of a Successful Court Mediation Program

In "Elements of a Successful Court Mediation Program," RSI Executive Director Susan M. Yates reviews seven essentials that should be in place in any court mediation program. First, a program should clearly define three aspects: the goals of the program, the role of the court in the program, and the way the program works with the local legal and mediation environments. Having these definitions in place helps to ensure that the program is meeting the needs of both

the participants and the administrators. The final four elements involve the different actors who must participate in the program: members of the bench, members of the bar, court administrators and mediators. Making sure that all four of these groups are knowledgeable and supportive of the program greatly increases the program's chance of success. The guide includes advice on how to engage members of each of these groups, as well as suggestions for setting mediator standards. To access the full guide, click [here](#).

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