State of Connecticut
Judicial Branch

COMMISSION ON CIVIL COURT ALTERNATIVE DISPUTE RESOLUTION

REPORT AND RECOMMENDATIONS

December 21, 2011

Members of the Commission

Hon. Linda K. Lager, Chief Administrative Judge for the Civil Division, Chair
Hon. James W. Abrams
Hon. Jon M. Alander, Administrative Judge for the New Britain Judicial District
Attorney Christopher Bernard, Koskoff Koskoff & Bieder, PC
Attorney Daniel Blinn, Consumer Law Group*
Attorney Joseph B. Burns, Rome McGuigan, PC
Attorney Agnes Cahill, The Hartford
Attorney David W. Cooney, RisCassi & Davis, PC
Attorney Sarah F. DePanfilis, Sturm, Ruger & Company,Inc.
Hon. Kari A. Dooley
Attorney Timothy S. Fisher, McCarter & English, LLP
Hon. Frederick A. Freedman
Hon. Robert L. Holzberg, Administrative Judge for the Middlesex Judicial District
Attorney Irene P. Jacobs, Jacobs & Jacobs, PC
Professor Carolyn Wilkes Kaas, Quinnipiac University School of Law
Attorney Patricia Kaplan, New Haven Legal Assistance Association, Inc.
Attorney Jeffrey T. Londregan, Conway, Londregan, Sheehan & Monaco, PC
Attorney Duncan R. MacKay, Northeast Utilities Service Company
Hon. Aaron Ment
Attorney Arthur A. Palmunen, Aetna*
Attorney David A. Reif, McCarter & English, LLP
Attorney Roland G. Schroeder, General Electric Company
Attorney Robert R. Simpson, Shipman & Goodwin, LLP
Hon. Elliot N. Solomon, Administrative Judge for the Tolland Judicial District
Professor James H. Stark, University of Connecticut School of Law
Hon. Dawne G. Westbrook

_____

* Resigned from the Commission.

ACKNOWLEDGMENTS

I appreciate and acknowledge the diligent and thoughtful work of all the members of this Commission and extend my thanks to them. The members represented many diverse views and collectively represented decades of experience. The Commission's work could not have been completed in such a short time without their willingness to devote a substantial amount of their time, to share their knowledge and insights and to work collaboratively with each other.

On behalf of all the members of the Commission, I appreciate and acknowledge the work and contributions of our dedicated support staff from the Superior Court Operations Division of the Judicial Branch: Tais Ericson, Deputy Director, Civil; Margaret (Peggy) George, Caseflow Management Specialist; Roberta Palmer, Program Manager; and Rose Ann Rush, Court Management Specialist. Special thanks to Cheryl Halford, Mediation Specialist, for her assistance in the preparation of the final report and a special acknowledgement to Gregory J. Pac, caseflow statistician, who prepared all the statistical reports appended to this report.

Finally, I would like to personally thank Roberta Palmer for her efforts in coordinating the Commission's meetings and for her work as the program manager for all the court-sponsored civil ADR programs and the supervisor of the Foreclosure Mediation Program.

Hon. Linda K. Lager, Chair
December 21, 2011

TABLE OF CONTENTS

INTRODUCTION

The purpose of this report is to detail the work of the Commission on Civil Court Alternative Dispute Resolution (ADR Commission) and to set forth certain recommendations to the Chief Justice and the Office of the Chief Court Administrator. The Commission's work focused on court-sponsored alternative dispute resolution programs within the purview of the Connecticut Judicial Branch.

This report is organized as follows:

Section I reviews the Commission's charge and the process the Commission undertook to meet that charge.

Section II provides background information including the history of court connected civil ADR in Connecticut, data about the civil caseload during the relevant time period, and a brief description of the authorized court connected civil ADR programs in Connecticut as of the date of this report.

Section III contains the substantive work of the Commission including definitions, the goals and objectives of court-sponsored civil ADR in Connecticut and the Commission's recommendations.

Section IV contains the reports of the subcommittees

Section V contains the relevant appendices.

I. Charge and Process

The ADR Commission was established pursuant to recommendations outlined in the Public Service and Trust Commission's "Strategic Plan for the Judicial Branch."[1] Specifically, Outcome Goal Three of the plan addresses delivery of services and provides: "The Judicial Branch will provide effective, uniform and consistent delivery of services by enhancing the management of court practices." Achievement of this goal is to be measured by "an increase in the consistency of court practices; an increase in the clarity of court practices; a decrease in the time from filing to disposition of a case; and a decrease in the cost of delivery of services."

The Strategic Plan recognized the importance of ADR in achieving the realization of Outcome Goal Three. Strategy III.1 identified increasing "the utilization and effectiveness of Alternate Dispute Resolution" through three recommended activities.[2] The plan states: "Efficient and timely resolution of cases can sometimes be impeded by the traditional adversarial trial process. In appropriate cases, alternative dispute resolution (ADR) allows parties to avoid unnecessary confrontations and arrive at creative and reasonable resolutions of their disputes more quickly and economically, reducing caseloads and increasing satisfaction."

---

[1] See www.jud.ct.gov/Committees/pst/StrategicPlan.pdf

[2] Activity III.1.1 calls for "improving the ADR scheduling process through the use of technology." Activity III.1.2 calls for "providing training in ADR for judges, court personnel and volunteers." Activity III.1.3 calls for "providing consistent ADR programs in each judicial district." Public Service and Trust Commission, "Implementation of the Strategic Plan," p. 29.

In September 2010, the Public Service and Trust Commission issued Phase Three of the Implementation of the Strategic Plan.[3] Improvement of the delivery of court-sponsored ADR in civil, non-family, cases was one of the significant initiatives of this phase through the creation of a committee "to study and assess currently available court-sponsored ADR programs for civil, non-family cases, and propose changes that will improve the utilization and effectiveness of ADR for pending civil cases."[4]

On December 16, 2010, Chief Justice Chase T. Rogers appointed the Hon. Linda K. Lager, Chief Administrative Judge for the Civil Division, as the chair of the Commission on Civil Court Alternative Dispute Resolution (ADR) and appointed members to the Commission. The Commission's members were drawn from the bench, the bar and the academy and efforts were made to have members represent the various litigants and stakeholders who utilize court - sponsored civil ADR programs including businesses, consumers and trial lawyers.

The ADR Commission met for the first time on January 20, 2011. The ADR Commission's **charge** was straight-forward: To study and assess the utilization of currently available court-sponsored ADR programs for civil, non-family, cases from the perspective of litigants and stakeholders and to make recommendations that will improve the utilization and effectiveness of court-sponsored ADR.

With its charge outlined, the Commission set out to gather information from the Judicial Branch's stakeholders, in formal and informal settings, about the utilization and effectiveness of the available court-sponsored civil ADR programs, as well as to identify stakeholders, the types of cases they bring to court, their needs and priorities and whether the existing programs meet those needs. This was done through the use of surveys and focus groups. The respondents included attorneys, members of various bar associations, judges and Judicial Branch staff.

On January 28, 2011 the Commission members were provided with a template to assist in the information gathering process. The template posed four basic questions:

1. Who are the Branch's stakeholders?
2. What types of cases do they bring to court?
3. What are their needs/priorities?
4. Is the Branch able to meet these needs with the existing ADR programs?

The template then provided for the evaluation of each existing ADR program to the extent the respondents were familiar with it. The answers to these questions and the information, suggestions and comments provided by those who participated in the information gathering stage were analyzed by the Commission and provide the foundation for the recommendations set forth in this report. A summary of the results of the information gathering stage of the Commission's work is set forth in Appendix A.

---

[3] See www.jud.ct.gov/Committees/pst/PST_Phase3_Implementation.pdf

[4] Id., p. 48.

After the first meeting, the Commission met as a whole on March 31, 2011; May 23, 2011; September 19, 2011; November 9, 2011; and December 19, 2011. The agenda and minutes of the respective meetings can be viewed at http://www.jud.ct.gov/committees/ADR/default.htm.[5]

Following the information gathering stage, the Commission determined that it would create four subcommittees: utilization of court-sponsored ADR (Utilization), delivery of court-sponsored ADR (Delivery), Training and Evaluation. All four subcommittees were asked to consider uniformity and resource allocation as part of their undertaking. The membership of each subcommittee and its charge are detailed below.

1. Utilization Subcommittee: Chair, Professor James Stark, Judge Jon Alander, Attorney Joseph Burns, Attorney Agnes Cahill, Attorney David Cooney, Judge Linda Lager, Attorney Duncan MacKay, Judge Elliot Solomon. The charge of this subcommittee was: "To examine how and why court-sponsored ADR programs are used for civil cases in Connecticut by evaluating existing court-sponsored ADR programs." The subcommittee met three times.

2. Delivery Subcommittee: Co-chairs, Attorney Sarah DePanfilis and Attorney Robert Simpson, Judge James Abrams, Judge Frederick Freedman, Attorney Jeffrey Londregan, Attorney David Reif. The charge of this subcommittee was: "To evaluate the process of delivering ADR services by identifying standards for a procedurally fair, cost-effective, timely and ethical process." The subcommittee met six times.

3. Training Subcommittee: Chair, Judge Robert Holzberg, Attorney Christopher Bernard, Judge Kari Dooley, Attorney Irene Jacobs, Professor Carolyn Wilkes Kaas. The charge of this subcommittee was: "To identify and describe the qualities including, but not limited to, specific skills and subject-matter expertise of an effective and ethical civil ADR neutral. To identify methods to select and to train effective and ethical neutrals to preside for existing and potential court-sponsored civil ADR programs." This subcommittee met four times.

4. Evaluation Subcommittee: Chair, Attorney Timothy Fisher, Attorney Patricia Kaplan, Judge Aaron Ment, Attorney Roland Schroeder, Judge Dawne Westbrook. The charge of this subcommittee was: "To conduct research on processes and criteria that could be used to evaluate ADR programs and providers in a rigorous and meaningful manner. To identify methods that could be used to evaluate Connecticut's court-sponsored civil ADR programs." This subcommittee met three times.

The subcommittees reported back to the Commission as a whole on September 19, 2011 to allow comment and discussion of their tentative recommendations. Each subcommittee finalized a report and recommendations which were reviewed and voted on by the Commission as a whole on November 9, 2011 and December 19, 2011. The final recommendations as well as the reports of the subcommittees will be presented in sections III and IV of this report.

[5] The Commission also created a wiki page to post its ongoing activities, which can be accessed at the following link - http://adrcommission.wikispaces.com/

II. Background Information

The mission of the Connecticut Judicial Branch is to serve the interests of justice and the public by resolving matters brought before it in a fair, timely, efficient and open manner. The Connecticut Superior Court is the only general jurisdiction court in the state to which civil matters, other than probate matters, may be brought. As a result, a wide variety of cases come before the Civil Division from small claims matters to complex business disputes, from summary process cases to multi-million dollar construction claims, from rear-end motor vehicle accidents to professional negligence actions, from unemployment compensation appeals to retaliatory discharge and discrimination claims and so on.

Although the fundamental judicial role is to render judgment to resolve a dispute, Connecticut has long recognized that there are other appropriate and effective ways by which parties could resolve civil disputes including forms of private dispute resolution. As early as colonial times, mediation of personal disputes and arbitration of commercial matters were practiced in the Connecticut colony and elsewhere in New England.[6] For example, in 1753 the General Assembly of the Connecticut colony passed "An Act for the more easy and effectually finishing of controversies by Arbitration" which permitted "all merchants and others desiring to end any controversy (for which they have no other remedy but personal action or a suit in equity) by arbitration" using an elective private mechanism that could be enforced in court.[7]

Today, the Civil Division of the Judicial Branch provides a number of court sponsored programs aimed at offering alternatives to the resolution of civil disputes by way of a full jury or bench trial. Likewise, the private sector provides dispute resolution options for civil litigants, such as arbitration and mediation, which the parties may freely elect to pursue without court mandate. In addition to its formal programs, the Branch by rule and custom offers parties the opportunity to settle their civil disputes or narrow the issues in judicially supervised pretrial conferences as outlined in Connecticut Practice Book §§ 14-11, 14-13, trial management conferences and settlement conferences. This structure, of access to court-sponsored programs and settlement options and non-mandatory private free market dispute resolution services, allows civil litigants to elect the most appropriate dispute resolution method for their case, promotes more efficient management of the civil docket and ensures that judges will be available to preside over full trials when parties elect to proceed to trial.

---

[6] Jerold S. Auerbach, Justice Without Law, Oxford University Press, 1983, 40, 41; Connecticut Bar Association, Unauthorized Practice of Law Committee, Informal Opinion 2002-02; Harry N. Mazadoorian, Mediation Practice Book: Critical Tools, Techniques and Forms, Law First Publishing, 2002, 3.

[7] Charles J. Hoadly, State Librarian, Public Records of Connecticut from May 1751 to February 1757, Inclusive, Press of the Case, Lockwood & Brainard Co., 1877, 202-203. Accessed online at

www.archive.org/stream/publicrecordsofc010conn Today, formalized arbitration is governed by the provisions of General Statutes § 52-408 et seq., (Rev. 2011) which are modeled on the Uniform Arbitration Act.

In the last 30 years, the Connecticut Judicial Branch has undertaken numerous court-sponsored ADR programs for civil cases. Some of these programs arose when the inventory of civil cases awaiting jury and court trials had burgeoned resulting in undue delays, sometime four or five years, before litigants could obtain their day in the civil trial courtroom. For example, when the Court Annexed Mediation program began in 1996, there were more than 22,000 cases pending cases on the jury trial list and more than 6,000 cases on the court trial list. Other programs arose from the Branch's internal case management initiatives. Others were instituted as required by specific legislation. The Branch has not comprehensively evaluated these programs in the last twenty years yet, in the same time period, the civil caseload has undergone much change including a substantial decrease in the length of time it takes to reach trial. Another dramatic change in the last few years is a marked increase in the number of self-represented litigants appearing in civil cases.

The civil caseload of the regular docket is comprised of eight major case types: Administrative Appeals; Contracts; Eminent Domain; Torts; Vehicular Torts; Property; Wills, Estates and Trusts; and Miscellaneous. From fiscal year 1992-93 through fiscal year 2006-07, the number of civil cases added to the regular docket each year ranged from a low of 50,640 to a high of 58,472, averaging approximately 55,000 cases a year, while the number of cases disposed ranged from a low of 49,973 to a high of 69,200 averaging approximately 57,000 cases a year. Then, in fiscal year 2007-08 new cases added rose to 69,112 cases and in the next two fiscal years to 76,317 and 78,275 cases respectively before dropping back to 68,932 cases added in fiscal year 2010-11, and dispositions increased from 55,872 in fiscal year 2007-08 to 79,0111 in fiscal year 2010-11.[8] See Appendix B.

The civil caseload also includes housing cases although caseload statistics for these cases are reported separately from matters pending on the regular docket. There are six Housing Sessions statewide that process landlord/tenant matters, the vast majority of which are summary process (eviction) actions. While the number of added summary process actions has dropped slightly in the past two fiscal years, the volume of cases added each fiscal year has consistently been over 16,000. See Appendix B.

From fiscal year 1991-92 through fiscal year 2003-04, a substantial percentage of the inventory on the regular civil docket were cases that had been claimed to either the jury or court trial list. For example, in fiscal year 1997-98, cases claimed to these two trial lists represented almost 42% of the pending cases; pending jury cases reached a high of 23,436 amounting to one-third of the pending civil caseload. A combination of docket management, the assignment of more judges to the Civil Division, the creation of the Complex Litigation Docket and the availability of appropriate alternatives to a full trial resulted in a more than 50% drop in the pending jury and court trial inventory from its 1997-98 high. The number of cases claimed to the jury and court trial lists has remained consistent since fiscal year 2004-05 at approximately 15% of the pending civil caseload. See Appendix B.

[8] During the same time period, approximately 85,000 small claims cases per year were added on average and approximately 94,000 per year on average were disposed. See Appendix B.

There is little doubt that the recent downturn in the economy has led to a significant increase in the number of foreclosure and contract collection cases filed in the last four fiscal years. These two case types presently account for about 55% of pending civil cases. Contract collection cases alone doubled from fiscal year 2006-07 to fiscal year 2010-11. Non-vehicular tort cases make up about 11% of the civil caseload, while vehicular torts make up 17%.

In addition to the increase in the volume of contract collection and foreclosure cases filed, there has been a steady increase in the number of self-represented parties in those cases as well as an overall increase in the number of self-represented parties appearing in civil cases. In fiscal year 2005-06, 19% of civil cases had at least one self-represented party; in fiscal year 2009-10, 26% of civil cases had at least one self-represented party appearing. See Appendix C. Interestingly, although a small part of the civil caseload, unemployment compensation appeals have a self-represented appearance rate in excess of 95%. In the housing session, summary process cases have a significant number of self-represented parties; for the past five fiscal years 82% of these cases have at least one self-represented party.

As of January 2011, when the Commission began its work, the Judicial Branch had eleven existing court-sponsored civil ADR programs.[9] The legal authority, eligibility requirements and procedures varied for each program. Program services were provided by specialized court staff, attorneys and judicial officials. Eligible case types included contested housing matters, residential property foreclosures, contract cases with damages less than $50,000.00, cases involving the ownership, maintenance or use of a private motor vehicle, tax appeals, certain nonjury cases requiring fact-finding and jury cases with damages less than $50,000.00. See Appendix D for a detailed description of the existing programs.

One demonstrably effective model of court-sponsored civil ADR is the use of specialized court staff in a specialized court setting. The first program in Connecticut, the Housing Session of Superior Court, was created by the Connecticut Legislature in 1978, P.A.78-365, now codified as General Statutes § 47a-68 et seq., to handle all housing matters. The legislation provided for "housing specialists" who were not only "responsible for the initial screening and evaluation of all contested housing matters," but also were given authority to "conduct investigations of such matters including, but not limited to, interviews with the parties, and . . . recommend settlements." The role of the staff of the housing sessions has evolved since the initial legislation, from one of screening and evaluating cases to mediating between parties and facilitating settlements. In fact, Public Act 10-43 officially changed the name of the "housing specialists" to "housing mediators" so as to better reflect the role these staff members play in resolving the majority of cases brought to the housing sessions every day. In 2008, with the passage of P.A. 08-176, the legislature used a similar court staff model to establish the foreclosure mediation program for residential mortgage foreclosure cases. General Statutes § 49-31m et seq., as amended by P.A. 11-201.

[9] Arbitration, Attorney Trial Referee, Attorney Trial Referee/Special Master for Administrative Appeals, Court Annexed Mediation, Early Intervention and Early Neutral Evaluation, Expedited Process Track, Fact-Finding, Foreclosure Mediation, Mediation Specialists – Landlord/Tenant Matters, Summary Jury Trial, Medical Malpractice.

Another effective model of court-sponsored civil ADR is the Court Annexed Mediation Program (CAM). When this program began on July 1, 1996, the idea was that retired judicial officials, specifically Senior Judges and Judge Trial Referees, would serve in a settlement role in cases that required more than a half day of judicial time for settlement discussions. The program thus served the Branch's case management needs at a time when trial list inventory was high but it also benefitted the parties by reducing delay, offering confidentiality and lowering costs. When it became clear that the involvement of experienced judges was the most attractive aspect of the program, active judges were recruited to participate in this specific settlement function under the auspices of the CAM program. To this day, CAM is one of the most popular of the court-sponsored civil ADR programs.

There can be no doubt that court-sponsored civil ADR programs can assist civil litigants in Connecticut and the Judicial Branch in resolving matters in a fair, timely, and efficient manner. Today, "courts across the country are seeking ways to provide a better quality of justice for various kinds of litigation, improve citizens' access to justice, save court and litigant costs, and reduce delays in the disposition of cases [including] the use of new forms of dispute resolution as an alternative to litigation . . . ." [10] The Judicial Branch's provision of appropriate alternative programs for resolving disputes or narrowing issues can have a measurable impact on the time it takes to dispose of a civil case and can result in significant savings but the litigants and stakeholders must feel confident that they will be treated fairly and with respect and that the program will be delivered with a high level of professionalism and integrity. Therefore, the Commission has concluded that a successful court-sponsored ADR program should consist of a procedurally fair, cost effective and ethical process designed to timely resolve the type of dispute at hand, taking into account the needs of all the involved stakeholders, conducted by trained neutrals applying best practices, which leads to an outcome or a change in position the stakeholders find satisfactory, even if the case itself does not settle.

III. The Commission's Substantive Work

This section of the report contains the substantive work of the Commission including the following: a list of definitions of terminology, the Commission's statement of the goals and objectives of court-sponsored civil ADR programs, an executive summary of the recommendations of the subcommittees, a section highlighting overlapping recommendations of the subcommittees, the Chair's recommendations, and additional recommendations of the full Commission. The full reports of the subcommittees which detail their recommendations are set forth in section IV of this report.

[10] National Standards for Court-Connected Mediation Programs, Center for Dispute Settlement, The Institute of Judicial Administration, Introduction.

A. Definitions of Terminology

The imprecise use of various terms that arise in the context of discussing or describing alternative dispute resolution processes and programs can lead to confusion and misunderstanding. The Commission relied upon the following definitions in making its recommendations. Unless otherwise noted, the definitions are taken from Kimberlee K. Kovach, Mediation Principles and Practice (3d ed. 2004).

Adjudicative: in adjudicatory dispute resolution processes, such as arbitration and private adjudication, or private judging, the neutral adjudicates, or makes a decision.

Arbitration: generally conducted by a sole arbitrator or a panel of three, arbitrators listen to a typically adversarial presentation of all sides of a case, and thereafter render a decision, usually termed an award; may be binding and nonbinding in nature.

Caucus: the confidential meeting of members of one side of a dispute, usually with the mediator, to discuss options and attempt to find a resolution.

Collaborative: a process where people are encouraged to work toward resolution in a transparent and peaceful manner; the goal is to support the parties to unfold the issues and create fair agreements that will stand the test of time while emphasizing the importance of a continuing relationship after the conflict has been resolved. International Academy of Collaborative Professionals http://www.collaborativepractice.com/_t.asp?M=1&MS=5&T=Glossary

Conciliative: a process where the primary focus is on the interpersonal aspect of a conflict; a neutral brings parties together to discuss matters, and emphasis is placed on the mending and maintenance of relationships.

Dispute: a conflict or controversy which may become the subject of litigation. Black's Law Dictionary (8th Ed. 2004)

Dispute Resolution Provider: a person, other than a judge acting in an official capacity, who holds himself or herself out to the public as a qualified neutral person trained to function in the conflict-solving process using the techniques and procedures of negotiation, conciliation, mediation, arbitration, mini-trial, moderated settlement conference, neutral expert fact-finding, summary jury trial, special masters, and related processes. Adapted from Title 58, Chapter 39a Utah Code Ann. 1953, as amended by Session Laws of Utah 2009

Evaluative: a process whereby advocates present their version of a case to one or more third party neutrals, who then evaluate the strengths and weaknesses of each case as presented; the primary purpose of neutral case evaluation is to provide an objective, non-binding and confidential evaluation of a case.

Facilitative: in facilitative processes, the neutral does not render a decision or an evaluation; rather, the neutral provides assistance to the parties so that they may reach an acceptable agreement.

Mediation: a process where a third party neutral, whether one person or more, acts as a facilitator to assist in resolving a dispute between two or more parties; the role of the mediator includes facilitating communication between the parties, assisting in identifying the real issues of the dispute and the interests of the parties, and generating options for settlement.

Neutral: a trained third-party who does not have a stake in the outcome of a dispute and assists the parties toward resolution.

Pretrial Conference: an informal meeting at which opposing attorneys confer, usually with a judge, to work toward the disposition of a case by discussing matters of evidence and narrowing the issues that will be tried. Black's Law Dictionary (8th Ed. 2004)

Provider: any entity or organization which holds itself out as managing or administering dispute resolution or conflict solving services. Adapted from CPR-Georgetown Commission on Ethics and Standards of Practice in ADR, Principles for ADR Provider Organizations, May 1, 2002

Procedural: pertaining to rules that prescribe the steps for having a right or duty enforced. Black's Law Dictionary (8th Ed. 2004)

Settlement: an agreement ending a dispute or lawsuit. Black's Law Dictionary (8th Ed. 2004)

Substantive: pertaining to rights, duties and powers. Black's Law Dictionary (8th Ed. 2004)

Success: a successful court-sponsored ADR program should consist of a procedurally fair, cost effective and ethical process designed to timely resolve the type of dispute at hand, taking into account the needs of all the involved stakeholders, conducted by trained neutrals applying best practices, which leads to an outcome or a change in position the stakeholders find satisfactory, even if the case itself does not settle. Definition of the ADR Commission

B. ADR Program Goals and Objectives

The Commission concluded that ADR program goals and objectives must be clearly stated for many purposes including designing and delivering court-sponsored civil ADR programs, training and, most importantly, evaluating existing programs as well as new programs. The Commission unanimously adopted the following goals and objectives:

- **Resolution of cases**: The most basic purpose of ADR programs is to enable the parties to achieve a resolution they find acceptable rather than one imposed by the judicial system. Because litigation can be expensive and difficult, ADR programs should serve to facilitate early resolution. A successful resolution does not necessarily mean the entire case is settled without trial; partial resolution of substantive or procedural issues can be deemed successful.

- **Efficiency of the process to parties and Judiciary**: ADR programs should avoid unnecessary procedures and delays that might increase the cost to the litigants; the programs should also be structured so that Judicial Branch resources are utilized in a cost effective way.

- **Fairness in the process**: Parties must trust that the ADR process is procedurally and substantively fair, as an incentive to utilize ADR. Fairness includes impartiality of neutrals, respectful treatment of litigants, and allocation of sufficient time to the ADR process so that the parties have the opportunity to be fully heard.

- **Provision of skilled neutrals (e.g. education, experience, process skills, knowledge of subject matter)**: The skills and experience of the neutral are factors in achieving quality resolutions through ADR; a skillful neutral with good process skills and experience in the subject matter is more likely to gain the confidence of the participants and aid in resolution of the issues in the case.

- **Success in identifying and addressing underlying issues in the case and seeking to satisfy party interests**: Some disputes arise in the context of ongoing relationships, such as employment and many housing cases. Good ADR resolves not only the immediate dispute, but improves the parties' communications, which can help to eliminate or reduce future disputes. Even where the parties are strangers, it is often possible to identify, address and seek to satisfy the underlying interests of the litigants, with settlements that are not mere compromise solutions.

C. Executive Summary of the Subcommittee's Recommendations

All the recommendations of the subcommittees were put to a vote by the members of the ADR Commission. The recommendations contained in this report, both as summarized below and as detailed in the individual subcommittee reports that appear in section IV of this report, were approved by a majority of the Commission. See Appendix E.

1. Utilization Subcommittee: This subcommittee evaluated the existing court-sponsored Civil ADR programs.

A. Recommendations re: Arbitration

1. Uniform criteria for the appointment of arbitrators should be

developed.
2. Training for arbitrators should be provided.
3. Uniform, formal procedures for hearings should be adopted.
4. A requirement that defendants, in addition to counsel, attend the proceedings should be adopted.

B. Recommendations re: Attorney Trial Referee (ATR)

1. Expanding the use of this program to other judicial districts should be considered.
2. Use of this program in more specialized cases when an ATR has specific expertise should be considered.
3. Training for ATRs should be provided.
4. Use of ATRs for pretrials should be eliminated.

C. Recommendations re: ATR/Special Master for Administrative Appeals

1. Expand this program to other judicial districts using the same model of volunteer special masters with subject matter expertise in tax appeals.
2. Develop/train volunteers who can act as special masters in unemployment appeals.

D. Recommendations re: Court Annexed Mediation (CAM)

1. The number of CAM judges should be increased.
2. Training for judges to serve as mediators should be provided.
3. The use of CAM, or a subset of CAM, should be considered in large or catastrophic type cases where there are barriers to resolution in order to resolve those barriers/issues first.
4. Qualifications and other relevant information about CAM judges should be available in advance of mediation in order to facilitate appropriate matching of CAM judges to cases. Other relevant information includes special substantive expertise, whether parties are permitted to speak and whether they use an evaluative or facilitative approach.

E. Recommendation re: Early Intervention and Early Neutral Evaluation

The Early Intervention and Early Neutral Evaluation programs should be eliminated.

F. Recommendation re: Expedited Track Process

Recommend that Conn. Gen. Stat. Sec. 52-195b(b)(2) be repealed.

G. Recommendations re: Fact-Finding

1. A pilot program to offer a mediation option in Fact-Finding eligible cases should be developed for implementation in a judicial district currently using the Fact-Finding program.

2. An additional ADR option of referral to a community mediation program, if available and willing to accept the referral, should be considered for Fact-Finding eligible cases.

H. Recommendation re: Foreclosure Mediation Program (FMP)
No recommendations were made with regard to the FMP program.

I. Recommendation re: Housing Mediation Specialists
This program should remain unchanged.

J. Recommendation re: Medical Malpractice Mediation
The final report should alert the legislature to the limited success of this program.

K. Recommendation re: Summary Jury Trial
The Summary Jury Trial program should be eliminated.

2. Delivery Subcommittee: This subcommittee focused on identifying standards for a procedurally fair, cost-effective, timely and ethical process for delivering court-sponsored civil ADR.

I. Recommendation: Criteria for ADR Process
The Branch should ensure that existing and new court-sponsored civil ADR programs contain the following features: procedural fairness, substantive fairness, cost-effectiveness and timely and ethical process.

A. Procedural Fairness Recommendations:

1. Rules should be established for each type of ADR process, published and easily available.

2. Neutrals and providers should adhere to these rules.

3. Sufficient and timely written notice should be given to all parties.

4. The Commission voted against recommendation I.A.4.

5. ADR should not take place until parties have had an opportunity to conduct sufficient discovery to know the facts reasonably necessary to determine settlement options.

6. All ADR neutrals should be trained in the particular type of service being provided.

7. Mandatory programs, such as the mediation of foreclosures, where there are a large number of self-represented parties, should be conducted by Judicial Branch personnel.

8. [Except as required by the reporting standards applicable to all cases, the results of ADR processes should remain confidential.] TABLED *

B. Substantive Fairness Recommendations:

1. Fact-finders and arbitrators should be required to base their decisions on applicable substantive law.

2. The results of fact-finding and arbitration should be in writing and set forth the reasoning used in reaching that decision.

3. Quasi-judicial functions, such as fact-finding and arbitration, when resolved by someone other than a judge, should permit judicial review.

4. While non-lawyer mediators and fact-finders may be appropriate in the mediation of and fact-finding in technical areas, such as electronic discovery, if the final determination is on the merits of the dispute, only judges and lawyers should act as arbitrators.

5. The ADR neutral should be fully informed as to the facts of the case and other considerations.

6. [Except to the extent required for standard reporting purposes, all third-party ADR neutrals should keep the results of their deliberations confidential.] TABLED*

* Note re tabled recommendations I.A.8 and I.B.6: The Commission had an extensive discussion on including recommendations regarding ADR neutrals maintaining the confidentiality of the results of the deliberations. The Commission was concerned that this language would conflict with mandates by statute and otherwise to file this information or provide this information to the court, for example, in the non-binding arbitration program, in the housing mediation program and in the foreclosure mediation program. The Commission discussed the importance of providing some confidentiality in settlement contexts, such as the court-annexed mediation program and pre-trial conferences. The Commission also recognized the Judicial Branch's commitment to openness and transparency. In light of the complexity of the issue of confidentiality in the context of court-sponsored civil ADR programs and the need to balance important and competing public policy considerations, the Commission concluded that these recommendations should be tabled.

C. Cost-Effectiveness and Timeliness Recommendations:

1. Flexible procedures should be adopted suited to the needs of a particular case. Requirements that the process occur at a preset time should be discouraged.

2. Procedures should include an on-going review of cases.

3. Sufficient resources should be committed to ADR processes to facilitate timely referral to appropriate ADR programs.

4. Specialized cases should, to the extent that resources permit, be assigned to a provider and neutral with substantive knowledge or experience. General lists of providers and neutrals should include information regarding any specialized experience or knowledge which the provider may possess.

5. All cases should be exposed to ADR prior to trial.

D. Ethical Process Recommendations:

1. The Judicial Branch should establish a formal process for parties to register complaints if they feel they have been treated unfairly in ADR.

2. Standards of conduct should be adopted for ADR neutrals and providers.

3. A review process for ADR neutrals and providers should be implemented for the purposes of ensuring adherence to proper procedures and the appropriate standards of conduct.

4. Where appropriate, due to a failure to perform adequately, non-Judicial Branch ADR neutrals and providers should be removed from the rolls of neutrals and providers. The neutral and provider should have input into the review process.

II. The subcommittee recommends that the delivery of ADR services be undertaken by a split approach employing both a case-specific model for certain cases and multi-option model for the rest of the docket.

A. Case-specific Approach Recommendations:

1. As recommended by the utilization subcommittee, housing and foreclosure cases should continue to be eligible for the mediation process.

2. Mediation processes should be developed which allow for referral based on specific case type (e.g. contract collections and certain administrative appeals) where the nature of the dispute and the parties involved demonstrate a need for a supplement to the traditional court trial process.

B. Multi-Option Approach Recommendations:

1. For all cases not subject to case-specific referral, a multi-option

model should be adopted.

2. The multi-option model should offer and coordinate a "menu" of dispute resolution options which could include:
    a. Mediation
    b. Arbitration
    c. Facilitation
    d. Discovery Dispute Resolution
    e. Settlement Conference
    f. Settlement Blitz
    g. Pretrial Conference
    h. Existing programs as recommended by the utilization subcommittee

3. Multi-option ADR neutrals and providers could include:
    a. Judges/Judge Trial Referees
    b. Staff Neutrals/Mediators
    c. Lawyers (Volunteer and Paid)

4. The use of supervised law students as ADR neutrals should be further explored.

5. Three referral processes should be utilized at any point during the case track. These include:
    a. Request by party
    b. Referral by stipulation
    c. Automatic assignment through the court with the creation of an assessment tool to be used by staff.

6. Referral to multi-option ADR should not be mandated.

7. Organization of the multi-option approach should be done in a centralized manner utilizing a staff member who is highly qualified and experienced in dispute resolution to ensure that there is quality control, consistency throughout the judicial districts, uniformity and a mechanism for evaluation.

8. The central coordinator of ADR should work in collaboration with the presiding judge in each district and local staff to integrate ADR as an effective case management tool.

9. A form should be developed (see suggested questions) to facilitate review of cases for an appropriate multi-option ADR referral.

3. Training Subcommittee: This subcommittee focused on identifying methods to select and to train effective and ethical neutrals.

I. Recommendation: Attorneys

The Judicial Branch should develop a process to recruit and train attorneys to serve in adjudicative capacities and settlement capacities.

II. Recommendation: Non-Attorneys

The Judicial Branch should recruit trained non-attorneys to assist with settlement functions in certain cases.

III. Recommendation: Judges

The Judicial Branch should develop a comprehensive training program for judges to improve settlement skills.

IV. Recommendation: Attorneys Performing Adjudicative Functions

A. The Judicial Branch should establish specific criteria (see suggested criteria) for screening and selecting attorneys to serve as trial referees, fact-finders and arbitrators.

B. The Judicial Branch should require selected attorneys to participate in a Branch sponsored training program and continuing legal education.

V. Recommendation: Attorneys and Non-Attorneys Performing Settlement Functions

A. The Judicial Branch should establish specific criteria (see suggested criteria) for screening and selecting attorneys and non-attorneys to assist the court by serving as mediators or settlement officers.

B. The Judicial Branch should require selected attorneys and non-attorneys to participate in a Branch sponsored training program and continuing legal education.

4. Evaluation Subcommittee: This subcommittee researched processes and criteria that could be used to evaluate ADR programs and providers in a rigorous and meaningful manner and identified methods that could be used to evaluate Connecticut's court-sponsored civil ADR programs.

I. Recommendation: **Monitoring ADR Program Operations**

The Branch should institute a system to monitor ADR programs that assesses each court-sponsored civil ADR program and neutrals for the

following features: procedural fairness, substantive fairness, cost-effectiveness, timely process and ethical process.

II. Recommendation: **ADR Evaluation Goals/Programs**

The Branch should gather data useful to determine whether the goals and objectives of each court-sponsored civil ADR program are being met.

III. Recommendation: Measurement

A. For each court-sponsored civil ADR program and for the neutrals and providers, the Branch should consider measuring the following:

1. Outcome of cases utilizing ADR
2. Settlement rates
3. Attorney and party satisfaction
4. Parties' perception of fairness about the process
5. Speed of process (e.g. from request for ADR to scheduling)
6. When ADR requested/referred (i.e. early in litigation, later)
7. Success in resolving issues underlying the legal dispute
8. Overall satisfaction with ADR program and neutral (e.g. suitability of program for a particular type of case, neutral's skills)
9. Program costs (to Branch and parties)
10. Effectiveness of programs (compare ADR programs/success rates)

B. For each court-sponsored civil ADR program and for the neutrals and providers, the Branch should use appropriate measurement criteria such as:

1. <u>Outcome of cases utilizing ADR</u>
    - disposition of cases- e.g. withdrawal v. trial

2. <u>Settlement rates</u>
    - percentage of cases withdrawn/settled within a certain time frame after participation in ADR program v. cases withdrawn/settled within a certain time frame with no utilization of ADR
    - percentage of cases settled by each neutral

3. <u>Attorney and party satisfaction</u>
    - did the parties find ADR productive and helpful
    - was the particular ADR program appropriate for their case
    - was the skill set of the neutral appropriate for their case
    - would they utilize ADR again, why or why not
    - would they request the same neutral again, why or why not

4. Parties' perception of fairness about the process
    - was the process fair, even if case did not settle
    - was the neutral fair and impartial in the process

5. Speed of process
    - time between ADR request and scheduling of ADR session(s)
    - number of sessions
    - ease in scheduling subsequent sessions with the neutral
    - time between last session and disposition of case
    - time it takes to get to trial if case does not settle through ADR

6. When ADR was requested/referred
    - point in case when ADR session was requested by parties or referred by court

7. Success in resolving underlying issues in the case
    - whether issues settled /stipulated to even if entire case was not settled

8. Overall satisfaction with the ADR process
    - rate specific ADR program
    - rate individual neutral

9. Program costs
    - cost to the parties (e.g. attorney and party's value of time committed)
    - cost to the Branch to administer the program

11. Effectiveness of programs
    - if case was withdrawn/settled, determine whether it was due to ADR
    - determine which ADR programs are most successful in settlement of cases (consider Outcome of cases utilizing ADR and Settlement rates above)
    - determine which ADR programs achieve highest rate of meeting the most ADR program goals
    - determine the success of each neutral in achieving ADR program goals

IV. Recommendation: **Measurement Tools**

The Branch should consider using the following measurement tools as deemed appropriate to the specific program or provider or neutral under evaluation:

- Questionnaires and Surveys

- Participant Interviews
- Observation
- Focus Groups
- Case Studies
- Documentation Review

D. <u>Overlapping Subcommittee Recommendations</u>

1. ADOPT UNIFORM FORMAL REQUIREMENTS FOR ADR PROCESSES
   UTILIZATION Recommendation A
   DELIVERY Recommendations I.A, I.C, I.D

2. ADOPT CRITERIA FOR APPLICATION AND APPOINTMENT OF ADR NEUTRALS AND PROVIDERS
   UTILIZATION Recommendation A
   DELIVERY Recommendation I.D
   TRAINING Recommendations I, IV.A, V.A

3. UTILIZE ADR NEUTRALS WITH SPECIALIZED EXPERTISE
   UTILIZATION Recommendations B, C, D
   DELIVERY Recommendation I.C

4. PROVIDE INFORMATION ON QUALIFICATIONS, SUBSTANTIVE SKILLS AND EXPERTISE OF ADR NEUTRALS
   UTILIZATION Recommendation D
   DELIVERY Recommendation I.C

5. PROVIDE TRAINING FOR ADR NEUTRALS
   UTILIZATION Recommendations A, B, C, D
   DELIVERY Recommendation I.A
   TRAINING Recommendations III, IV.B, V.B

6. CONSIDER USING NON-ATTORNEY ADR NEUTRALS
   UTILIZATION Recommendation G
   TRAINING Recommendation II

7. PROVIDE PROGRAMS RUN BY JUDICIAL STAFF NEUTRALS
   UTILIZATION Recommendations H, I
   DELIVERY Recommendations I.A, II.A

E. Chair's Recommendations

1. The Connecticut Judicial Branch should consider adopting the term "Appropriate Dispute Resolution" in lieu of the term "Alternative Dispute Resolution" for court-sponsored civil programs.

Comment: The word "alternative," which as an adjective can imply "either or" or a "second choice" and as a noun means a choice between two courses where if one "is chosen the other is rejected," Webster's Third New International Dictionary, does not accurately describe the nature and types of programs that this report recommends. In addition, "alternative" may suggest to litigants and stakeholders that the offered program does not provide the substantive and procedural protections of full-blown litigation or a fully adversarial process. The word "appropriate" means "specially suitable." Id. It more accurately describes court-sponsored programs that take into account the needs of litigants and stakeholders, are procedurally fair, cost effective, ethical and conducted by trained neutrals applying best practices which are designed to timely resolve the type of dispute at hand or lead to an outcome or a change in position the stakeholders find satisfactory, even if the case itself does not settle. See "success" § II.A. Definitions of Terminology, supra.

2. The Connecticut Judicial Branch should redesign the web page found at http://jud.ct.gov/external/super/altdisp.htm.

a. The web page should describe the civil court-sponsored ADR programs using clear stakeholder-friendly descriptions which should contain all information relevant to a stakeholder's decision to participate in the program including the ways in which the program could lead to a successful outcome and whether the program is voluntary or mandatory. Terminology should be consistent with the definitions adopted by the Commission.

b. The web page should describe the locations in which the programs are offered.

c. The web page should describe how stakeholders can elect to participate in voluntary programs.

3. The "Court-Annexed Mediation" program should be renamed the "Judicial Settlement Program" to more accurately reflect the way in which the program operates.

4. The Connecticut Judicial Branch should work with bar, consumer and business organizations, as well as local media, to publicize the court-sponsored civil ADR programs.

F. Additional Recommendations

I. In connection with its process of implementing the recommendations of this report, the Judicial Branch should consider the appropriateness and feasibility of involving non-profit and private ADR providers in court-sponsored civil ADR programs. [11]

II. The Commission recommends the establishment of a standing committee on civil court-sponsored ADR to advise and assist the Judicial Branch in the implementation of the Commission's recommendations. [12]

IV. The Reports of the Subcommittees

The reports of the subcommittees contain more detail than the executive summaries of the recommendations. The reports illuminate the process by which each recommendation was reached and in some instances explain both the advantages and disadvantages of certain recommendations. By consulting the full reports, policy makers should be able to inform their choices with respect to adopting the recommendations set forth in this report and those tasked with implementing adopted recommendations will find guidance as they engage in the process. In addition, to aid both policy makers and implementers Appendix F contains a bibliography of materials and Appendix G indexes the documents distributed to the members of the Commission (which may be obtained upon request from the Judicial Branch's manager of ADR programs).

[11] At the Commission's meeting on November 9, 2011, attorney Timothy Fisher proposed adding a recommendation regarding the involvement of outsider providers, specifically non-profit and private ADR providers, in court-sponsored ADR programs. Recommendation I is derived from that proposal.

[12] This recommendation was proposed at the Commission meeting on December 19, 2011.

Commission on Civil Court Alternative Dispute Resolution (ADR)
Utilization Subcommittee Full Report

The Utilization Subcommittee was charged with examining how and why court sponsored ADR programs are used for civil cases in Connecticut by evaluating existing court-sponsored civil ADR programs.

Evaluation of Existing Civil ADR Programs:

1. Arbitration

A. Objective:

To provide a non-binding option for jury cases <50K to achieve a disposition short of a trial, while providing the parties with an opportunity to be heard.

B. Is the objective being met?

Positive Attributes Identified:

- Statistics suggest it is effective in that disposition frequently occurs within 90 days of the event
- Allows parties to be heard in a more formal setting than some other ADR programs
- Evaluative process
- Alternate routes to program - judge referral or party request, are available and seen as valuable
- Right to trial de novo - important feature because program is off the record, can be mandated and was set up to be a non-binding procedure

Issues Identified:

- Qualifications of arbitrator
    - No criteria for appointment as an arbitrator
    - No training
    - Lack of subject matter expertise and ability to value a case
    - Minimal standard for experience (beyond C. G. S. 52-549w) desirable

- Procedure
    - Lack of uniformity of procedures across judicial districts statewide
    - Issue with defendants frequently not attending
    - Widely varying attitudes about the process and degree of preparation for it lead to inconsistent

outcomes; it can be a waste of time when litigants or their attorneys are resistant

C. Other or new uses for the program?

No other or new uses were identified.

Recommendations:

1. **Uniform criteria for the appointment of arbitrators should be developed.**
2. **Training for arbitrators should be provided.**
3. **Uniform, formal procedures for hearings should be adopted.**
4. **A requirement that defendants, in addition to counsel, attend the proceedings should be adopted.**

2. Attorney Trial Referee (ATR)

A. Objective:

To provide an option, with no jurisdictional limit on the amount in controversy, when there is consent of the parties in non-jury cases, to present evidence before a neutral in a proceeding on the record in which the rules of evidence apply.

B. Is the objective being met?

Positive Attributes Identified:

- In the only judicial district where this program is used (Stamford), ATRs assigned to cases have subject matter expertise.

Issues identified:

- Program is only used in two judicial districts; used in Stamford for trials and in Tolland for pretrials
- Criticism of using ATRs for pretrials has been received because conducting pretrials is seen as a judge function

C. Other or new uses for the program?

Use of this program in more specialized cases should be considered.

Recommendations:

1. **Expanding the use of this program to other judicial districts should be considered.**

2. **Use of this program in more specialized cases when an ATR has specific expertise should be considered.**
3. **Training for ATRs should be provided.**
4. **Use of ATRs for pretrials should be eliminated.**

3. ATR/Special Master for Administrative Appeals

A. Objective:

To provide an opportunity for resolution of tax and unemployment appeals claimed to the administrative appeals trial list before a qualified neutral.

B. Is the objective being met?

Positive Attributes Identified:

- Used in a specific class of cases
- In judicial districts where this program is used, ATRs assigned have subject matter expertise
- Additional sessions with provider are available if needed
- High rate of settlement
- No costs associated with this program because neutrals are volunteer attorneys and are not paid for their services; neutrals are assigned for their expertise in tax appeals so no training is required

Issues Identified:

- Program is not widely used. It was noted that this program is currently being used only in two judicial districts – Stamford and New Haven. New Haven automatically assigns all tax appeals to this program. Stamford assigns tax appeals bi-annually.

C. Other or new uses for the program?

No other or new uses were identified.

Recommendations:

1. **Expand this program to other judicial districts using the same model of volunteer special masters with subject matter expertise in tax appeals.**
2. **Develop/train volunteers who can act as special masters in unemployment appeals.**

4. Court Annexed Mediation (CAM)

A. Objective:

To provide an option to seek resolution through mediation with a judge or judge trial referee at the request of the parties in cases which will require more than a half-day pretrial conference to settle.

B. Is the objective being met?

Positive Attributes Identified:

- Adequate time is allotted; multiple sessions can be scheduled if necessary
- Parties have input regarding judge/JTR assigned by listing 3 preferred mediators on the referral form
- CAM often results in settlement or moves cases toward settlement by focusing the issues

Issues Identified:

- Currently there are 6 -12 very popular CAM judges. It can take months to schedule CAM with one of these judges, and cannot be done on short notice
- Judges have different skill sets and use different approaches
- Information re: judge qualifications, approach, etc., is not always known or available in advance of the mediation, e.g., some judges will speak to parties, while others will only speak to counsel.
- Some large or catastrophic type cases have barriers to resolution such as complex insurance coverage issues which should be settled separately before there is a mediation between plaintiff(s) and defendant(s)

C. Other or new uses for the program?

Consider using a subset of CAM in large or catastrophic type cases where there are barriers to resolution, such as complex insurance coverage issues, in order to break down or resolve those issues first.

Recommendations:

1. **The number of CAM judges should be increased.**
2. **Training for judges to serve as mediators should be provided.**
3. **The use of CAM, or a subset of CAM, should be considered in large or catastrophic type cases where there are barriers to resolution in order to resolve those barriers/issues first.**
4. **Qualifications and other relevant information about CAM judges should be available in advance of mediation in order to facilitate appropriate matching of CAM judges to cases. Other relevant information includes special substantive expertise, whether parties**

are permitted to speak and whether they use an evaluative or facilitative approach.

5. Early Intervention and Early Neutral Evaluation

A. Objective:

To allow for referral, mostly in personal injury cases, either by a judge or party, to a special master for a settlement conference early in the litigation process

B. Is the objective being met?

Positive Attribute Identified:

- There were no positive attributes identified

Issues Identified:

- Both programs are rarely used
- Programs were developed at a time when the inventory of cases statewide was very high
- May be too early in the process to be helpful
- Not enough demand for a formal early intervention or early neutral evaluation type program. If an early option is desired, it can be accommodated by a request to the caseflow office. CAM and other ADR options are also available

C. Other or new uses for the program?

No other or new uses were identified.

Recommendation:

The Early Intervention and Early Neutral Evaluation programs should be eliminated.

6. Expedited Track Process

A. Objective:

To provide an option for expedited resolution in cases involving the ownership, maintenance or use of a private passenger motor vehicle where the plaintiff's claim <75K, and all parties consent and waive the right to a jury trial, record of proceedings and the right to appeal.

B. Is the objective being met?

Positive Attributes Identified:

- There were no positive attributes identified

Issues Identified:

- Program is not being used in any judicial district; parties not filing the consent form and notice required/not seeking placement in this program
- Application is limited by statute to motor vehicle cases where the plaintiff's claim <75K

C. Other or new uses for this program?

No other or new uses were identified.

Recommendation:

Recommend that C. G. S. sec. 52-195(b)(2) be repealed.

7. Fact-Finding

A. Objective:

To allow the court to refer contract cases claimed to the courtside trial list (except uninsured motorist/underinsured motorist contracts) where the claim is <50K and is based on a promise to pay a definite sum, to a neutral to find facts, in a proceeding on the record and where the rules of evidence apply.

B. Is the objective being met?

Positive Attributes Identified:

- Exposure to the event, not the event itself, frequently prompts settlement
- In JDs using this program, they have a roster of well-respected, actively practicing attorneys serving as fact-finders
- Fact-Finding is helpful in a small judicial district that has a limited number of judges available; and in larger judicial districts with a large number of eligible cases, it helps dispose of cases without having to schedule them for court trials

Issues Identified:

- Used mostly in 4 judicial districts (Hartford, Middletown, Bridgeport, Windham); JDs not using program report that they have the resources to schedule these cases for court

trials and therefore do not have the same needs as the 4 JDs using it
- Low value contract cases which are eligible for Fact-Finding are often the types of cases that are a good fit for mediation, e.g., home improvement contracts. A mediation option could be offered for these cases as well, but would require a large pool of practicing attorneys to serve as the neutral and would also require a training component.
- Some types of low value contract cases which are eligible for Fact-Finding are not always disputes about money, but often involve emotion, e.g., home improvement contracts, neighbor disputes, and may be well suited for community mediation

C. Other or new uses for the program?

No other or new uses were identified.

Recommendations:

1. **A pilot program to offer a mediation option in Fact-Finding eligible cases should be developed for implementation in a judicial district currently using the Fact-Finding program.**
2. **An additional ADR option of referral to a community mediation program, if available and willing to accept the referral, should be considered for Fact-Finding eligible cases.**

8. Foreclosure Mediation Program (FMP)

A. Objective:

To address the high number of mortgage foreclosure cases returnable after July 1, 2008 by providing an opportunity for resolution between the parties through mediation.

B. Is the objective being met?

Positive Attributes Identified:
- Settlement rate of 80% (65% staying in home; 15% moving from home) from inception of program through 5/31/11
- Mandated by legislation
- Dedicated staff mediators
- Need for program is great for both sides

Issues Identified:
- Expensive; Total Branch cost for fiscal year 2012 = 5.2 million dollars (separately funded through special appropriations)

- Legislation imposes constraints with regard to making any changes to this program

C. Other or new uses for the program?

No other or new uses were identified.

Recommendations:

No recommendations were made with regard to the FMP program.

9. Housing Mediation Specialists

A. Objective:

To resolve contested housing matters eligible for placement on the housing docket through mediation.

B. Is the objective being met?

Positive Attributes Identified:

- Effective and efficient: large number of cases mediated and large number settle
- Narrow
- Evaluative
- Black Letter
- Specific range of outcomes that can generally be predicted by staff mediators, most of whom are very experienced

Issues Identified:

- No issues were identified

C. Other or new uses for program?

No other or new uses were identified.

Recommendation:

This program should remain unchanged.

10. Medical Malpractice Mediation

A. Objective:

To achieve a prompt resolution in cases alleging personal injury or wrongful death, whether in tort or in contract, as a result of the negligence of a health care provider through mediation, or another

ADR program agreed to by the parties, prior to the close of pleadings.

B. Is the objective being met?

Positive Attributes Identified:

- No positive attributes were identified

Issues Identified:

- Occurs before the close of pleadings - too early in the litigation process for these types of cases
- When event is scheduled, vast majority of the cases report that it is too early
- National settlement data base deters settlements

C. Other or new uses for the program?

No other or new uses were identified.

Recommendation:

The final report should alert the legislature to the limited success of this program.

11. Summary Jury Trial

A. Objective:

To provide an opportunity for resolution in jury cases through presentation of an abbreviated summary of the case before a Judge/JTR and jurors.

B. Is the objective being met?

Positive Attributes Identified:

- No positive attributes were identified

Issues Identified:

- Non-binding
- Labor intensive – requires judge, staff, courtroom, jurors
- Almost never used

C. Other or new uses for the program?

No other or new uses were identified.

Recommendation:

The Summary Jury Trial program should be eliminated.

Commission on Civil Court Alternative Dispute Resolution (ADR)
Delivery Subcommittee Full Report

I. BACKGROUND

A. ESTABLISHMENT AND CHARGE

The ADR Delivery Subcommittee was established by the full Commission with the following members: Attorney Sarah DePanfilis, Co-Chair; Attorney Robert Simpson, Co-Chair; Hon. James Abrams; Hon. Frederick Freedman; Attorney David Reif; Attorney Jeffrey Londregan and Roberta Palmer, Staff Assistant. The Subcommittee was given the charge of evaluating the process of delivering ADR services by identifying standards for a procedurally fair, cost-effective, timely and ethical process. The Subcommittee was asked to consider scheduling, case management issues, case selection, uniformity and resource allocation.

B. APPROACH TO CHARGE

As part of its charge, the Subcommittee reviewed existing data and statistics, as well as researched and reviewed periodicals and other materials on the subject of ADR. These materials included:

1. A list of all pending civil cases as of March 28, 2011 in all Connecticut Superior Courts (itemized by case type and physical location of the case);

2. ADR statistics as of February 28, 2011 for all civil cases scheduled for ADR events from September 1, 2010 until February 28, 2011 (itemized by ADR type and physical location of the case);

3. Factual information and data for currently existing court sponsored civil ADR programs;

4. ADR statistics as of May 31, 2011 for civil cases scheduled for arbitration, attorney trial referee, fact finding, early intervention, court annexed mediation, and civil mediation events, from July 1, 2009 until May 31, 2011;

5. ADR Commission Survey Results compiled as of March 31, 2011;

6. Data from twenty-seven (27) states and their authorities, oversights, processes, and funding for their respective ADR programs; and

7. ADR Articles:

a. Publication by Jennifer Shack, Court ADR Rules Nuts & Bolts.

b. Publication by Susan M. Yates, Elements of a Successful Court Mediation Program.

c. Brazil, Comparing Structures for the Delivery of ADR Services by the Courts: Critical Values and Concerns, 14 Ohio St. J. of Disp. Resol. 717 (1999).

d. McAdoo and Welsh, Court Connected General Civil ADR Programs: Aiming for Institutionalization, Efficient Resolution and the Experience of Justice ADR Handbook for Judges.

e. Pel and Combrink, Referral to Mediation by the Netherlands Judiciary, Judiciary Quarterly, Customized Conflict Resolution: Court-Connected Mediation in The Netherland 1999-2009 (2011).

f. Riskin and Welsh, Is That All There Is?: "The Problem" in Court- Oriented Mediation, 15 Geo. Mason L. Rev. 863 (2008).

g. Sanders and Rozdeiczer, Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation-Centered Approach, 11 Harv. Negot. L. Rev. 1 (2006).

h. Wissler, Court Connected Mediation in General Civil Cases: What We Know From Empirical Research, 17 Ohio State J. of Dispute Resolution 641 (2002).

i. Wissler, Court Connected Settlement Procedures: Mediation and Judicial Settlement Conferences (draft August 10, 2010) to be published in 26 Ohio St. J. of Disp. Resol. (2011).

8. National Standards for Court-Connected Mediation Programs by the Institute of Judicial Administration Center for Dispute Settlement.

9. Guide to Judicial Management of Cases in ADR by the Federal Judicial Center, 2001.

10. Principles of Judicial Administration by the National Center for State Courts.

In addition to this data and documentation, the Subcommittee was fortunate enough to draw upon the personal knowledge of some of its members who had recently attended national ADR seminars.

The Subcommittee held four (4) meetings. These were held on June 13, 2011, at the law offices of McCarter & English in Hartford; July 25, 2011, at the law offices of Day Pitney in New Haven; September 13, 2011, at the law offices of Shipman & Goodwin in Hartford; and October 3, 2011, at the Middletown Superior Court.

During the June 13, 2011 meeting, the Subcommittee concentrated on finalizing the definition of a fair ADR program, specifically including standards such as procedural fairness, cost-effectiveness, timeliness, and an ethical process. The goals of the Subcommittee were set to include identifying a fair ADR program, identifying programs that meet the fairness standard, and recommending programs and delivery processes appropriate for Connecticut. Analysis was done as to the existing ADR programs, and whether or not every case should be exposed to ADR. A consensus was reached that mandatory ADR generally works well in summary process (housing) and foreclosure cases; and that mandatory ADR should be extended to collection cases where at least one defendant has appeared.

During the July 25, 2011 meeting, the Subcommittee determined that confidentiality should be included as a standard for any ADR process under the categories of procedural fairness and having an ethical process. Discussions were had as to whether or not case management of ADR matters should be handled at a neutral site in order to relieve the Presiding Judges of that burden, or if case management should remain with the Judicial Districts. Docket management was identified as an important consideration in developing an effective ADR program. Different systems used nationwide were analyzed, and a consensus was reached that a “split approach” of having individual ADR mediation programs for housing, foreclosure, and collections in place, while offering “multi-option” programs for cases involving torts, contracts, tax/unemployment administrative appeals, and miscellaneous cases which may be candidates for some type of ADR. The development of an ADR intake form was discussed and developed.

During the September 13, 2011 meeting, the Subcommittee agreed to recommend that the mandatory mediation programs in housing and foreclosure actions continue, and that a formal recommendation be made that a new mediation program be created for collection cases. This new mediation program should mirror, as close as possible, the housing and foreclosure programs. Discussions were held on finalizing an intake form for use with the multi-option programs, and creating a system of ADR oversight through a centralize coordinator that would work with the various Judicial Districts.

During the October 3, 2011 meeting, the Subcommittee reviewed and reconsidered some of its preliminary recommendations in light of the comments and feedback it received from the entire Commission during the September 19,

2011 ADR Commission meeting. It was decided that the Subcommittee needed to take a more "macro" approach to delivery, so that policy-makers will have options and alternatives. It was determined that there should be a type of assessment process for cases to determine if they could benefit from ADR. It was also determined that much of the assessment and case management duties should remain with the local Judicial Districts, but that there be some centralized support by a central ADR coordinator for the local Districts. Discussions of the various advantages and disadvantages to individual ADR programs and "multi-door" ADR programs were discussed.

The outcome of these meetings is this written report, and the recommendations made herein.

II. RECOMMENDED CRITERIA FOR ADR PROCESS

The Subcommittee believes that one of the keys to the acceptance of Alternative Dispute Resolution in the courts will be the degree to which all the stakeholders leave the process with a sense that it has given them an opportunity to resolve their dispute in a fair process, without duress and with an impartial decision maker or mediator. To obtain that result, the Subcommittee recommends that the consideration of both existing and new ADR processes be guided by the degree to which such process fits the following criteria.

A. PROCEDURAL FAIRNESS AND THE PERCEPTION THEREOF

Third-party stakeholders - attorneys and clients - need to enter and leave the process with both the reality of a process which has given each side an equal opportunity to prepare and present their arguments and to be heard, the perception of that opportunity, and a sense of having been fully invested in the process. Therefore, the Subcommittee recommends the following:

1. Rules should be established for each type of ADR and those rules should be published and easily available.

2. While some flexibility is necessary, particularly for self-represented parties, the ADR neutral and provider should adhere to those rules.

3. Written notice should be given to all parties as to the date and time of any ADR proceeding and such notice should be sufficiently before the event to allow the parties to have time to prepare.

4. [To the extent possible within financial constraints, the ADR neutral should not be an attorney actively engaged in the practice of law, unless the parties agree to such a neutral. This is particularly important where one of the parties is self-represented, as such parties may feel that they are at a disadvantage where the neutral and opposing counsel know each other.] **Note: The full Commission rejected this recommendation.**

5. In order to assure that the parties have adequate information to assess the strengths and weaknesses of their case and to present those claims, ADR should not take place until the parties have had an opportunity to conduct sufficient discovery to know the facts reasonably necessary to determine the facts necessary to make such a determination. In order to satisfy the timeliness goals set forth below, however, they need not have conducted all the discovery needed to try the case.

6. All ADR neutrals should be trained in the particular type of service being provided.

7. Mandatory programs, such as the mediation of foreclosures, where there are a large number of self-represented parties, should be conducted by Judicial Branch personnel.

8. [Except as required by the reporting standards applicable to all cases, the results of ADR processes should remain confidential.] **Note: The full Commission voted to table this recommendation.**

B. SUBSTANTIVE FAIRNESS

While the results that the parties reach in a facilitative ADR, such as mediation, may not be those which would be reached by a judge deciding the case, the Subcommittee believes that the goal of speedier resolution, should not overwhelm the desire to reach a result which approximates that which would be reached at trial where the ADR process is designed to make a quasi-judicial determination, such as fact-finding or arbitration. Therefore, the Subcommittee recommends:

1. Fact-finders and arbitrators should be required to base their decisions on applicable substantive law.

2. The results of fact-finding and arbitration should be in writing and set forth the reasoning used in reaching that decision.

3. Quasi-judicial functions, such as fact-finding and arbitration, when resolved by someone other than a judge, should permit judicial review.

4. While non-lawyer mediators and fact-finders may be appropriate in the mediation of and fact-finding in technical areas, such as electronic discovery, if the final determination is on the merits of the dispute, only judges and lawyers should act as arbitrators and fact finders.

5. The ADR neutral should be fully informed as to the facts of the case and other considerations.

6. [Except to the extent required for standard reporting purposes, all third-party ADR neutrals should keep the results of their deliberations confidential.] **Note: The full Commission voted to table this recommendation.**

C. COST-EFFECTIVENESS AND TIMELINESS

One of the advantages of ADR is savings to the parties and the judicial system through the avoidance of full trials after exhaustive and often exhausting discovery and motion practice. In order to fulfill this goal, the Subcommittee recommends:

1. The procedures adopted should have sufficient flexibility to adjust the timing of the process to the needs of a particular case. Requirements that the process occur at a preset time, such as X days after the filing of the complaint, should be discouraged.

2. The procedures should include an on-going review of cases so that cases can be spotted that might be amenable to early resolution.

3. Sufficient resources should be committed to the process so that parties who believe that their case is at a point where ADR would be effective can get speedy assignment to a qualified neutral.

4. Where the matter being considered would benefit from a neutral with specialized knowledge, such as construction cases, the parties should, to the extent that resources permit, be assigned to a neutral with that substantive knowledge or experience. General lists of neutrals should include information regarding any specialized experience or knowledge which the neutral may possess.

5. All cases should be exposed to ADR prior to trial.

D. ETHICAL PROCESS

The judicial system only works because the participants believe that they are being given an unbiased hearing. In order to be sure that those same standards apply to ADR, the Subcommittee recommends:

1. The Judicial Branch should establish a formal process, similar to, but less formal than, that applicable to judges, for parties to register complaints if they feel they have been treated unfairly in ADR.

2. Standards of conduct should be adopted for ADR neutrals and providers.

3. A review process for ADR neutrals and providers should be implemented for the purposes of ensuring adherence to proper procedures and the appropriate standards.

4. Where appropriate, due to a failure to perform adequately, non-judicial branch ADR neutrals be removed from the rolls of providers. The neutral should have input into the review process.

III. RECOMMENDATION - SPLIT APPROACH

A. "CASE-SPECIFIC" AND "MULTI-OPTION" PROGRAMS

There are significant differences between individual "case-specific" dispute resolution programs and multi-option (also referred to as multi-door) programs. As further described below in Section IV, case-specific programs generally operate as the name suggests, offering a single dispute resolution process and categorical case referral based on case-type.

The multi-option model provides a coordinated yet flexible approach to dispute resolution. It typically employs a centralized management system to help facilitate and unify the intake and referral processes. The model allows for substantial flexibility of intake and referral procedures to meet the needs and resources of each jurisdiction. Unlike the case-specific approach, multi-option programs offer and coordinate a "menu" of dispute resolution options and handle a variety of cases. As further described below, options may include processes such as mediation, arbitration (binding or non-binding), discovery dispute resolution, etc.

A basic tenet of the multi-option approach is a diagnostic screening of cases or case assessment. The structure of the court system and types of cases usually define the types of screening mechanisms used. Examples of widely used screening mechanisms are as follows:

- **Categorical Screening** – conducted by case-type, dispute resolution type (i.e. "settlement week"), age of case, amount of claim, or other common factor.

- **Individualized Screening** – each case is individually diagnosed for needs and appropriate dispute resolution referral. This can be performed by a trained professional staff by telephone conference or an in-person conference (recommended for self-represented parties for maximum informed consent). The screener recommends the appropriate dispute resolution process and best neutral for the issues that need to be addressed.

- **Computer Assessment** – appearing parties complete a computerized assessment form. If certain criteria are met, the form is analyzed and a recommendation made as to the most appropriate dispute resolution process.

- **Combination** – a combination of any of the above may occur (i.e. categorical screening takes places during computer assessment. If appropriate, case is referred for individualized screening).

After extensive research and discussion, it is the recommendation of the Delivery Subcommittee that a split approach (employing both a case-specific and multi-option approach) would be most beneficial in Connecticut. As the Utilization Subcommittee found, the existing housing and foreclosure case-specific programs are generally successful. The Delivery Subcommittee recommends that it may be useful to consider additional case-specific programs, that mirror the existing housing and foreclosure programs, for collections cases and administrative appeals. It also recommends that the balance of pending cases be eligible to participate in a multi-option program, as shown below by example.

Case-Specific Programs
- Housing
- Foreclosure
- Collections
- Tax/Unemployment Administrative Appeals

Multi-Option Programs
- Torts
- Contracts
- Miscellaneous

B. RESEARCH

As noted above in Section I, the Delivery Subcommittee reviewed a number of materials and recent publications on this issue in formulating its split approach recommendation. The Delivery Subcommittee also conducted a survey of dispute resolution programs used in other states, a summary of which is attached as Exhibit A.

C. RATIONALE FOR SPLIT APPROACH RECOMMENDATION

1. ADVANTAGE

A multi-option component provides an opportunity for case assessment and access to an appropriate dispute resolution process and provider, while still retaining the success of case-specific programs such as housing and foreclosure.

2. DISADVANTAGE

Increased administrative oversight, training and cost.

IV. CASE-SPECIFIC APPROACH

A. DEFINITION

The delivery of ADR processes based on referral of a specific case type such as housing, foreclosures, contract collections.

B. BACKGROUND

The Judicial Branch has seen both an increase in the number of certain civil case types filed and in the number of self-represented parties involved in certain cases. At the same time, judicial resources are strained. Despite these factors, the Branch can continue to ensure equal access to the judicial system by offering innovative ways for parties to resolve their dispute through processes which are procedurally fair, cost-effective, timely and ethical. Effective ADR services can play an important role by offering processes and outcomes which may be better suited for some parties' needs.

Due to the documented success of the Housing Mediation Program and the Foreclosure Mediation Program, the Subcommittee believes that the J Judicial Branch should increase the availability of mediation services for certain case types in a process that mirrors these programs.

C. RECOMMENDATION

The Subcommittee recommends that mediation processes be developed which allow for referral of certain specific case types where the nature of the dispute and the parties involved demonstrate a need for a supplement to the traditional court trial process. As previously stated, the Housing Mediation Program and the Foreclosure Mediation Program should be used as an effective model for delivery.

1. ADVANTAGES

- Provider offers specialized knowledge/expertise
- Process is understanding of the issues facing self-represented parties
- Inspires public confidence/satisfaction with Court
- Cost-effective
- Central management allows for uniformity

2. DISADVANTAGES

- Expensive if providers are court staff
- Requires a large pool of providers if non-court staff used

3. CASE TYPES

- Contract Collections
- Administrative Appeals
- Any other appropriate case types

V. MULTI-OPTION APPROACH

A. DEFINITION

The multi-option concept is described above in Section III.

B. BACKGROUND - MULTI-STATE REVIEW

States such as Colorado, Washington D.C., Northern District of Ohio and Massachusetts (on a pilot basis) use a multi-option approach. The programs are briefly discussed below.

Colorado – Colorado's first multi-option pilot program was implemented in 1995. The purpose of the project was to facilitate matching of individual cases to appropriate dispute resolution processes. The multi-option concept arose out of the realization that litigation is not always the best choice for resolving disputes. Parties should be offered a range of consistent alternatives (such as mediation and arbitration) as well as have access to assistance in screening, or evaluating cases to determine the dispute resolution process and provider that is most appropriate.

Colorado offers a case screening conference at which parties review the issues involved in the case and the best ways to resolve those issues. The result is a settlement plan with details about the nature of the form of dispute resolution to be tried, the timing of the settlement efforts, and the identity of the dispute resolution provider. If the parties are unable to agree on a settlement plan, fail to meet with the case screeners, or fail to provide a more specific settlement plan, a screening judge reviews the case and formulates a settlement plan that becomes an order entered by the trial judge. There is a central Office of Dispute Resolution that provides oversight, pro se assistance and periodic seminars that explain the processes offered.

Washington D.C. – The Multi-Door Dispute Resolution Division helps parties settle disputes through mediation and other types of appropriate dispute resolution, including arbitration, case evaluation and conciliation. The name "Multi-Door" comes from the multi-door courthouse concept, which envisions one courthouse with multiple dispute resolution doors or programs. Cases are referred through the appropriate door for resolution. The goals of a multi-door approach are to provide citizens with easy access to justice, reduce delay, and provide links to related services, making more options available through which disputes can be resolved. The Multi-Door Dispute Resolution Division of the D.C. Superior Court assists parties to reach agreements that meet their interests, preserve relationships, and save time and money. The mediators and dispute resolution specialists are trained at Multi-Door to serve in a wide range of cases, including civil, small claims and family.

Northern District of Ohio – Northern District of Ohio's multi-option program began on January 1, 1992 and offers mediation, arbitration, early neutral evaluation, summary bench trial and summary jury trial processes

for the resolution of civil cases. The court's program has a full-time ADR administrator and handles several hundred cases a year on average. The ADR Administrator also conducts periodic evaluations of the program.

All five of the ADR processes provide for a combination of either voluntary or mandatory referral. A judge may order a case to one of the five processes at the case management conference or anytime thereafter, or a party may request referral, or both parties may stipulate that the case be referred to a particular ADR process. In practice, most referrals take place at the case management conference and are made by the judge although parties regularly select some ADR process typically after some discovery has occurred. All of the court's ADR processes are confidential unless the parties otherwise agree. Evaluators and Mediators file confidential reports with the ADR administrator regarding agreements reached, and recommendations as to whether future ADR might be beneficial.

Massachusetts – Massachusetts' multi-option pilot program was implemented in 1990. In the program, civil cases were sent via referral or, during the evaluation period, through random assignment. Parties paid an administration fee as well as a fee for the neutral's time. Referral led to a mandatory case screening conference, in which the parties learned about the different dispute resolution options available to them and the case screener recommended the use of one of those options. The parties were then allowed to choose one or no option.

C. RECOMMENDATION OF THE MULTI-OPTION APPROACH

1. ADVANTAGES

- Ability to offer a selection of high quality and uniform dispute resolution processes
- Increased coordination among offered dispute resolution programs
- Increased assistance in assisting parties and the court in selecting appropriate dispute resolution programs
- Increased public awareness and confidence in the judicial branch
- Courts that use multi-option approach report high stakeholder satisfaction
- Increased desirability as parties maintain more control over the process
- Judicial and court staff time and resource savings

2. DISADVANTAGES

- Requires training for broader skills to assess cases
- Too many options may discourage party agreement on most appropriate process
- To the extent voluntary, parties may chose option with least effort to get through the process and move on to litigation

- The more options, the more training needed for neutral roster

D. OPTIONS

1. Mediation – a process where a third party neutral, whether one person or more, acts as a facilitator to assist in resolving a dispute between two or more parties; the role of the mediator includes facilitating communication between the parties, assisting in identifying the real issues of the dispute and the interests of the parties, and generating options for settlement

2. Arbitration – generally conducted by a sole arbitrator or a panel of three, arbitrators listen to a typically adversarial presentation of all sides of a case, and thereafter render a decision, usually termed an award; may be binding and nonbinding in nature

3. Facilitation – in facilitative processes, the neutral does not render a decision or an evaluation; rather, the neutral provides assistance to the parties so that they may reach an acceptable agreement

4. Discovery Dispute Resolution – a process where a third party neutral acts as a facilitator to assist in resolving limited discovery issues; if agreement is not reached, neutral may make a recommended ruling for consideration by court

5. Settlement Conference – parties and their attorneys meet before trial with a judge. Each side makes offers and the judge evaluates their validity and fairness while encouraging the parties to reach a settlement

6. Settlement Blitz – the court schedules a number of cases during a specific time frame (i.e. full day, week) for settlement conferences hoping to encourage settlement discussions and dispose of a large number of cases

7. Pretrial Conference – an informal meeting at which opposing attorneys confer, usually with a judge, to work toward the disposition of a case by discussing matters of evidence and narrowing the issues that will be tried

8. Options as recommended by the Utilization Subcommittee

a. **Arbitration –** to provide a non-binding option for jury cases <50K to achieve a disposition short of a trial,

while providing the parties with an opportunity to be heard

b. **Attorney Trial Referee (ATR) –** to provide an option, with no jurisdictional limit on the amount in controversy, when there is consent of the parties in non-jury cases, to present evidence before a neutral in a proceeding on the record in which the rules of evidence apply

c. **ATR/Special Master for Administrative Appeals –** to provide an opportunity for resolution of tax and unemployment appeals claimed to the administrative appeals trial list before a qualified neutral

d. **Court Annexed Mediation (CAM) –** to provide an option to seek resolution through mediation with a judge or judge trial referee at the request of the parties in cases which will require more than a half-day pretrial conference to settle

e. **Fact-Finding –** to allow the court to refer contract cases claimed to the courtside trial list (except uninsured motorist/underinsured motorist contracts) where the claim is <50K and is based on a promise to pay a definite sum, to a neutral to find facts, in a proceeding on the record and where the rules of evidence apply

VI. ADR NEUTRALS

A. JUDGES/JUDGE TRIAL REFEREES

1. ADVANTAGES

- Presumptive status or respect
- Reputation for specialized knowledge/expertise
- Evaluation easier to accomplish

2. DISADVANTAGES

- Limited to cases where all parties are represented
- Lacking uniformity in process
- May have difficulty giving up evaluative/adjudicative role
- Lack of specialized knowledge/expertise

It is recommended that Judges and JTRs be available to provide ADR services when appropriate with the creation of a roster which identifies each neutrals' area of expertise, style/process approach, and process requirements.

B. STAFF NEUTRALS/MEDIATORS

1. ADVANTAGES

- Quality control easier to accomplish
- Training easier to provide
- Specialized knowledge/expertise
- Able to work with self-represented parties
- Evaluation easier to accomplish
- Inspires public confidence

2. DISADVANTAGES

- Expensive
- Conflict exists between remaining neutral and "leveling the playing field"

Due to the success of the Housing Mediation Program and the Foreclosure Mediation Program, it is recommended that additional mediation services be offered using staff mediators for those cases where a specialized knowledge of the issues and/or the skills necessary to work with self-represented parties are needed.

C. LAWYERS (VOLUNTEER AND PAID)

1. ADVANTAGES

- Specialized knowledge/expertise
- Larger pool provides diversity (background, expertise, perspective, gender, race or ethnicity)
- Cost-effective

2. DISADVANTAGES

- Less court oversight/control
- Lacking uniformity in process
- Conflict of interests more likely to arise

It is recommended that attorneys be available to provide ADR services as arbitrators, fact-finders, attorney trial referees and special masters when appropriate with the creation of a roster which identifies each neutrals' area of expertise, style/process approach, and process requirements.

D. PRIVATE PROVIDERS/COMMUNITY MEDIATORS

1. ADVANTAGES

- Specialized knowledge/expertise
- Larger pool provides diversity

2. DISADVANTAGES

- May be cost-prohibitive for parties
- Less court oversight/control
- Impacts equal access to justice

The Subcommittee makes no recommendation concerning Private ADR Providers and Community Mediators as they are beyond the scope of the Judicial Branch. Nevertheless, the Subcommittee believes it is beneficial to outline the advantages and disadvantages of such providers.

E. SUPERVISED LAW STUDENTS

1. ADVANTAGES

- Cost-effective
- ADR training

2. DISADVANTAGES

- Inexperience/Lack of knowledge and skills

The Subcommittee recommends that the use of supervised law students as ADR neutrals be further explored.

VII. REFERRAL PROCESS

A. RECOMMENDED REFERRAL PROCESSES

The Delivery Subcommittee believes that the following three (3) recommended referral processes would be appropriate at any point during the case track:

1. Request by party
2. Referral by stipulation
3. Automatic assignment through court

B. MANDATORY VS. CONSENSUAL

With respect to the multi-option program, no specific form of ADR is mandated. Consistent with the findings of the Utilization Subcommittee, case-specific programs benefit from a mandatory referral.

1. MANDATORY REFERRAL

A. ADVANTAGES

- Adds to court's ability for efficient case management
- Specific case types benefit from specialized knowledge/expertise of staff providers
- ADR process can serve special interests/needs of certain parties (i.e. self-represented litigants)

B. DISADVANTAGES

- Conflicts with the parties right for self-determination which forms the foundation for most ADR processes
- Limits access to open/transparent court process (access to justice concerns)

2. VOLUNTARY REFERRAL

A. ADVANTAGE

- Ensures parties right for self-determination

B. DISADVANTAGE

- Participation rate may be low because parties/attorneys may not be knowledgeable about ADR processes and their benefits

VIII. RECOMMENDED STRUCTURE

A. CENTRAL AND LOCAL MANAGEMENT

The Delivery Subcommittee recommends that the multi-door mediation program be organized in a centralized manner. The person tasked with the supervision of alternative dispute resolution programs throughout the state, a Central Coordinator, will assist with some of the key goals of a successful ADR program. The Central Coordinator should be a highly qualified, experienced dispute resolution professional. The Central Coordinator will help to ensure that there is quality control, consistency throughout all of the judicial districts, uniformity and a mechanism to evaluate the programs and third-party participants.

The Subcommittee recognizes that some of the options from the multi-option menu may not be offered in all judicial districts for a variety of reasons. To the extent that programs are being offered in multiple jurisdictions, a centralized management approach will help to ensure uniformity. Central management may also require that the Central Coordinator be given additional resources at the central location in addition to the resources referenced below at the judicial district.

To effectively manage and implement the multi-door program, there should be coordination with the Central Coordinator and the judicial districts. One option to achieve this coordination is to have ADR Coordinators resident in each of the judicial districts. Given the growing financial concerns of the State, it may not be feasible although optimal to hire ADR coordinators for each judicial district. In anticipation of some financial barriers, the Subcommittee recommends that the local coordination be done with a person within the Caseflow Office. The Caseflow Coordinator is the likely candidate; however, there are certain judicial districts where the Caseflow Coordinator does not have the capacity to serve as an ADR Coordinator.

The Subcommittee envisions the role of the local ADR Coordinator to be far more than a scheduling clerk. The ADR Coordinator will need to be equipped with the knowledge of the ADR programs that are being offered through the multi-door system. The ADR Coordinator should be capable of educating lawyers and litigants about dispute resolution options and matching the appropriate process options with the case type and the needs and desires of the parties and their counsel.

For this program to be successful, it is essential that there be a tripartite relationship between the Central Coordinator, the ADR Coordinator and the

Presiding Judge. The Presiding Judge will continue to play the pivotal role in the overall case management. The goal is to allow the Central Coordinator and the local ADR Coordinators to help the Presiding Judge in identifying cases that would benefit from ADR and helping to provide the appropriate ADR program for the parties. The Subcommittee envisions full integration of the dispute resolution program with the docket management.

The Subcommittee gave consideration to having all of the ADR Coordinators in a central location. The Subcommittee believes that having "boots on the ground" at the judicial districts will be optimal for identifying the appropriate dispute resolution vehicle for the parties.

The Subcommittee has attached a very basic diagram of a potential ADR Management System. (Exhibit B)

B. STANDARD APPROPRIATE RESOLUTION OPTION REVIEW

The Subcommittee believes that with the exception of those cases that are categorically required to engage in a dispute resolution process, all civil cases should be involved in an appropriate dispute resolution process. The Subcommittee recommends that all civil cases should go through a review process to determine whether the matter is ready for an appropriate dispute resolution program. This review will not result in a mandatory referral to an ADR program. The goal is to allow the ADR Coordinators to help the parties identify an appropriate resolution process or aid the parties in determining what steps are required to ripen the case for a dispute resolution option. Often times, the parties believe that there are certain discovery issues that need to be resolved before a particular ADR vehicle can be utilized. The ADR Coordinator in conjunction with the Caseflow Coordinator will be able to facilitate the scheduling of discovery and then proceed in incorporating an appropriate resolution process as part of the overall case management.

To facilitate the review of each case, the Subcommittee recommends that a form be completed by all of the parties and reviewed by the ADR Coordinator. The Subcommittee believes that the parties should have the ability to select from a menu of defined dispute resolution options they deem most suitable. Ensuring a meaningful ability to select is dependent on the availability of key information and the implementation of an appropriate screening mechanism. Information and recommendations aimed at increasing knowledge and understanding of process choices and fostering informed choice by litigants, lawyers, judges and others are facilitated by the process outlined below.

The following are some of the questions that should be considered:

1. Will participation in an ADR Program be helpful?

2. If no, please provide the reason.

3. Please address the nature of the case and amount in controversy.

4. Have the parties negotiated before filing of the form?

5. Is there insurance coverage?

6. Is there a dispute over insurance coverage?

7. Please identify the alternative dispute option that seems most appropriate.

The Subcommittee recommends that an in-person or telephonic conference with counsel and the ADR Coordinator be held to review the form and explore an appropriate resolution approach and neutral or provider.

The Subcommittee recognizes that a disadvantage of this approach is that it adds another layer of review; however, the proactive approach to dispute resolution should result in cases resolving sooner and the parties feeling invested in the process.

The Subcommittee also recognizes that hiring additional qualified staff to serve as ADR Coordinators to screen cases, administer and monitor dispute resolution programs places an additional financial burden on the Judicial Branch. In applying a cost benefit analysis, the Subcommittee concluded that the additional expense will enhance the effectiveness of the dispute resolution programs and free judicial resources for appropriate use in rendering rulings and conducting hearing and trials. The public perception of the judicial system will be enhanced by the integration of judicial management of the docket with effective dispute resolution methods.

EXHIBIT A

STATE SYSTEMS REVIEW SUMMARY CHART

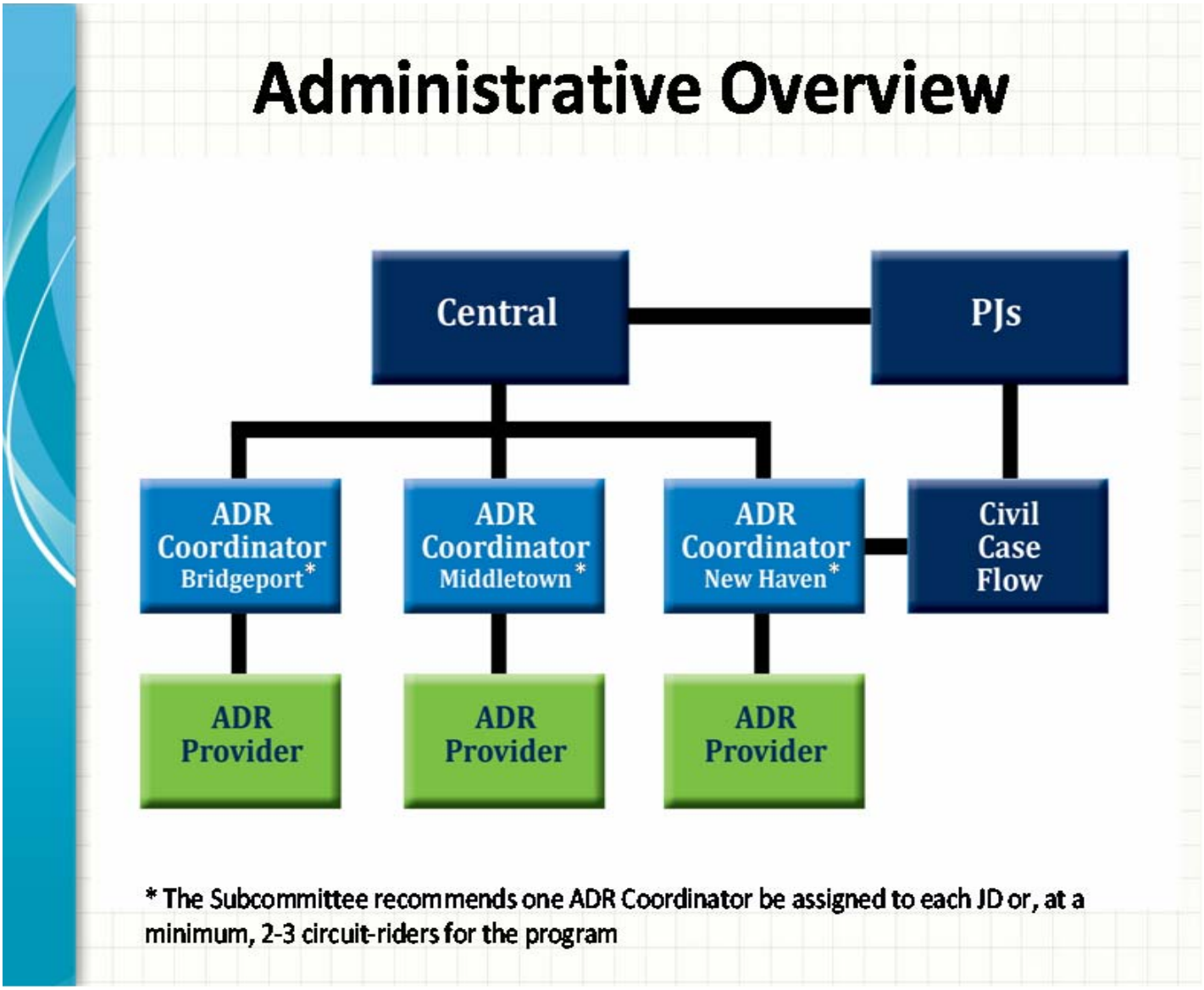
STATE	TYPE	AUTHORITY	OVERSIGHT	PROCESSES	FUNDING
Arizona		Statutory Court Rules	No full-time state court ADR office	Arbitration Mediation Minitrial Negotiation Settlement Conference Summary Jury Trial	State budget Party fees
Alaska		Court Rules	No full-time state court ADR office	Arbitration Early Neutral Evaluation Mediation Settlement Conference	Party fees
California		Statutory	No full-time state court ADR office	Arbitration Judicial Dispute Resolution Mediation	Party fees Government grants
Colorado	Multi-Option	Statutory	Colorado Office of Dispute Resolution	Mediation Private Judging Settlement Conference	Party fees Government grants
Delaware		Court Rules	No full-time state court ADR office	Arbitration Early Neutral Evaluation Mediation	State budget Party fees
Florida		Statutory	Florida Dispute Resolution Center	Arbitration Mediation	Party fees Court filing fees
Georgia		Court Rules	Georgia Commission on Dispute Resolution	Arbitration Mediation	Party fees Court filing fees
Illinois		Statutory Court Rules	No full-time state court ADR office	Arbitration Mediation Settlement Conference	Party fees Government grants Court filing fees

Maine		Statutory	Maine Judicial Branch Office of Court ADR	Arbitration Early Neutral Evaluation Mediation	Party fees Court filing fees
Maryland		Court Rules	Maryland Mediation and Conflict Resolution Office	Mediation Settlement Conference	State budget Party fees Government grants Court filing fees
Massachusetts	Multi-Option Pilot Program	Statutory Uniform Rules	No full-time state court ADR office	Arbitration Early Neutral Evaluation Mediation Minitrial Multi-Door Courthouse Private Judging Summary Jury Trial	Private funding Party fees Government grants
Michigan		Statutory Court Rules	Michigan Office of Dispute Resolution	Arbitration Case Evaluation Mediation	Party fees Government grants Court filing fees
Minnesota		Statutory	No full-time state court ADR office	Arbitration Mediation Settlement Conference Summary Jury Trial	Party fees
New Hampshire		Statutory	New Hampshire Office of Mediation and Arbitration	Arbitration Early Neutral Evaluation Mediation	Court filing fees Party fees
New Jersey		Court Rules	New Jersey Office of Complementary Dispute Resolution	Arbitration Early Neutral Evaluation Mediation Settlement Week Summary Jury Trial	Party fees State budget

New Mexico		Statutory	No full-time state court ADR office	Facilitation Mediation Settlement Conference	Party fees Court filing fees
New York		Statutory Chief Judge Rules Chief Administrator Rules Uniform Rules	New York Office of Alternative Dispute Resolution and Court Improvement Programs	Arbitration Conciliation Mediation Minitrial Settlement Conference Summary Jury Trial	State budget Party fees Government grants
North Carolina		Statutory	North Carolina Dispute Resolution Commission	Arbitration Early Neutral Evaluation Mediation Settlement Conference Summary Jury Trial	Party fees
Ohio	Multi-Option (Northern District)	Supreme Court Rules of Superintendence	Ohio Supreme Court Dispute Resolution Section	Arbitration Early Neutral Evaluation Mediation Settlement Conference Summary Bench Trial Summary Jury Trial	Party fees Government grants Court filing fees
Oregon		Statutory	No full-time state court ADR office	Arbitration Mediation	Party fees Court filing fees
Pennsylvania		Statutory	No full-time state court ADR office	Arbitration Summary Jury Trial	Party fees Court filing fees
Rhode Island		Statutory	No full-time state court ADR office	Arbitration Mediation Settlement Conference	Party fees
South Carolina		Statutory	No full-time state court ADR office	Arbitration Mediation	Party fees
Texas		Statutory	No full-time state court ADR office	Mediation	Party fees Court filing fees
Vermont		Statutory	No full-time	Early	Party fees

		Court Rules	state court ADR office	Neutral Evaluation	
Virginia		Statutory	Virginia Division of Dispute Resolution Services	Mediation Settlement Conference	State budget Private funding Party fees Municipal/county budgets
Washington D.C.	Multi-Option	Statutory Superior Court Rules	No full-time state court ADR office	Arbitration Mediation	State budget

EXHIBIT B


Administrative Overview
Central
PJs
ADR Coordinator Bridgeport*
ADR Coordinator Middletown*
ADR Coordinator New Haven*
Civil Case Flow
ADR Provider
ADR Provider
ADR Provider
* The Subcommittee recommends one ADR Coordinator be assigned to each JD or, at a minimum, 2-3 circuit-riders for the program

We recommend that the Judicial Branch:

- **develop a process to recruit and train attorneys to assist the Branch with two separate functions: to serve in adjudicative capacities, and to serve in settlement capacities;**
- **recruit trained non-attorneys to assist with settlement functions in certain cases;**
- **develop a comprehensive training for judges to improve their skills in facilitating settlement.**

I. ADJUDICATIVE FUNCTIONS

A. Requirements for Attorney Trial Referees, Fact Finders and Arbitrators Selection Method & Qualifications:

The Judicial Branch shall accept applications from attorneys wishing to serve as Trial Referees, Fact-Finders and Arbitrators. The application shall demonstrate that the applicant has the following qualifications:

1. Member of the Connecticut Bar in good standing.[13]
2. Minimum of 10 years of legal practice, at least 50% of which has been devoted to civil litigation.[14]
3. Ability to act impartially and without bias.
4. Ability to listen, analyze problems, identify relevant legal issues, and to frame the issues for fair resolution.
5. Provision of at least one letter of recommendation from an attorney who has not practiced law with the applicant. The letter should address the applicant's experience, temperament, reputation for honesty, and adherence to ethical principles.[15]

[13] The Application will need to be redrafted, and should include a reference to prior discipline.
[14] At least one federal court has also specifically included law professors as qualified arbitrators.
[15] We recommend a form letter of recommendation, addressing the criteria.

The Judicial Branch shall develop a process for screening and selecting the successful applicants.[16] The successful applicant must take the appropriate oath of office.[17]

B. Training for Selected Attorneys:

1. Attendance at training seminar sponsored by the Judicial Branch prior to service as an Attorney Trial Referee, Fact Finder or Arbitrator.[18]

2. Completion of 6 hours of continuing legal education devoted to ADR during each 3 year term of appointment, as a condition for reappointment as an Attorney Trial Referee, Fact Finder or Arbitrator.[19]

Pros/Cons: Factors and Concerns for our Recommendation:

Qualifications: *Bright line test or flexibility?*
Pros: Anyone performing adjudicative functions must have doctrinal expertise and experience. We believe this category of volunteers should be limited to lawyers. The question arises regarding the amount of civil litigation experience that an attorney needs in order to act as an arbitrator or fact finder. We recommend extensive experience in civil litigation, in order to give the attorney sufficient background to adjudicate cases. We selected 10-years.
Cons: We do not want to dissuade other professionals who might be able to demonstrate the ability to perform this function. For example, law professors, even those without direct litigation experience, might also have sufficient doctrinal expertise to perform the adjudicative functions. In certain cases, there might be others with other sorts of expertise relevant to a particular type of case who could perform this function with fewer years of traditional litigation experience.

Amount and type of training: *When is enough "enough" and not too much?*
We are concerned with two competing concerns. For volunteers, we do not want to demand so much that good and talented people are dissuaded from participating. On the other hand, we need the attorneys to be skilled in the tasks which we are asking them to perform. We believe a half-day training is a bare minimum.

[16] The process should include input from members of the judiciary familiar with the attorney's performance and reputation.
[17] The Judicial Branch currently uses different oaths of office for Attorney Trial Referees than for Arbitrators and Fact Finders. The former includes a requirement of adherence to the Rules of Professional Conduct. We recommend a single oath that includes the ethical provisions.
[18] We recommend a half-day training.
[19] We recommend one half-day refresher training during the three years and an annual meeting each of the three years for discussion of timely issues.

Cons: We are concerned that it will not be sufficient to provide enough skills training.
Pros: If the selected attorneys bring with them sufficient prior experience, this half day training, if carefully constructed, should prepare the attorneys to take on the different, adjudicative role, given that the type of legal analysis required should be similar to the quality of analysis in which good lawyers already engage, in the course of their advocacy.

II. SETTLEMENT FUNCTIONS

Requirements for Professionals Performing Mediation and other Settlement Functions

A. Selection Method & Qualifications:

The Judicial Branch shall accept applications from both attorneys and non-attorneys wishing to assist the court by serving as Mediators and/or to facilitate settlement conferences ["Settlement Officers"].
The application shall demonstrate that the applicant has the following qualifications:

1. For Attorneys: Member of the Connecticut Bar in good standing for a minimum of two years.
2. For all non-attorneys: prior completion of an approved 40-hour training in mediation skills.
3. Ability to act impartially and without bias.
4. Ability to listen, analyze problems, identify relevant legal issues and party interests, and to frame the issues for fair resolution.
5. Provision of at least one letter of recommendation from an attorney who has not practiced law with the applicant. The letter should address the applicant's experience, temperament, skill in negotiation, reputation for honesty, and adherence to ethical principles.[20]

The Judicial Branch shall develop a process for screening and selecting the successful applicants.[21] The successful applicant must take the appropriate oath of office.[22]

[20] We recommend a form letter of recommendation, addressing the criteria.
[21] The process should include input from members of the judiciary familiar with the attorney's performance and reputation, especially as a negotiator.
[22] The oath for a mediator of settlement officer would be different than that of an arbitrator, fact finder, and trial referee.

B. Training for Selected Attorneys and Non-Attorneys:

1. Attendance at training seminar sponsored by the Judicial Branch prior to service as a Mediator or Settlement Officer. [23]

2. Completion of 6 hours of continuing legal education devoted to ADR during each 3 year term of appointment, as a condition for reappointment as a Mediator or Settlement Officer.[24]

C. Training for All Judges:

The Judicial Branch shall provide training and education for all judges, to assist them in case settlement functions, whether in mediation sessions or in settlement conferences.

Content of Training for Attorneys and Judges:

1. Overview of range of ADR processes
2. Basic Negotiation Theory and Practice
3. Theory and Practice of Mediation and other methods of facilitating party negotiation[25]

Content of Training for Non-Attorneys:

1. Primer on relevant law
2. Primer on basic relevant court procedure

Pros/Cons: Factors and Concerns for our Recommendation:

Who is participating: *Limiting this Branch function to judges or not?*

JUDGES:

Pros: It is both obvious and non-controversial that judges will continue to perform settlement conferences and mediations. We do not expect a problem with designing and delivering a significant amount of training in mediation and other settlement facilitation skills to judges, in order to enhance the skills and expand the number of judges who are in demand by the bar and parties.

Cons: We cannot identity many cons. Given that there is already a judicial education vehicle by which judges already receive ongoing education, and there are many experts in this sort of training available within the state, we do not see

[23] We recommend a full-day training, although attorneys with prior mediation training (30-40 hours) could receive a waiver for part of the training.

[24] We recommend one half-day refresher training during the three years and an annual meeting each of the three years for discussion of timely issues.

[25] See attached Appendix for overview of proposed topics

even a cost concern. The only possible issue is whether this training should be mandatory or optional for interested judges.

ATTORNEYS AND NON-ATTORNEYS:
Pros: Only judges can try cases. Providing another class of persons available to move the dockets frees judges to judge. It is not yet clear to what extent and in what class of cases that attorneys and non-attorneys will be encouraged to volunteer to assist judges with settlement functions. We recommend that we provide attorneys for all sorts of cases, and provide non-attorneys in collections and other consumer cases. Where sophisticated doctrinal experience is not necessary, trained non-attorneys can be as effective in facilitating settlement as attorneys; both can be as effective in facilitating as judges. Non-judges are less likely to employ evaluative approaches, and in many cases that can be entirely appropriate.

Cons: There is a concern about being able to provide sufficient training, in order to assure that the non-judges are as effective as judges. See below.

Qualifications: *What prior experience is most likely to provide the Branch with competent assistance to settle appropriate cases?*

NON-ATTORNEYS:
Cons: Some states (such as Florida) have created extensive recruitment, certification, and training program for volunteer non-attorneys. It has costs and levels of bureaucracy, although it has proved effective.

Pros: To limit costs, it seems prudent to recruit only non-attorneys who have already received 40-hours of mediation training from a recognized training program (e.g.: Quinnipiac and other law school sponsored trainings; programs recognized by other state courts; community mediation program trainings; trainings approved by the Association for Conflict Resolution). Many might also already be affiliated with one of the community mediation programs, on their rosters of trained volunteers.

ATTORNEYS:
Pros: The question arises regarding the amount of civil litigation experience that an attorney needs in order to be able to facilitate settlement negotiations competently. Traditional civil litigation does not necessarily prepare attorneys to mediate; in fact, advocacy experience can tend to undermine the process and facilitation skills required of a mediator. On the other hand, some experience will give the attorney a foundation upon which to build his or her mediation skills. We conclude that an attorney will not require as much prior traditional legal experience to mediate as he or she would to arbitrate. Given that younger

attorneys, especially those who graduated from law school within the last five years, are the most likely cohort to have received extensive negotiation, mediation, and mediation advocacy education in law school, we chose to lower the threshold of lawyering experience in order to include these previously-trained lawyers.

Cons: Depending on the types of cases that attorneys are asked to mediate, more doctrinal expertise can be helpful in some cases. The Branch may need to recruit certain attorneys with more doctrinal expertise to work on particular types of cases, and this can become more complicated to administer.

Amount and type of training: *Again, when is enough "enough" and not too much?*

ATTORNEYS:
Cons: We are concerned with two competing concerns. For volunteers, we do not want to demand so much that good and talented people are dissuaded from participating. On the other hand, standard mediation training programs are almost always 30-40 hours; a half-day, or even one-day, training is not realistically enough to provide significant skill development in facilitation process.

Pros: We would encourage attorneys who have prior mediation training (similar to that of the non-attorneys) to volunteer. More and more attorneys are receiving such training, even in law school. (This is one reason why we lowered the experience threshold, as stated above.) For those without such prior training, a one-day training in mediation skills would be the minimum that we could recommend. We recommend people with significant expertise in training be asked to design the training. We also recommend offering some optional additional training.

NON-ATTORNEYS:
Pros: We also recommend that only non-lawyers who already have obtained mediation training be eligible to participate, and would dip into another available talent pool.
Cons: Non-lawyer volunteers would need some basic legal orientation training to understand the legal framework in which they will operate. This would require someone to design an offer a different type of training to this class of volunteers.

Appendix: Overview of Suggested Training Curriculum for Conciliation Function
(Judges and Attorneys serving as Mediators and Settlement Officers)

Knowledge of Basic Negotiation Theory & Practices

Note: "Negotiation" refers solely to the bargaining process directly between the parties and/or their attorneys. Knowledge of negotiation is recommended in order to improve effectiveness of the judge or mediator who is assisting the parties and/or the lawyers with their negotiation

- Different possible approaches: Interest-based negotiation "vs." Positional negotiation
- Ethical issues in negotiation (honesty)
- The difference between party interests and positions
- The role and relevance of legal norms in bargaining
- The role of empathy and assertiveness in negotiation
- Computing reservation points ("bottom line")
- Analyzing alternatives to a negotiated agreement
- Generating and evaluating options in a bargaining session, including creative solutions that are not among the remedies that a judge could order through a litigated judgment
- Advantages and disadvantages to settling cases, as opposed to litigating to judgment
    - Generally
    - In specific cases

Knowledge of Theory, Practice, and "Nuts and Bolts" of Acting as a Third-Party Facilitator of Negotiation

Note: A "Third- Party Facilitator of Negotiation" encompasses a range of processes, all of which have an impartial third person working with the parties and/or their attorneys to explore settlement options. This includes a formal and more detailed process known as mediation, as well as other shorter and less detailed processes.

This part of the training would include theory, practical skills, and ideally, opportunities to participate in role-plays.

- Definitions of mediation and other processes that assist parties with negotiation
    - Selecting the right approach at the right time
- Balance and Neutrality required in Facilitator role
- Recognizing value of party self-determination of outcome
- Appropriate etiquette and neutral language and vocabulary
- Ethical issues in facilitating negotiation
    - Power imbalance
    - Proper and improper influence over result
- Knowledge of basic cognitive psychology principles

    - Reactive devaluation
    - Risk-taking and other factors impacting so-called “rational” decision-making
    - Other physiological processes that inhibit and facilitate settlement
        - Role of strong emotion, defensiveness on cognition
        - Encouraging, without manipulation, a “settlement” frame of mind
- When to use joint session, and when to caucus
- When and how to involve parties
- How to assure informed decision-making by participants (i.e., evaluation of the merits)
- How to ensure procedural fairness and confidence in the process
- How to structure the session
    - Identifying issues
    - Articulating interests of both sides
    - Generating options
        - When to elicit, when to suggest, when to be directive
    - Getting parties to evaluate options
        - Role of facilitator in educating parties, evaluating options
    - Encouraging bargaining
    - Dealing with impasse: when to keep trying, and when to accept that the matter will not (and perhaps should not) settle

Commission on Civil Court Alternative Dispute Resolution (ADR)
Evaluation Subcommittee Full Report

This document sets out four different issues on which the Evaluation Subcommittee has sought to reach consensus. They are:

- The end goals of court-annexed ADR programs, against which the performance of programs and neutrals should be measured.
- The different operational components of ADR programs, which should be monitored as part of an evaluation process.
- The reasons for conducting evaluation and monitoring, and the uses to which the information will be put.
- A series of proposed measurement methods and tools.

I. ADR Program Goals:

An effective ADR program evaluation process measures whether the goals and objectives of the ADR programs are being met; therefore, ADR program goals and objectives must be clearly defined.

- **Resolution of cases**: The most basic purpose of ADR programs is to enable the parties to achieve a resolution they find acceptable rather than one imposed by the judicial system. Because litigation can be expensive and difficult, ADR programs should serve to facilitate early resolution. A successful resolution does not necessarily mean the entire case is settled without trial; partial resolution of substantive or procedural issues can be deemed successful.

- **Efficiency of the process to parties and Judiciary**: ADR programs should avoid unnecessary procedures and delays that might increase the cost to the litigants; the programs should also be structured so that Judicial branch resources are utilized in a cost effective way.

- **Fairness in the process**: parties must trust that the ADR process is procedurally and substantively fair, as an incentive to utilize ADR. Fairness includes impartiality of neutrals, respectful treatment of litigants, and allocation of sufficient time to the ADR process so that the parties have the opportunity to be fully heard.

- **Provision of skilled neutrals**: (e.g. education, experience, process skills, knowledge of subject matter) the skills and experience of the neutral are factor**s** in achieving quality resolutions through ADR; a skillful neutral with good process skills and experience in the subject matter is more likely to gain the confidence of the participants and aid in resolution of the issues in the case.

- **Success in identifying and addressing underlying issues in the case and seeking to satisfy party interests**: Some disputes arise in the

context of on-going relationships, such as employment and many housing cases. Good ADR resolves not only the immediate dispute, but improves the parties' communications, which can help to eliminate or reduce future disputes. Even where the parties are strangers, it is often possible to identify, address and seek to satisfy the underlying interests of the litigants, with settlements that are not mere compromise solutions.

II. Monitoring of ADR Program Operations:

Apart from evaluating the end goals of ADR programs, the Evaluation Subcommittee proposes that the Branch institute a system to monitor the elements of court-annexed ADR processes. The following are the features of well-run ADR programs that our subcommittee proposes be considered.

- **Fairness**
  - respectful treatment
  - impartial treatment
  - opportunity to be heard/tell story
  - feedback
  - participants involved in neutral selection process
  - set guidelines, expectations of process
  - opportunity for clarification of expectations, issues, ad possible resolution
  - opportunity to improve understanding of the issues involved in the party's case and the other side's perspective
  - provide opportunity for parties to have more control over process (self-determination)

- **Cost-Effectiveness**
  - triage cases to determine if/which appropriate ADR program
  - conduct pre-ADR intake evaluation on-line
  - make ADR option available prior to filing suit
  - establish guidelines for length and number of ADR sessions
  - use statewide trained neutrals
  - consider hybrid system for costs (e.g. court and party split costs)
  - determine specific costs associated with particular types of ADR programs

- **Timely Process**
  - early dispute resolution
  - uniform standards/guidelines
  - broad roster of neutrals for flexible scheduling
  - coordination between ADR and court activity
  - minimize time between request for ADR and delivery of it (scheduling)
  - emphasize use of single sessions instead of multiple

- **Ethical Process**
  - develop code of conduct for neutrals and participants

- provide neutral training with skills evaluation component
- screening and certification process for neutrals
- limit neutral roster to those with strong record of service
- develop mentoring system among neutrals
- utilize evaluation and accountability checks on ADR programs
- determine neutrals' knowledge areas

III. ADR Evaluation Goals/Purpose:

In general, ADR program evaluation is utilized to determine whether ADR program goals and objectives are being met, or why they are not being met.

ADR program evaluation should result in the gathering of data that helps to:

- identify ways to improve the program;
- provide feedback to individual neutrals on how to improve their own effectiveness;
- provide feedback to the program administrators regarding selection and training of neutrals;
- provide guidance to the Branch's administration on resource allocation (I.e. which programs are most cost-effective for the Branch, and which should be continued, expanded, or discontinued)

IV. Measurement Methods and Tools:

What to Measure (for each specific ADR program and each neutral):

- Outcome of cases utilizing ADR
- Settlement rates
- Attorney and party satisfaction
- Parties' perception of fairness about the process
- Speed of process (e.g. from request for ADR to scheduling)
- When ADR requested/referred (i.e. early in litigation, later)
- Success in resolving issues underlying the legal dispute
- Overall satisfaction with ADR program and neutral(e.g. suitability of program for a particular type of case, neutral's skills)
- Program costs (to branch and parties)
- Effectiveness of programs (compare ADR programs/success rates)

How to Measure:

- Outcome of cases utilizing ADR
  - disposition of cases- e.g. withdrawal v. trial

- Settlement rates
  - percentage of cases withdrawn/settled within a certain time frame after participation in ADR program, v. cases withdrawn/settled within a certain time frame with no utilization of ADR
  - percentage of cases settled by each neutral

- Attorney and party satisfaction
    - did the parties find ADR productive and helpful
    - was the particular ADR program appropriate for their case
    - was the skill set of the neutral appropriate for their case
    - would they utilize ADR again, why or why not
    - would they request the same neutral again, why or why not

- Parties' perception of fairness about the process
    - was the process fair, even if case did not settle
    - was the neutral fair and impartial in the process

- Speed of process
    - time between ADR request and scheduling of ADR session(s)
    - number of sessions
    - ease in scheduling subsequent sessions with the neutral
    - time between last session and disposition of case
    - time it takes to get to trial if case does not settle through ADR

- When ADR was requested/referred
    - point in case when ADR session was requested by parties or referred by court

- Success in resolving underlying issues in the case
    - whether issues settled /stipulated to even if entire case was not settled

- Overall satisfaction with the ADR process
    - rate specific ADR program
    - rate individual neutral

- Program costs
    - cost to the parties (e.g. attorney and party's value of time committed)
    - cost to the Branch to administer the program

- Effectiveness of programs
    - if case was withdrawn/settled, determine whether it was due to ADR
    - determine which ADR programs are most successful in settlement of cases (consider Outcome of cases utilizing ADR and Settlement rates above)
    - determine which ADR programs achieve highest rate of meeting the most ADR program goals
    - determine the success of each neutral in achieving ADR program goals

Evaluation Tools:

- Questionnaires, Surveys: collect responses, oral or written to simple, direct questions
    - Advantages:
        - ability to quickly/easily gather a lot of information
        - non-threatening to participants
        - can be anonymous
        - inexpensive to administer
        - many samples already exist
    - Disadvantages:
        - could be impersonal
        - may not get accurate feedback
        - party's response can be biased by wording of question
        - does not tell full story/details

- Interviews: speak to participants to gather information, or to learn more about responses to questionnaire/survey
    - Advantages:
        - in depth information
        - establishes relationship with participant
        - allow for flexibility with participant
    - Disadvantages:
        - can take a lot of time
        - can be difficult to analyze/compare
        - can be labor intensive, more costly
        - party's response can be influenced by interviewer
        - may be difficult for participant to establish level of comfort with interviewer

- Observation: observe ADR processes and participants during the ADR session
    - Advantages:
        - actually view program in operation
        - adapt to events as occur
    - Disadvantages:
        - can take a lot of time
        - can be difficult to interpret
        - can be labor intensive, expensive
        - can be complex to categorize observations
        - participants can be influenced by observer
        - participants may not be comfortable with being observed

- Focus groups: explore issues and experiences through discussion in groups of 6-8
    - Advantages:
        - quickly and reliably get groups' impressions
        - can be efficient way to get in depth information is short period of time
        - can convey key information about program

- Disadvantages:
  - can be time consuming to conduct session(s) and organize information
  - availability/scheduling issues- can be difficult to get participants to attend
  - need to have good facilitators
  - can be difficult to analyze comments/responses

- Case studies: comprehensive examination through cross-comparison of cases
  - Advantages:
    - depicts participants' full experience in program
    - powerful way to present program to outsiders
  - Disadvantages:
    - can be time consuming to collect and organize information
    - may not represent breadth of information

- Documentation review: review existing files, cases, that utilized ADR
  - Advantages:
    - comprehensive and historical information
    - information already exists
    - few biases about information
  - Disadvantages:
    - can be time consuming to collect, organize and describe information
    - reviewer of information can be biased and affect analysis of information
    - information can be incomplete
    - data is restricted to what already exists
    - need to clearly determine what information must be gathered

V. Appendices

A Summary of Results of Information Gathering

1. Final Survey Results
2. Focus Group Summary

B Civil Caseload Data

1. Pending Civil Cases by Case Type-Fiscal Year 1991-02 to 2010-11
2. Movement of Jury and Court List Cases-Fiscal Year 1991-02 to 2010-11
3. Movement of Small Claims Cases-Fiscal Year 1991-02 to 2010-11
4. Movement of Summary Process Cases, Housing Sessions, Fiscal Year 2001-02 to 2010-11

C Cases by Major Case Type Where There is at Least One Self-Represented Party- Fiscal Year 2006-07 to 2010-11

D Existing Court Sponsored ADR Programs, including authorizing statute and/or rules

E Tabulation of votes on recommendations

F Bibliography of materials

G Index of documents distributed to Commission members

H Court-connected ADR Programs in Seven Neighboring States

Appendix A: Summary of Results of Information Gathering

1. Final Survey Results
2. Focus Group Summary

Commission on Civil Court Alternate Dispute Resolution (ADR) Questionnaire

Please identify group(s) surveyed:	Individual Judges and Attorneys, Legal Services Attorneys, Connecticut Trial Lawyers Association, Fairfield County Bar Association Members, Connecticut Defense Lawyers Association, Connecticut Bar Association's Young Lawyers Section, New Haven County Bar Association, American Board Of Trial Advocates

Total Surveys Circulated:	1,800+	Total Responses:	188

For each of the following ADR programs, with which you are familiar, please indicate whether you think the program works or does not work and the reasons for your answer.

1. **Arbitration** (Conn. Gen. Stat. §§ 52-549u through 52-549aa)

The majority (58%) of folks who have participated in this program say it works. 43% of those surveyed had never participated in this program.

53 said yes, I have participated in this program and it works.
39 said yes, I have participated in this program, but it does not work.
78 said no, I have not participated in this program.
11 said they had never heard of this program.

The most frequent comment was that the success of the arbitration program depends largely on the effectiveness of the arbitrator.

Other comments include: the program is helpful in that it shows the parties what an independent person thinks of the case and its value; helps to point out certain weaknesses in the case or evidence and is usually more helpful than a mere pretrial conference; works very well in many situations and presents the parties a good way to resolve their case at a reasonable cost and in a more expedient way; binding arbitration is more valuable than non-binding arbitration; I typically do not go through the centralized scheduler for voluntary arbitration before a judge but rather caseflow and this can be very useful for handling binding arbitrations; my experience is that it works well for uncomplicated personal injury cases and deserves a shot at attempting to handle more complicated cases; on the small cases it tends to move things along; question as to whether the $50,000 jurisdictional limit apply separately to each plaintiff in a multiple plaintiff case or must the aggregate sum fit within the limit; works in select

cases where parties are actually interested in resolving through arbitration, otherwise could be waste of time; interested in statistics on resolved matters.
Points of interest are as follows:

1. The decision is RARELY, as in almost never, accepted and a trial de novo is sought. To that end, the intended purpose of having cases resolved via this arbitration is NOT coming to fruition. For this reasons, some believe it should be eliminated.
2. The process of the arbitration however, may be having the unintended consequence of opening the lines of communication. In that vein, for reasons not originally contemplated, the arbitrator's decision, while not accepted, may be a catalyst to conversations which might not otherwise occur. For this reason, some see value to the program.
3. Even though there is this possible (and somewhat intangible) benefit, those jurisdictions which require participation upon directive of the Civil PJ, should rethink that practice. It is time consuming and potentially expensive for a client. In those cases where counsel agree that it would be a futile exercise, their voices should be heard and respected.
4. The use of arbitration with attorney trial referees should be curtailed to those cases in which the parties agree it would be of benefit (perhaps not in terms of accepting the arbitration results but in terms of creating a platform from which to launch settlement dialogue.)

Criticisms include: it is expensive to participate; not taken seriously enough by most participants and arbitrators; several called it "a joke"; often conducted without any witnesses or documents alone; unfair to plaintiffs who must physically attend to preserve their right to a trial de novo while defendants can appear by counsel; parties are there knowing that one or the other will file a trial de novo and the process becomes meaningless; used solely to avoid possible objections to retired judges sitting on trials; while there are advantages to having a free shot at a mini-trial, arbitration that can be avoided by either side merely by filing a motion is a waste of time; get rid of mandatory arbitrations for under $50,000 cases; do not make the use of senior judges/retired judges/JTRs a condition or a benefit of the arbitration program; decisions are routinely made moot by a motion for trial de novo; some attorneys use it as a discovery tool, fully intending to reject the decision; often the arbitrator has no civil litigation experience which affects my evaluation of the decision; usually awards are not consistent with jury verdicts; if the defendant is insured, they are able through this program to take a free shot at the plaintiff, with little thought to producing their witnesses or accepting a negative result; either shrink this to voluntary submission with binding results or kill it.

2. **Attorney Trial Referee** (Conn. Gen. Stat. § 52-434(a)(4))

The majority of folks (65%) who have participated in this program say it works. 34% of those surveyed had never participated in this program.

68 said yes, I have participated in this program and it works.
37 said yes, I have participated in this program, but it does not work.

60 said no, I have not participated in this program.

11 said they had never heard of this program.

Comments include: it can help some attorneys take a more realistic view of their cases; effectiveness of ATRs varies greatly; Stamford is lucky to have excellent ATRs; in some instances, ATRs have more familiarity than certain judges in the subject area at issue which is helpful; facilitates quicker resolution to contested cases; more convenient in terms of scheduling; good for certain cases involving factual disputes rather than unusual legal issues; less expensive than other programs; works well when the panel of ATRs is monitored to retain only those whose work reflects well upon the court; should limit challenges to ATR decisions to clearly erroneous standard; most ATRs work as mediators rather than factfinders as suggested by the statute; ATRs need better training; this is a very good program which allows for flexibility because the ATRs can mediate cases as well as arbitrate them; this helps with resolving cases so there is a smaller backlog; cases before ATRs get heard quicker and usually get fairer results; New London & Milford courts had a special masters program in which cases had pretrials with 2 lawyers at the same time, one a plaintiff's lawyer and one a defense lawyer. I have had experience w/the program on both sides (as a participant and as an ATR/special master and think the pretrials were more meaningful, as there was a dialogue and more of a meeting of the minds regarding value, especially when the ATR/special masters were of like minds on cases; the fact that an award can be approved and adopted by the court is the plus that allows this to work; trial referees generally well qualified and take their responsibility seriously.
.

Criticisms include: lack of early intervention; a waste of time with self-represented opponents; ATRs must be involved early on in the process to keep the pressure on; some ATRs demonstrate favoritism for counsel repeated before them; ATRs have too many matters assigned to them for settlement purposes and therefore not enough time to meaningfully resolve disputes; ATRs rarely take the time to understand the case and the parties' positions and typically recommend a settlement figure that is calculated through a formula that fails to take into account the strengths and weaknesses of the case; process is much more cumbersome than it needs to be for the stakes involved; often ATRs will shuffle cases in and out too quickly; Bridgeport however uses this process for pretrials w/retired attorneys and it is generally a waste of time because the pretrials are often early in the process and turn into a trip to court for the purpose of picking a trial date and the ATRs have a habit of setting the matter down for numerous additional pretrial conferences; ATR's make poor judges, which may be because advocates in general make poor judges; ATR's write poor decisions, misapply the facts, and often lack an understanding of the law underlying the cases before them; Additionally, a few attorneys expressed their frustration over the process of confirming an ATR decision into a judgment, which can sometimes take years.
.

3. **Attorney Trial Referee/Special Master for Administrative Appeals** (Conn. Gen. Stat. § 51-5a)

Every respondent who participated in this program said it works, but only 15% of those surveyed have actually participated in the program. 68% of those surveyed had never participated in this program.

26 said yes, I have participated in this program and it works.
0 said yes, I have participated in this program, but it does not work.
121 said no, I have not participated in this program.
32 said they had never heard of this program.

Comments include: this program has been very successful in administrative appeals because, often, all the parties are looking for a solution to their problem; because of their specialized experience, the ATR can offer constructive suggestions and the parties have confidence in them because of that experience; it is helpful in tax appeals because the judges are flexible with scheduling and considerate of the litigants and their attorneys' schedules.

4. **Court Annexed Mediation** (Conn. Gen. Stat. § 51-5a)

The vast majority (86%) of folks who have participated in this program say it works. Almost 39% of those surveyed had never participated in this program.

88 said yes, I have participated in this program and it works.
14 said yes, I have participated in this program, but it does not work.
72 said no, I have not participated in this program.
12 said they had never heard of this program.

The most frequent comment was that the few judges who are effective mediators are in such high demand that it takes months to get on their schedules.

Other comments include: excellent program; use it repeatedly; cost-effective method for getting clients to accept realities of the case, especially when difficult client is being unrealistic or is unwilling to accept frank assessments by their own counsel; great at moving cases towards settlement even if case does not settle at mediation; judges will frequently recognize when multiple sessions are needed for a meaningful resolution to be reached and are very accommodating in that regard, this is probably the most valuable ADR program in Judicial because the parties get a chance to be heard by a judge and they are also empowered by the fact that they (the parties) resolve the case without a third party dictating a decision to them; should be utilized when cases are "ripe" for resolution, e.g. all discovery concluded and case ready to proceed to trial if not resolved; far less expensive for the parties than private mediation; its effectiveness depends greatly on the participation of a good mediator/judge who is willing to spend an appropriate amount of time on the matter; very well run; even if the case doesn't settle at mediation, it usually settles within a short time thereafter close to the

parameters recommended by the mediator; once Medicare Set Asides hit the civil side this program will probably need more funding and more personnel and the larger cases that are so effectively resolved here will take even more effort when Medicare injects itself into the proceedings; Suggestions include (1) hold pre-mediation conferences so that the parties can know what to expect (possibly ex parte), and (2) standardize certain practices, for example the judges should speak to the actual parties at the mediation, and not just counsel. In this respect, the attorneys would like to see court-annexed mediation to resemble private mediation. A few attorneys commented that they have had more success with federal court mediation; get out of it what you put into it- meaning to extent mediator and parties are well-prepared, process works well, great chance of settlement; "free" mediator is great benefit; some very experienced and sophisticated judges conducting these.

Criticisms include: it works, but takes way too long; the wait for a good mediator is too long so many prefer private mediation if clients are willing to pay; those judges who are more readily available are lacking in settlement skills such as active listening and proactive intervention when needed; parties should be free to pick a mutually agreeable judge; a bad mediator (there are a few) can do more harm than good; judges are not sufficiently prepared in more complex cases to be effective as mediators; could use a larger pool of judges; additional mediation training for judges is needed; it is difficult to schedule on short notice; difficult to schedule with the statewide coordinator and often must have multiple follow-up calls to get it scheduled; some judges tend to treat this as a pretrial and put a figure on it way too early.; perceived disparity in skills, determination, and attention of the mediator; need more consistency in training and handling of mediations

5. **Early Intervention** (Conn. Gen. Stat. § 51-5a)

Only 11% of those surveyed have participated in the program. 47% of those surveyed had never participated in this program and 36% never heard of this program.

20 said yes, I have participated in this program and it works.
10 said yes, I have participated in this program, but it does not work.
87 said no, I have not participated in this program.
67 said they had never heard of this program.

Comments include: success in this program depends upon case readiness; could be combined with Early Neutral Evaluation; this could be useful in cases where Medicaid or Medicare are involved by having the Judge get plaintiff's counsel to seek lien information from CMS so that information could be available at a later pretrial/mediation (same with ERISA liens); effective only in the most basic of cases when all essential facts are obvious to all parties and both sides recognize that there are considerable unnecessary "transactional" costs to be avoided by early resolution; I like it although it rarely settles a claim, it usually gets the parties talking early and helps

to schedule discovery deadlines; would be helpful if judge asks parties at status or scheduling conference whether settlement discussions/mediation might be useful so party doesn't consider it a sign of weakness if other party requests.

Criticisms include: usually too early to be helpful for anything other than agreed upon scheduling orders; too perfunctory and judge not effective; plaintiffs' are either not ready at all in the early states or defendants are stonewalling; the old "EIP" scheduling orders did not work because they were too rigid.

6. **Early Neutral Evaluation** (Conn. Gen. Stat. § 51-5a)

51% of those surveyed had never participated in this program and 45% never heard of this program. Only 7 (4%) participated.

4 said yes, I have participated in this program and it works.
3 said yes, I have participated in this program, but it does not work.
95 said no, I have not participated in this program.
83 said they had never heard of this program.

Comments include: depends on the quality of the neutral evaluator and the ability of the attorneys and their clients to be realistic, cases are brought in too early before discovery is completed and it often is used as a scheduling order conference.

7. **Expedited Process Track** (Conn. Gen. Stat. § 52-195b(b)(2))

53% of those surveyed had never participated in this program and almost 41% never heard of this program. Only 6 participated.

6 said yes, I have participated in this program and it works.
1 said yes, I have participated in this program, but it does not work.
101 said no, I have not participated in this program.
77 said they had never heard of this program.

Comments include: raise the limiting amount of the statute to at least $150,000; should be expanded to include slip and fall cases for elderly clients; this is a useless program; sounds promising.

8. **Fact-Finding** (Conn. Gen. Stat. §§ 52-549n through 52-549t)

There is a split between those who have participated in this program as to whether it works.(54% of those who participated say it works, 46% say it does not) 42% of those surveyed had never participated in this program and 31% never heard of this program.

26 said yes, I have participated in this program and it works.
22 said yes, I have participated in this program, but it does not work.
76 said no, I have not participated in this program.
57 said they had never heard of this program.

Comments include: agree that smaller value cases should not necessarily consume limited resources (judges' schedules), but would suggest that the small claims limit be increased to $20,000 and that some form of expedited procedures be implemented for cases up to $50,000 to make it more accessible to and cost-effective for litigants – otherwise, the legal fees to pursue or defend claims up to $50,000 often make it too costly to litigate such claims, by impeding both parties' ability to have the case decided on its merits; has limited value; its usually not the factual dispute that prevents a case from settling-its usually a dispute about value and assessing one's risks; excellent time savers for a case such as a contract with questions of law and money damages that are not highly speculative and it saves litigation costs and scheduling is typically fair to all; usually results in a stipulated judgment.

Criticisms include: it merely short circuits the ATR program for no reason; do not like the additional steps that must be taken regarding objections to findings of fact to challenge or modify findings; should be combined with either arbitration or Attorney Trial Referee program.

9. **Foreclosure Mediation Program** (P.A. 08-176 and P.A. 09-209)

The vast majority of folks (86%) who have participated in this program say it works. 57% of those surveyed had never participated in this program.

43 said yes, I have participated in this program and it works.
7 said yes, I have participated in this program, but it does not work.
103 said no, I have not participated in this program.
28 said they had never heard of this program.

Comments include: good program; it works, but would be more effective if the rules were modified to require the lender to appear with reinstatement numbers that were valid; as the program currently operates, the lenders' numbers are only valid through the day of the mediation, if not the day before – this renders the information almost useless; it works with the right facts; it works, but only for a small number of cases; probably would not work without TARP money; mediators have no power – they cannot make the bank do anything; if the borrower does not fit nicely into the formula set up under HAMP, then the bank does nothing; have seen banks not agree to modifications – or string along for months – borrowers who are working and hundreds of thousands of dollars in equity; on occasions when the situation that caused the borrower to default has changed (or an interest rate adjustment is the sole cause for the default), the borrower can make immediate payments, and the lender is willing to modify interest rates or work out a repayment plan to cure an arrearage, the program can work; works very well but could be improved by requiring greater attendance and participation by lender; the mediator's neutrality is key to the success of the program; there were some concerns raised over the validity of the statistical "successes"; more experienced mediators with more relevant knowledge would benefit the program.
.

Criticisms include: it takes too long; banks are adequately incentivized to work with debtors and do not need a mediator to broker the deal; unfortunately, it is often a waste of time for both parties, as there are far too many situations where the borrowers simply cannot afford to remain in the property (even were the loan is modified) and may not be able to sell the property so quickly – even if additional time is given to them (due to market conditions or short sale issues); mediators need the ability to compel lenders to adjust the principal on a loan and to enforce the agreement; when multiple mediation sessions occur, you may not get the same mediator.

10. **Mediation Specialists-Housing Matters** (Conn. Gen. Stat. § 47a-69)

The majority of those surveyed have participated in this program and almost all (98%) said it works and speak very highly of it.

82 said yes, I have participated in this program and it works.
2 said yes, I have participated in this program, but it does not work.
67 said no, I have not participated in this program.
32 said they had never heard of this program.

Comments include: excellent program – wonderful at getting both parties to recognize realities of the situation and to work towards finding meaningful, realistic resolutions; part of success is due to the simply reality that if a settlement is not reached, the court will hear the matter and will render a final decision fairly quickly; with stakes as high as they are to the parties involved (need for housing, need to receive cash flow, etc.), parties are more willing to exchange uncertainty of outcome and potential of stays of execution for the certainty of a "less than perfect" stipulated judgment; this has always been an arena particularly well situated to intervention where fees are not available for full trial; this system is invaluable in lightening the case load of the housing session; the specialists are very well informed; have never seen an end result that was not just and comparable to the expected outcome after trial; very helpful; the housing specialists understand the cases and know what the judge will do with the case – as a result, they are able to effectively convince attorneys to settle most matters; this program is great in resolving nearly all eviction cases; works very well although typically the specialist does not have a great deal of time to spend with the parties; great program; the mediators do a great job helping the parties achieve a fair and just solution and often reach out to community resources, thus turning a conflict into a long-term solution that benefits all of the parties; while there is a palpable pro-tenant bent to some mediators, the outcomes have been realistic, quick and well done.

Criticisms include: with all cases on the docket scheduled for the same time, it can take a couple of hours to be reached and the cases do not seem to be called in order – it seems inefficient to clients, who have to pay their counsel to stand around for hours waiting for a mediator; suggest that the scheduling times be staggered in the morning; if neither party wants to participate, it should not be mandatory; mediation process is not helpful in commercial matters – it's more like a hoop to jump through to get a hearing; mediators should not advocate for pro se party; mediator knew the housing statutes well but was unable to deal with the parties and could not skillfully move the parties together by pointing out strengths/weaknesses in the case appropriately; some lawyers for plaintiff property owners are allowed to opt out of mediation and have their cases treated separately and some of these lawyers may take advantage of unrepresented tenants, even if an agreement reached outside of mediation may be looked at afterwards by a mediator; some mediators need training in fair housing laws and available services.

.

11. **Summary Jury Trial** (Conn. Gen. Stat. § 51-5a)

72% of those surveyed had never participated in this program and 26% never heard of this program. Only three people (2%) participated in the program and all said it works.

3 said yes, I have participated in this program and it works.
0 said yes, I have participated in this program, but it does not work.
131 said no, I have not participated in this program.
48 said they had never heard of this program.

Comments include: have done a number of mock trials and not in favor of this as a branch activity if they are non-binding because resources and time are committed for what is essentially a trial preparation/case evaluation tool for the parties; very helpful in cases that are difficult to value; it was a great way to have the particular case decided. We had a high-low agreement and the trial took about 2 hours.
.

12. **Medical Malpractice Mediation** (P.A. 10-122)

Only three people surveyed (2%) had participated in this program. 76% of those surveyed had never participated in this program and 23% never heard of this program.

2 said yes, I have participated in this program and it works.
1 said yes, I have participated in this program, but it does not work.
137 said no, I have not participated in this program.
41 said they had never heard of this program.

Comments include: too early to tell if it works but there is a concern that the first session happens too early for it to be productive; "mandatory" mediation is an oxymoron and mediation in a serious case should be the choice of the litigants to be effective; the statute sets up a clumsy machinery which is too easy for either party to "game"; works well because these claims lend themselves to mediation especially if the doctor consents; courts should be more proactive in identifying the cases where consent has been given; it worked wonderfully to narrow the issues and grease counsel for a settlement even though the case did not settle at mediation.

Criticisms include: some judges simply "rubberstamping" that they asked parties if they want mediation because parties regularly claim it is too early in the process.

13. **Suggestions to improve/change existing ADR programs:**

- The topic of "mediation" within the field of ADR needs to be carved out separately and addressed separately. In the mediation environment, the parties themselves are making the final determination as opposed to a third party in such situations as arbitration, fact finding or court/jury trial. As a result, mediation offers the parties the opportunity to control the process and outcome. This is a distinction worth noting particularly in the context of the Commission's work which is focused on making ADR tools more accessible and meaningful to the public.

- It is essential that our court system create some sort of credentialing for mediators. There should be at least minimal training required, adherence to a Code of Ethics unique to mediators and some overall accountability. As the legislature incorporates mediation into different types of disputes (e.g. Land Use Disputes, Medical Malpractice Cases, etc.), it is imperative that trained and skilled mediators are used. Not everyone can serve as a mediator and the bad ones will give mediation a bad name and undercut its usefulness.

- Judges need to be trained in mediation – many have no idea about difference between a pretrial and a mediation and some of them are not temperamentally suited to serve as mediators.

- Identify more judges who are skilled (or can be trained to be skilled) and effective mediators and find/allocate more time for them to function as such.

- All mediators should have mediation training which would increase the dwindling number of effective mediators.

- It is productive and helpful to have an engaged mediator who explores business solutions and creative ways to settle cases.

- Each civil case should be assigned to some form of ADR early in the life of the case – would encourage settlement and avoid the stalemate that may arise in which neither party wants to be the first to suggest ADR.

- Promote and enhance visibility of ADR programs.

- Courts should be more flexible on the scheduling of cases to allow for effective use of ADR programs.

- More frequent judicial status conferences where parties (not just lawyers) are required to attend and be adequately prepared to discuss the merits of the case and possible resolution.

- ADR works, at least for more complex cases, only if the parties and the neutral are well-prepared and when they are prepared to devote significant time to the process.

- Streamline and combine programs. We have too many that do the same thing. There really are just four types needed: 1) Court/Judge mediation, 2) Attorney mediation, 3) Attorney fact-finder, 4) court staff mediation (foreclosure, housing).

- Must remain flexible to make ADR programs work well, for instance, sometimes we need to have one or more status conferences to get all sides prepared for a meaningful mediation. It is also important to have all the appropriate decision-makers present to have a meaningful mediation.

- While it may not be feasible in the larger JDs, Rockville has the most effective system for resolving cases short of trial. Pretrials are scheduled far enough from the return date so most, if not all, discovery is done. The plaintiffs along with the adjusters are required to attend so all decision makers necessary are present. The judge takes considerable time talking to plaintiffs which is a help, especially if the plaintiff feels the need to have "his day in court".

- One area which needs attention is the resolution of discovery disputes in complicated cases by the use of experienced special masters who should be paid by the parties. Judges do not have the time to get involved in such disputes and this plays into the hands of litigants who use discovery both offensively and defensively to seek unfair advantage by either overreaching or stonewalling – We need something similar to Federal Rule 53.

- Eliminate non-binding arbitration.

- All jury trials should be required to be mediated using judges for cases worth more than $50,000 and lawyers for cases $50,000 or less.

- More judges need to be designated for ADR programs.

- Eliminate court-annexed arbitration; start the judicial pretrials by inviting plaintiff and their counsel, defendants and their counsel and adjusters to meet briefly with the judge or ATR at the beginning of the process.

- Better publicity is needed for existing programs.

- More and better training of judges in mediation. This might make civil pretrial conferences more effective as well.

- I liked the ATR/special master program w/2 attorneys as ATR/special masters, one from each side. I found them more productive as they were less biased.

- Provide mediation training to other judges. Perhaps the court could ask the parties by way of the status conference agreement form if they would like a mediation 4 wks in advance of the TMC, and if so, with what judge.

- We need to prepare for the impact of Medicare and CMS. Medicare set aside agreements/approvals can take 6 to 18 months. Just an FYI, the Workers' Comp world has been dealing with this for ages and it is time consuming. It would impact many of

the large, complex case ADR programs that deal with the larger awards. Programs such as court-annexed mediation should see more time demands per case as we thrash out the MSA. ADR will be needed more than ever; the MSA's will slow the paces of cases where the MSA is needed.

- Non-binding programs that are mandated just are not effective. I suggest that parties have to agree in writing to arbitration, perhaps including a good faith certificate that they have completed enough discovery to make informed decisions regarding the arbitration decision.

- There is a lack of any process for dealing with complaints about mediators who may act inappropriately or in a biased manner.

- There should be review of forms that are designed by individual mediators.

- Mediators who help the parties come to a settlement should not be permitted to canvass unrepresented parties.

- There is significant confusion as to the distinctions between the various referrals to ATRs. Perhaps the "Civil: The Basics" course should include the panoply of ADR options out there.

- The referral for fact finding and filing of a report under 52-549n et. seq. was considered effective and more often than not, the findings became final and binding

Suggestion: Identify other types of cases for which it might be suited beyond courtside contract cases and expand the program accordingly.

- There is a sense among the judges that Court-Annexed Mediation is, and perhaps should remain, a very informal and unstructured process. There are several judges who are not "on the list" but who regularly make themselves available. They do this so that they remain available to the "local" requests, without having to accommodate requests from all over the state. Having said that, if a judge gets a request from "out of district," he will still say yes, on an "as available" basis.

Problem: This approach makes it difficult to quantify and assess the CAM program and may well result in an "underreporting" of the successes with mediation.

Suggestion: Educate the judges and judge trial referees about CAM and how to get on the list. Train ALL judges in the area of civil dispute mediation so that the list will grow. Establish parameters, so that if a judge wants to hear matters on a particular subject matter, i.e. med mal or from a particular JD, he or she can make that request. Then... PR the whole program. Educate the Bar through its various associations about efforts being made to train and make available more judges for CAM.

- Regarding the various informal practices triggered by the closing of the pleadings:

Apparently, in different JD s, but almost without exception, there are events triggered by the closing of the pleadings. Most, if not all, involve a scheduling of a settlement conference. Some places use attorneys who volunteer and others use JTRs or judges. Most JD s also use this conference as a means for picking a trial date and any other scheduling orders that should be entered. Generally, these various approaches are deemed helpful. However, there is a need and

request for greater flexibility by the Branch.

For example, in some cases counsel agree that there can be no settlement discussion for any number of reasons: i.e., no plaintiff's deposition; no IME report etc. When counsel report such an agreement to caseflow, the response varies from JD to JD. In some, the conference is marked off and counsel can agree on and send in trial dates via fax. In some, the parties are required to appear anyway, sometimes solely for the purpose of picking a trial date. In some, the parties are required to appear and go through the motions of a settlement conference that invariably fails quickly (but might not have been reached quickly).

Uniformity in the process that is triggered with the closing of the pleadings would hopefully eliminate the disparate treatment which would permit greater confidence in the process by the clients as well as the lawyer.

The uniform process chosen should build in flexibility. Where there is flexibility, there is no appearance of arbitrariness. If counsel report, "it is too early," that assessment should be given credit and a later date given for a pretrial.

- Miscellaneous observations:

  Although the courts typically trigger some form of settlement conference when the pleadings are closed, there should be a mechanism for obtaining a pretrial conference (with whomever) prior to that point if both parties believe the case would benefit from intervention. Anecdotally, it appears that if a pretrial is requested in advance of that magic moment, counsel are often told no, for that reason.

  While it does not appear that the "early intervention" or "fast track" type programs gained traction for the reason that more often than not, it is simply "too early" for meaningful discussion, for those few cases in which early settlement conferences are deemed appropriate by counsel, a mechanism should be maintained. It does not have to be formalized to any extent, but a procedure to follow would be helpful.

- The only people who should be conducting ADR are those with the skill, training, desire and time to perform the function efficiently and effectively.

- Administer ADR programs similarly from courthouse to courthouse- there is a lack of uniformity

- Judges should always ask at pretrials if parties want ADR, because of reluctance of a party to be first in suggesting mediation, for fear of showing perceived weakness

14. **Suggestions for entirely new ADR programs:**

• Full-time trained Court Mediator assigned to each judicial district to oversee ADR programs.

• Pair mediators with particular substantive experience with like cases.

• Replace ineffective pretrial conference procedure with serious mandatory ADR participation.

• Using skilled mediators who will be in a position to devote sufficient time to settlement conferences at various stages of a case would hold promise. The federal court magistrate judges perform a valuable function in this regard and settle a significant number of cases. They accomplish this in part by making mediation an important part of their function and setting aside time – often full days or more – to conduct mediations. The court-annexed mediation program holds promise for similar results in our state system, but it needs to be more routine and set up to handle more cases.

• Assign a single judge to each court who handles mediations/pretrials and nothing else. Judges are too busy with trials, opinions and administrative work to take the time (sometimes significant) to resolve cases. A single judge could be trained and would develop effective skills for settling matters, would be able to do prompt follow up and would thereby earn the reputation as an effective mediator. That is what distinguishes private attorney mediators (whom parties pay for) from a judge who tries to juggle this time-consuming task with all else they must do. This one judge system would result in more settled cases, which would allow other judges to have more time to issue opinions and fulfill other duties.

• The problem with many court programs is that they do not seriously attempt to help the parties or counsel and therefore become a waste of time and resources. Over the past few years, scheduling order conferences, trial management and pretrial conferences merely “make work” and are largely unproductive. Experienced counsel simply ignore the orders while less experienced lawyers are pushing them. Either way, it results in contempt for the court and waste of time and money. The current system is not working and not helping to resolve cases and therefore should be at least modified or replaced.

• For certain civil cases (breakup of businesses or family property disputes), it might be valuable for a mediator to work with the parties and lawyers for many sessions over a long period of time. They could work on resolving segments of the case, then move on to the next issue, etc…..

• Promote private arbitration in smaller personal injury cases, e.g. value less than $50,000, as a fast, inexpensive way of resolving disputes.

- I would suggest that in a case in which a plaintiff's lawyer has a good faith belief that the value of the case exceeds the insurance coverage, there should be a procedure for very early pretrial. If the judge recommends that the defendant tender the policy limits and the limits are not tendered within 30 days, there should be an expedited scheduling order and an early trial.

- There were no new areas of dispute for which it might be appropriate to expand mandatory arbitration similar to the foreclosure or housing context. While the idea of doing so in the consumer debt cases was discussed, there was no consensus that this would be an effective tool. And, if the idea of ADR is to resolve cases sooner rather than later, or without the need for trial, the consumer debt cases rarely go to trial; are often the subject of either default judgments or summary judgments, none of which take a great deal of time on the docket.

- "high/low" binding arbitration is also an effective tool for moving cases and should be encouraged or at least discussed in any appropriate case. If chosen, the parties are free to choose an arbitrator, either from the ATR list or the CAM list, or on their own.

- Create a special masters program using members of the Academy of Court Appointed Masters to aid the court and the parties in resolving issues that arise before trial. This would allow judges to devote their time to critical issues that only they can handle.

- Make some non-binding ADR programs (e.g. early intervention, fact finding and mediation) mandatory for certain types of cases not highly dependent upon discovery.

ADR Commission
Information gathered from focus groups throughout the state
(February-March 2011)

Stakeholders:

- Counsel
- Litigants: Businesses
  - Large Companies/Insurance
  - Self-represented parties/Disenfranchised
  - Landlords/tenants
  - Social Agencies
  - Taxpayers
    - Land Owners
    - Prop. Owners
    - Developers
    - Debtors
    - Doctors
- Consumers
- Contractors
- Banks/Financial Institutions
- Victims, PI
- Mediators
- Civil Div./Judges
- Arbitrator/Fact Finders
- Insurance Companies
- Manufacturers
- Not-for-profit
- Municipalities
- Jurors

Interests/Needs:

- Speedy resolution
- Fairness/fair resolution
- Early but not rushed
- Desperate for dignity
- Responsiveness – address needs
- Opportunity to be heard/"day in court"
- Finality and certainty/closure
- Economical, cost-effective
- Creative solutions
- Confidentiality
- Trained neutral who understands
- Subject matter knowledge
- Language – literally speaks it
- Process understandable and transparent

- Process conducted in an ethical manner/faith in judicial system
- Non-adversarial
- Vindication
- Preserving relations, encourage cooperation
- Confrontation, vigorous rep.
- Venting/feeling of being heard
- Telling a story
- Individual approach
- Self-determination informed decisions
- Less conflict
- Accessibility-localized service
- Small dockets-create time for more complicated cases
- Compromise, creativity
- Narrowing of the issues
- Predictability
- Reality check

Disadvantages of ADR:

- No judge
- Not an open/transparent process
- Quality of ADR provider
- Time-consuming
- No record of proceedings
- Lack of structure
- No clear rules
- Cost issues
- Settlement terms are private-no precedental value
- Non-binding
- No formal discovery
- Conflict of interest/excusal or disqualification of Judge
- Used as a delay
- How to handle complaints

Areas for ADR:

- Collection cases
- FMP for non-residential/lien foreclosures
- Construction
- Land use/Adm. Appeals
- Lead paint
- Mass Tort
- Asbestos Cases
- Cases with self-represented litigants
- Condemnation-redevelopment

- Transfers from small claims
- All appeals
- Special masters for special proceedings
- Tax appeals-provider with specialized knowledge
- Probate appeals
- Employment cases
- Real property disputes
- Insurance coverage disputes

Specific Programs

Arbitration:

- Small claims transfer sent to arbitration (unnecessary expense)
- ? minimum threshold
- Most request trial de novo
- No knowledge of process
- Can assign JTRs
- Sets bar – promotes settlement
- Client involved
- No enforcement/non-binding
- No fee for de novo
- Is it mandatory – Judges make referral
- "Feel forced into program"
- Delays
- More legal fees/costs
- "Nonsensical"
- Timing occurs before discovery completed
- Get attys. and parties to communicate (helpful process)
- Upon request of parties – successful

- Waste of time (trial de novo)
- Cost out weighs benefit
- Not enough providers
- Jurisdictional limit may need to be increased
- Free discovery
- Parties can gauge witnesses' performance
- Helps both sides assess-settlement occurs

Attorney Trial Referee:

- Used as a trial (issues with scheduling)
- Used when Judges not available (case management technique)
- Attys. with great experience
- Potential to be cohesive
- Availability of providers
- Training

- No choice in provider
- Client control – tough to sell
- Process by attorney to client
- Atty. Trial Referee – Special Master for Admin. Appeals
- Provider has specialized knowledge
- Used to help backlog
- Settlement occurs after referral to trial like process – move to resolution
- Some get appealed within court process
- TTs want to have a forum to "tell their story" – once done more ready to accept outcome
- Want to be heard in a respectful forum
- People need to be confronted
- Not using judicial resources
- Don't need (no backlog)
- Some cost to Branch
- No paper files available to ATR-access to electronic file needed
- More effective scheduling
- No consistency in process-some use as mediation, some as trial

ATR/Administrative Appeals:

- Highly regarded
- Predictable (sue same people over & over)
- Virtually no judicial involvement
- Might be a cost associated
- Opportunity to expand to other types of appeals –
    - Zoning
    - FOI
- Have ATR assigned to cases based on area of expertise
- Tax appeals
- Successful (80-90% settle)
- Lengthy process
- Need localized experience/expertise

Court Annexed Mediation:

- Confidence in judge (parties get to select)
- Adequate time
- Done with a judge
- All decision makers present
- Works/Great
- Pick someone with expertise
- Confusion (about number given)
- Can be used as an aggressive technique
- Use judicial resources (takes judge away from courtroom)
- Unable to meet demand/Not enough judges
- Number can be an obstacle to settling (barrier to settling)
- Open it to lawyers as mediators

- CAM – central office process isn't efficient – too cumbersome
- Effective because of timing
- Client/adjuster feel like they have access to judge
- Judges' opinion has impact on clients
- Scheduling is difficult – with form
- Majority of cases assigned outside central process
- Mediator's ability is very important – patience & facilitative
- Judges' skill and reputation made them effective
- Some of the best outcomes with process
- Judge may lose touch when not hearing cases
- Parties and mediator both want to be involved in the process
- No consistency in other programs with process requirements
- Certain judges who are good at mediation have proven they can multi-task
- Important for parties to hear message directly from mediator/ADR provider
- Lose judges' trial time
- Local courts lose ability to track cases
- Judges take only certain case types
- Point person in each court who can direct to particular programs
- Certain judges get majority of cases – more judges
- Want to feel invested in process
- Hard to get a judicial pretrial
- Tough to get pretrial close to trial date
- Pretrial vs. mediation
- Pretrials without client involved usually is unproductive
- Mediation training for ATR – process outline

Early Intervention:

- Too early
- Gets parties to the table early in the process
- Used in NB with tax appeals
- Defined criteria
- Cumbersome
- Not many cases fit criteria
- Needs broader/more expansive use

Early Neutral Evaluation:

- Should publicize program
- Lost its usefulness
- Not being used

Expedited Process Track:

- Cost associated with private ADR program
- Too soon
- Have not heard of it
- Takes away court discretion

- Not useful or practical

Fact-Finding:

- Results in settlement
- Saves judge involvement
- Good for smaller contractor cases
- Works with self represented parties
- Don't get a judge
- Objection to FF can take up time
- Requires coordination
- "Trial" used in notice maybe misleading or cause confusion
- Facilities and staff may be unavailable
- Unavailability of providers
- Track case once completed
- Problems for self-represented parties
- $5000 claim may limit

Foreclosure Mediation:

- Good
- Specialized appt.
- TT not requirement to be there – but A is
- No access to investor
- High settlement rate
- Positive effect for homeowner (all parties)
- Popular
- Well trained mediators
- Takes too long
- Statute not flexible; timeframes too short
- Extensive Judge time for extensions
- Success with program
- At some point we get tough – when that happened – process began moving
- Get approval of settlement at mediation – paperwork never comes
- Attys. for TT have zero ownership of file – no consistency in atty. with each case
- No person with authority available
- "Equitable powers" of court should be used – sanctions
- Toll interest
- "skin in the game"
- TTs must understand that there are teeth to the process
- Legislation to give judges power to set sanctions
- Securitization has caused problems with knowing who has authority to settle
- Gets self-reps. communication with bank contact
- Doesn't impact court
- Benefits self-reps. with questions and information

- Positive image for the Branch to the public
- Doesn't apply to a lot of cases
- No enforcement by Judge

Housing Mediation:

- Fantastic
- Professional staff – can solve practical problems; use practical solutions
- Flexible
- Relieves demand on other staff
- Keep doing it
- Great settlement rate
- Assists caseload when located in ID location
- Information given to parties – resources given
- Reduces questions that come to clerks' office
- Mutually beneficial to parties – some input into outcome
- Increases the public trust
- Allows resources to be used in more efficient ways (Judicial resources allocated more efficiently)

Medical Malpractice Mediation:

- Helps in specialized cases
- Gets quick access to judge
- Too early!
- Waste of time
- Too early
- Not practical
- May be a more cost-effective way to resolution – defendants deserve more expedient process to get to settlement
- Complex Lit. process – much money wasted; don't put Med. Mal. cases here
- May help keep a handle on the efficiency of these cases – so they get to trial in a more timely fashion
- Have parties meet to "tell/hear stories" which may help the case to settle much earlier
- Streamline process where multiple parties/interest exist – may conflict
- Judge who hears it must recuse

Summary Jury Trial:

- Too much time for little return
- Requires many resources-staff
- Not binding
- No need

Private ADR:

- Employment matters (done by agreement of parties)

- Commercial landlord – tenant dispute – used atty. outside court to make decision
- Clients should participate in judicial pretrial
- Use if for mediation – very effective
- Ins. Adj. prepare much more effectively for mediation vs. arbitration
- The cost drives parties to settle

Suggestions:

- Pretrials are not effective
- Must be more like mediation with accountability – must have authority and access to adjusters – sanctions should be set if not
- Pretrials right before jury selection are more effective
- Pretrials should give parties access to the judges
- Hartford – arbitration pretrials (cases within 2 weeks of ret. Date) are scheduling conferences – too early – no impetus to resolve case
- Perspective on the number of ADR programs mandated
- Speedy dispute resolution
- Uniformity of ADR throughout districts
- Promotes effective use of Judicial resources and cost-effectiveness for parties
- Collaborative/satisfaction – parties are more invested therefore more compliant
- Docket management
- Giving parties choices
- Litigation model may work for some types of cases – not others
- Create a binding process for smaller civil claims (above small claims limit)
- *Pretrials not taken seriously anymore*
- Apathy with pretrial process
- Pretrials scheduled much too soon
- Judges don't take pretrials seriously
- Pretrial goal should be consistent – "scheduling conference" or "mediation" [criminal lack of concern]
- Too little time scheduled for pretrial
- No ability to know what to expect (arbitration scheduled – lots of prep. – no hearing held)

Appendix B: Civil Caseload Data

1. Pending Civil Cases by Case Type-Fiscal Year 1991-02 to 2010-11
2. Movement of Jury and Court List Cases-Fiscal Year 1991-02 to 2010-11
3. Movement of Small Claims Cases-Fiscal Year 1991-02 to
4. Movement of Summary Process Cases, Housing Sessions Fiscal Year 2001-02 to 2010-11

Pending Civil Cases by Case Type
Fiscal Year 1991-02 to 2010-11

	Fiscal Year									
Case Type	**1991-92**	**1992-93**	**1993-94**	**1994-95**	**1995-96**	**1996-97**	**1997-98**	**1998-99**	**1999-00**	**2000-01**
Administrative Appeals										
Added	2,175	2,347	1,813	2,329	1,708	1,600	1,416	1,208	13,747	1,740
Disposed	1,501	1,917	2,111	1,917	2,034	1,943	1,847	1,777	1,365	1,441
Pending, End	2,509	3,416	3,217	3,682	3,446	3,127	2,749	2,230	2,266	2,586
Contracts										
Added	30,863	22,232	21,204	19,596	17,982	18,548	18,854	18,249	20,561	16,655
Disposed	29,989	27,824	23,463	22,281	17,115	20,400	20,083	20,093	17,413	16,435
Pending, End	25,087	20,450	18,845	16,742	18,104	16,347	15,685	14,529	18,241	18,635
Eminent Domain										
Added	158	351	203	193	229	329	267	339	395	429
Disposed	134	183	131	188	148	193	132	296	266	335
Pending, End	190	448	523	529	611	752	887	915	1,045	1,136
Miscellaneous										
Added	2,922	3,233	3,025	3,223	4,071	4,270	4,123	4,087	4,062	4,122
Disposed	2,821	3,071	3,211	3,297	3,648	4,590	4,083	4,197	3,345	3,447
Pending, End	3,514	3,626	3,501	3,526	4,027	3,726	3,871	3,885	4,723	5,459
Property										
Added	14,874	13,309	11,622	11,321	12,483	13,630	13,042	11,570	10,976	11,188
Disposed	11,120	15,030	13,223	12,055	11,466	15,742	13,910	12,862	10,892	10,102
Pending, End	13,794	13,911	12,904	12,630	14,036	12,052	11,727	10,986	11,524	12,808
Torts										
Added	5,383	5,967	5,902	6,749	6,933	6,466	6,516	5,988	5,947	5,571
Disposed	5,387	6,024	6,060	6,086	5,907	6,828	6,750	6,862	5,878	5,943
Pending, End	11,235	11,840	12,038	12,984	14,277	13,957	14,049	13,506	13,935	13,662
Vehicular Torts										
Added	10,883	9,980	9,740	11,183	12,278	13,437	13,520	12,899	12,559	11,991
Disposed	11,099	10,829	10,175	9,787	9,831	11,468	12,497	13,635	12,075	12,128
Pending, End	15,181	14,576	14,425	16,025	18,693	20,638	21,953	21,534	22,425	22,416
Wills										
Added	198	201	193	181	168	192	177	181	171	134
Disposed	201	207	196	209	174	202	165	173	152	142
Pending, End	277	282	286	263	260	251	269	282	311	308
Total										
Added	68,456	57,620	53,702	54,775	55,852	58,472	57,915	54,521	56,045	51,830
Disposed	62,252	65,085	58,570	55,820	50,323	61,366	59,467	59,895	51,386	49,973
Pending, End	71,787	68,549	65,739	66,381	73,454	70,850	71,190	67,867	74,470	77,010

Pending Civil Cases by Case Type
Fiscal Year 1991-02 to 2010-11

	Fiscal Year									
Case Type	**2001-02**	**2002-03**	**2003-04**	**2004-05**	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**	**2010-11**
Administrative Appeals										
Added	2,099	2,140	1,630	1,537	1,453	1,905	2,213	2,053	1,661	1,408
Disposed	1,690	2,126	2,051	1,724	1,829	1,659	1,806	2,141	1,860	2,027
Pending, End	3,037	3,098	2,707	2,565	2,217	2,493	2,938	2,891	2,739	2,216
Contracts										
Added	15,432	16,352	16,667	19,189	17,637	18,178	24,558	27,960	29,592	31,825
Disposed	21,185	14,614	15,229	16,998	17,525	23,078	18,411	21,689	27,445	33,024
Pending, End	13,042	15,264	16,883	19,228	19,469	14,691	21,385	27,848	30,200	29,196
Eminent Domain										
Added	389	313	285	292	153	185	155	204	140	170
Disposed	346	326	496	393	278	259	215	257	142	232
Pending, End	1,167	1,141	935	849	738	665	624	573	573	515
Miscellaneous										
Added	4,170	4,093	4,206	4,913	4,627	4,643	5,211	4,831	4,229	4,221
Disposed	5,267	3,693	3,703	4,756	4,206	6,688	4,543	4,602	4,090	4,747
Pending, End	4,407	4,921	5,480	5,670	6,151	4,167	5,110	5,413	5,636	5,154
Property										
Added	12,542	11,790	11,189	10,971	12,754	16,728	21,259	26,022	27,486	16,272
Disposed	14,555	11,086	11,456	9,798	12,046	17,340	15,981	20,221	21,776	22,786
Pending, End	11,038	12,175	12,161	13,543	14,416	14,015	19,805	26,236	33,287	28,359
Torts										
Added	5,234	5,382	4,925	5,234	4,839	4,930	4,968	4,784	4,852	4,796
Disposed	7,252	5,937	5,492	5,560	5,427	6,355	4,810	4,879	4,435	5,087
Pending, End	11,762	11,595	11,163	10,974	10,460	9,150	9,636	9,650	10,142	9,940
Vehicular Torts										
Added	12,164	12,094	11,599	11,298	10,656	10,629	10,604	10,335	10,183	10,088
Disposed	15,100	12,273	12,237	12,219	12,252	13,574	9,987	10,153	9,790	10,974
Pending, End	19,606	19,888	19,448	18,627	17,171	14,343	15,271	15,584	16,059	15,258
Wills										
Added	156	144	139	172	133	151	144	128	132	152
Disposed	222	137	143	127	144	247	119	128	88	134
Pending, End	245	262	263	310	302	209	243	248	292	313
Total										
Added	52,186	52,308	50,640	53,606	52,252	57,349	69,112	76,317	78,275	68,932
Disposed	65,617	50,192	50,807	51,575	53,707	69,200	55,872	64,070	69,626	79,011
Pending, End	64,304	68,344	69,040	71,766	70,924	59,733	75,012	88,443	98,928	90,951

Movement of Jury and Court List Cases
Fiscal Year 1991-02 to 2010-11

YEAR	JURY CASES				COURT CASES			
	ADDED	DISPOSED	PENDING	Median Age of Pending Cases (in mos)	ADDED	DISPOSED	PENDING	Median Age of Pending Cases (in mos)
1991-92	10,103	8,726	16,538	22.60	7,684	6,544	8,670	21.64
1992-93	9,967	9,172	17,397	23.14	7,066	6,472	8,791	21.12
1993-94	10,265	10,026	17,570	21.14	6,477	6,622	8,077	20.86
1994-95	10,604	10,147	18,014	19.86	5,404	6,158	6,744	19.89
1995-96	12,101	10,237	19,744	19.08	4,978	5,445	5,742	19.77
1996-97	13,582	10,723	22,463	20.11	5,975	5,122	6,209	19.67
1997-98	13,413	12,400	23,436	19.83	5,507	4,947	6,311	18.69
1998-99	13,349	13,452	23,236	19.64	5,249	4,739	6,496	19.02
1999-00	11,038	13,384	20,798	20.04	4,158	4,869	5,207	18.96
2000-01	10,687	13,040	18,350	19.08	3,820	4,165	4,613	19.08
2001-02	12,732	13,261	17,708	18.72	4,779	4,378	4,793	20.64
2002-03	9,995	12,546	15,096	17.78	3,459	4,495	3,406	17.76
2003-04	9,568	11,604	12,986	16.80	3,637	3,813	3,150	16.68
2004-05	9,465	11,088	11,296	15.84	3,541	3,553	3,047	16.32
2005-06	9,327	10,244	10,279	14.76	3,319	3,399	2,861	16.68
2006-07	10,818	9,550	11,601	15.36	4,340	3,219	3,932	19.08
2007-08	9,031	9,539	11,051	14.64	3,455	3,700	3,552	16.32
2008-09	9,293	9,732	10,661	14.40	3,214	3,426	3,181	17.04
2009-10	9,703	9,049	11,254	14.16	3,551	3,303	3,339	17.04
2010-11	9,704	9,417	11,420	14.28	3,777	3,489	3,465	18.00

Movement of Small Claims Cases
Fiscal Year 2006-07 to 2010-11

Fiscal Year	Added	Disposed	Pending, End
2006-07	79,801	55,821	76,860
2007-08	93,320	80,168	60,983
2008-09	96,434	107,438	49,979
2009-10	87,930	106,701	31,208
2010-11	63,582	81,682	13,108

Movement of Summary Process Cases
Housing Sessions
Fiscal Year 2001-02 to 2010-11

Fiscal Year	Added	Disposed	Pending, End
2001-02	17,968	18,543	2,207
2002-03	18,011	18,435	1,783
2003-04	16,591	16,054	2,320
2004-05	16,471	16,759	2,037
2005-06	16,987	16,392	2,627
2006-07	17,619	18,035	2,169
2007-08	18,719	18,482	2,406
2008-09	18,237	18,440	2,203
2009-10	16,233	16,191	2,248
2010-11	16,515	16,467	2,251

Appendix C

Cases by Major Case Type Where There is at Least One Self- Represented Party-Fiscal Year 2005-06 to 2010-11

Cases by Major Case Type Where There is at Least One Self-Represented Party
Fiscal Year 2005-06 to 2010-11

		Case Type								
Year	Case has at least one Self-Rep. Appearance	Administrative Appeals	Contract	Eminent Domain	Misc.	Property	Tort	Vehicular	Wills	Total
FY06	Yes	264	4043	14	1581	3405	329	412	30	10078
	Total	1453	17637	153	4627	12754	4839	10656	133	52252
	% Self-Rep.	18%	23%	9%	34%	27%	7%	4%	23%	19%
FY07	Yes	261	4080	15	1603	4721	363	402	31	11476
	Total	1905	18178	185	4643	16728	4930	10629	151	57349
	% Self-Rep.	14%	22%	8%	35%	28%	7%	4%	21%	20%
FY08	Yes	298	5847	26	1772	6512	423	368	36	15282
	Total	2213	24558	155	5211	21259	4968	10604	144	69112
	% Self-Rep.	13%	24%	17%	34%	31%	9%	3%	25%	22%
FY09	Yes	381	6860	13	1688	9820	475	360	43	19640
	Total	2053	27960	204	4831	26022	4784	10335	128	76317
	% Self-Rep.	19%	25%	6%	35%	38%	10%	3%	34%	26%
FY10	Yes	391	8420	28	1537	11341	469	371	43	22600
	Total	1661	29952	140	4229	27486	4852	10183	132	78635
	% Self-Rep.	24%	28%	20%	36%	41%	10%	4%	33%	29%
FY11	Yes	351	8950	17	1480	6207	429	345	35	17814
	Total	1408	31825	170	4221	16272	4796	10088	152	68932
	% Self-Rep.	25%	28%	10%	35%	38%	9%	3%	23%	26%

Appendix D:

Existing Court Sponsored ADR Programs

Commission on Civil Court Alternative Dispute Resolution (ADR)

Existing Court Sponsored Civil ADR Programs:

Introduction:

This is a reference document containing enhanced descriptions of the existing civil court ADR programs, along with highlights of comments/notes on each program obtained from information gathering efforts. A breakdown of the number of each ADR event by judicial district, to the extent this information is captured, is included. This document includes descriptions, including legal authority, of the following programs:

Arbitration
Attorney Trial Referee (ATR)
Attorney Trial Referee/Special Master for Administrative Appeals
Court Annexed Mediation (CAM)
Early Intervention
Early Neutral Evaluation
Expedited Track Process
Fact-Finding
Foreclosure Mediation
Housing Mediation
Medical Malpractice Mediation
Summary Jury Trial

I. ARBITRATION:

A. Legal Authority:

- C.G.S. sec. 52-549u – 52-549aa;
- Practice Book sec. 23-60 - sec. 26-66

B. Eligibility Criteria:

- < 50K judgment expected, exclusive of interest or costs, in the discretion of the court
- Jury claim and Certificate of Closed Pleadings filed

C. Referral:

- Judge referral
- Party may request referral
- Consent required

D. Other Characteristics:

- Decision filed within 120 days
- Non-binding – right to seek appeal/trial de novo within 20 days
- Judge Trial Referee (JTR) may be assigned for a trial de novo without parties' consent
- No record of proceedings
- Strict adherence to the rules of evidence is not required

E. Cost:

- Arbitrator paid $100/each day of proceedings; additional $25 for each decision filed with the court.
- Total Branch payment to Arbitrators for fiscal year 2010 = $46,775
- No fee for appeal/trial de novo
- No court personnel assigned to proceedings before arbitrator, but court monitor and clerk (usually TAC) assigned to trial de novo

Notes from Information Gathering Efforts:

- Most cases result in a trial de novo
- Non-binding nature leads to appeals; non-binding does not work when it is mandated by the PJ
- Viewed negatively when there is not a voluntary submission by the parties, but instead a mandatory directive by the PJ
    - increases costs to parties;
    - time-consuming;
    - seen as a way to avoid parties objection to a JTR for trial
    - some attorneys use it as a discovery tool.
- May facilitate settlement by increasing communication; assignment of value to case
- Jurisdictional limit of 50K may need to be increased

- Formality of arbitration proceeding varies widely across Judicial Districts
- Effectiveness of arbitrator important to success

ARBITRATION	# Events 9/1/10 – 5/31/11
Statewide	1201
Ansonia-Milford	------
Danbury	------
Fairfield	177
Hartford	576
Litchfield	------
Meriden	------
Middlesex	11
New Britain	10
New Haven	363
New London - Norwich	25
Stamford	39
Tolland	------
Waterbury	------
Windham	------

F. Outcomes:

Dispositional Outcomes for Cases with Arbitration Conferences Scheduled in 2010

Dispositional Outcome	Calendar Year 2010	% of Cases
Disposition entered within 90 days from conference	656	53%
Disposition entered over 90 days from conference	424	34%
Still pending	153	12%
Total	1233	100%

II. ATTORNEY TRIAL REFEREE (ATR):

A. Legal Authority:
- C.G.S. sec. 52-434(a)(4)
- Practice Book Chapter 19

B. Eligibility Criteria:
- No jurisdictional limit on the amount in controversy
- Non-jury cases
- Certificate of Closed Pleadings filed

C. Referral:

- Consent of parties required
- Referred to take evidence (from stat. discuss)

D. Other Characteristics:

- Proceedings on the record
- Rules of evidence apply
- Report filed within 120 days
- Report contains facts found and conclusions drawn therefrom
- Report may be accompanied by a memorandum of decision if the ATR deems it helpful
- Parties have 21 days to file objection to acceptance of ATR report
- If no objection to report, parties or court may move for judgment on the report
- If court rejects the report, court may refer again to ATR or leave case to be disposed of in court

E. Cost:

- "Reasonable compensation and expenses as determined by CJ" per statute
- Total Branch payment to ATRs for fiscal year 2010 = $12,960
- Court monitor assigned

Notes from Information Gathering Efforts:

- Use varies in different Judicial Districts –
    - ATRs used in some districts to conduct pretrials
    - Inconsistent use: some used as mediation instead of fact-finding; some used as trial
- Effectiveness of ATRs varies greatly; Stamford has historically had pool of very skilled ATRs with subject matter expertise
- No choice in provider – court decides on provider and recommendations by counsel "shall only be made at the request of the court or judge." (P.B. 19-5)
- May be tough to sell idea to client
- Good for cases with factual disputes rather than unusual legal theories
- Allows for flexible scheduling
- Alleviates backlog of court cases on trial list and saves judicial resources/No longer a backlog, so not needed
- Sometimes a long wait for ruling on judgment on the report

ATTORNEY TRIAL REFEREE	Trials 9/1/10 – 5/31/11	Pretrials 9/1/10 – 5/31/11
Statewide	57	101
Ansonia-Milford	-------	------
Danbury	------	------
Fairfield	2	------
Hartford	------	------
Litchfield	------	------
Meriden	1	------
Middlesex	------	------
New Britain	------	------
New Haven	------	------
New London - Norwich	------	------
Stamford	54	------
Tolland	------	101
Waterbury	------	------
Windham	------	------

III. ATTORNEY TRIAL REFEREE/SPECIAL MASTER FOR ADMINISTRATIVE APPEALS

A. Legal Authority:

- C.G.S. sec. 51-5a**
- Practice Book Chapter 19

B. Eligibility Criteria:

- Tax and unemployment appeals
- Claimed to Administrative Appeals trial list

C. Referral:

- Used mainly in NH where tax appeals are automatically assigned for at least one session with a special master
- Stamford JD assigns tax appeals bi-annually

D. Other Characteristics:

- New Haven assigns special master based on expertise

E. Cost:

- The neutrals are volunteer attorneys and are not paid for their services
- No training costs

Notes from Information Gathering Efforts:

- Not widely used, but highly regarded by those attorneys who have participated in it
- Used mainly in New Haven JD
    - NH automatically assigns all tax appeals for at least 1 special master pretrial
    - Special Masters assigned for their expertise in tax appeals
    - High rate of settlement before trial
    - Parties have confidence in provider because of their expertise
- Used also in Stamford; Tax appeals are referred to a special master for pretrials and an ATR for trial

ATTORNEY TRIAL REFEREE/ SPECIAL MASTER	PRETRIAL 9/10/10 – 5/31/11
New Haven	560
Stamford	191

** C.G.S. 51-5a addresses the duties and powers of the Chief Court Administrator including responsibility for the "efficient operation of the department, the prompt disposition of cases and the prompt and proper administration of judicial business."

IV. COURT ANNEXED MEDIATION (CAM)

A. Legal Authority:

- C.G.S. sec. 51-5a**

B. Eligibility Criteria:

- Cases which will require more than a half-day pretrial conference to settle

C. Referral:

- Parties request referral (Form JD-CL-61)

D. Other Characteristics:

- Conducted by judge or JTR
- Referral form (JD-CL-61) allows parties to list 3 preferred mediators – list of mediators available on judicial branch website
- Parties are required to attend. If insurance coverage, claims rep. with authority must attend; defendant excused unless claim is in excess of coverage.
- Mediators may request a position summation in advance of session
- Confidential; only referral form and stipulations for judgment may become part of file.

E. Cost:

- JTR fee; Judge time

Notes from Information Gathering Efforts:

- Very successful at settling cases or moving cases toward settlement
- Judge's opinion has impact on client; parties have confidence in judge especially because they select preferred mediator on CAM referral form (JD-CL-61)
- Can take months to schedule with one of the top requested/highly regarded mediators; hard to schedule on short notice
- Adequate time is allotted; multiple sessions can be scheduled
- All decision-makers are required to be present
- Not all mediators possess same settlement skills; some highly regarded, others need training
- Some mediators treat it as a pretrial and assign a value too early in process thereby creating a barrier to settling
- Some mediators will speak to parties, others will only speak to counsel; desire to see standard practice of judge speaking to

parties because of importance of hearing message directly from the mediator
- Impacts judge/JTR's availability for trial or other matters in court
- Not done with self-represented parties; perhaps counsel not requesting if self-rep. on other side

COURT ANNEXED MEDIATION (CAM)	# Events 9/1/10 – 5/31/11
Statewide	609
Ansonia-Milford	25
Danbury	24
Fairfield	70
Hartford	114
Litchfield	4
Meriden	7
Middlesex	50
New Britain	37
New Haven	86
New London - Norwich	46
Stamford	54
Tolland	7
Waterbury	78
Windham	7

F. Outcomes:

Dispositional Outcomes for Cases with Court-Annexed Mediation Conferences Scheduled in 2010

Dispositional Outcome	Calendar Year 2010	% of Cases
Disposition entered within 90 days from conference	143	32%
Disposition entered over 90 days from conference	196	44%
Still pending	105	24%
Total	444	100%

V. EARLY INTERVENTION

A. Legal Authority:

- C. G. S. sec. 51-5a**

B. Eligibility Criteria:

- Civil personal injury or small claims transfer case
- At least 6 months old
- At least 1 defendant has filed an appearance

C. Referral:

- May be court ordered

D. Other Characteristics:

- May be referred to a special master for a settlement conference

E. Cost:

- Rarely used – unable to quantify

Notes from Information Gathering Efforts:

- Not used in all Judicial Districts; unfamiliar with program
- In actuality, Stamford draws little distinction between "Early Intervention" and "Early Neutral Evaluation"
- May be too early to be helpful – plaintiffs not ready, defendants not serious; may only be helpful in setting agreed upon scheduling order
- Perfunctory
- Effective in only very basic cases where both sides wish to avoid added costs through early resolution

VI. EARLY NEUTRAL EVALUATION

A. Legal Authority:

- C. G. S. sec. 51-5a**

B. Eligibility Criteria:

- Cases within 180 days of return date
- Usually personal injury cases

C. Referral:

- Request of parties

D. Other Characteristics:

- May be referred to a special master for settlement conference

E. Cost:

- Rarely used – unable to quantify

Notes from Information Gathering Efforts:

- Used only in Stamford JD, and in motor vehicle cases only

- In actuality, Stamford draws little distinction between “Early Intervention” and “Early Neutral Evaluation”
- New Haven JD indicates that they have not received a request for this program in at least 10 years
- Very limited familiarity with program even among court staff
- Lost its usefulness

VII. EXPEDITED TRACK PROCESS

A. Legal Authority:

- C. G. S. sec. 52-195b(b)(2)
- Practice Book sec. 23-2 – 23-12

B. Eligibility Criteria:

- Consent of all parties required
- Cases involving the ownership, maintenance or use of a private passenger motor vehicle
- Each plaintiff’s claim must be ≤ 75K, exclusive of interest or costs

C. Referral:

- Consent form filed with the complaint or at later time
- Once consent is filed, plaintiff files with the clerk a notice for placement on the expedited track

D. Other Characteristics:

- Consent to expedited track process waives right to jury trial, record of proceedings and right to appeal
- Parties may agree to refer cases involving the ownership, maintenance or use of a private passenger motor vehicle to an ADR program within 60 days of return date; If case does not resolve, it may be placed on the expedited track where each plaintiff’s claim is 75K or less exclusive of interest or costs and all parties consent

E. Cost:

- Cost associated with private ADR

Notes from information Gathering Efforts:

- Not being used in any judicial district
- Is 60 days too soon? Is that the reason it is not used?
- Is the 75K limit a factor in why it is not used?

VIII. FACT-FINDING

A. Legal Authority:

- C.G.S. sec. 52-549n – 52-549t
- Practice Book sec.23-52 – 23-59

B. Eligibility Criteria:

- Contract cases, except claims under insurance contracts for uninsured/underinsured motorist coverage
- Based on promise to pay definite sum
- Money damages claims only, <50K exclusive of interest and costs
- Certificate of Closed Pleadings filed and time to file jury claim expired

C. Referral:

- Judge referral

D. Other Characteristics:

- Proceedings are on the record
- Rules of evidence apply
- Findings of fact due within 120 days
- Parties may object to acceptance of finding of fact
- Binding if accepted by the court – court may render judgment in accordance with the finding
- Court may reject finding and remand to fact-finder, reassign to different fact-finder or take any other action deemed appropriate

E. Cost:

- Fact-finder paid $100/each day of proceedings; additional $25 for each decision filed with the court.
- Total Branch payment for FFs for fiscal year 2010 = $20,375
- Court monitor for proceedings on record

Notes from Information Gathering Process:

- Saves judge involvement
- Good for smaller contractor cases
- Results in settlement in many cases
- Limited provider availability
- Facilities and staff availability
- Not used in some Judicial Districts where it is deemed easier to schedule for a court trial

FACT FINDING	# Events 9/1/10 – 5/31/11
Statewide	318
Ansonia-Milford	------
Danbury	------
Fairfield	53
Hartford	138
Litchfield	------
Meriden	------
Middlesex	51

New Britain	1
New Haven	------
New London - Norwich	------
Stamford	10
Tolland	11
Waterbury	------
Windham	54

IX. FORECLOSURE MEDIATION PROGRAM

A. Legal Authority:

- C.G.S. Sec. 49-31l – 49-31o as amended by H.B. 6650, Sec 31-32 and H.B. 6351

B. Eligibility Criteria:

- Mortgage foreclosure cases with a return date of July 1, 2008 or after
- Property is residential, 1-4 units, being used as borrower's primary residence and owner-occupied; or property is owned by a religious organization

C. Referral:

- Certificate filed by mortgagor
- May be court ordered

D. Other Characteristics:

- Court staff assigned as mediators. (parties do not choose)
- Specific timelines for mediation period established by statute.
- Parties must attend with exception made for mortgagee who is represented by counsel – they may participate via speakerphone.
- Financial documents submitted to court prior to first mediation session. (most recent change by statute)
- Mediators must file reports after the first and final mediation sessions.
- Confidential (with exception of information used to prepare mediator reports)
- Staff required to refer self-represented litigants to community based assistance programs

E. Cost:

- Total Branch cost for 25 mediators, 9 caseflow coordinators and 17 office clerks for fiscal year 2012 = 5.2 million dollars (separately funded through special appropriations)

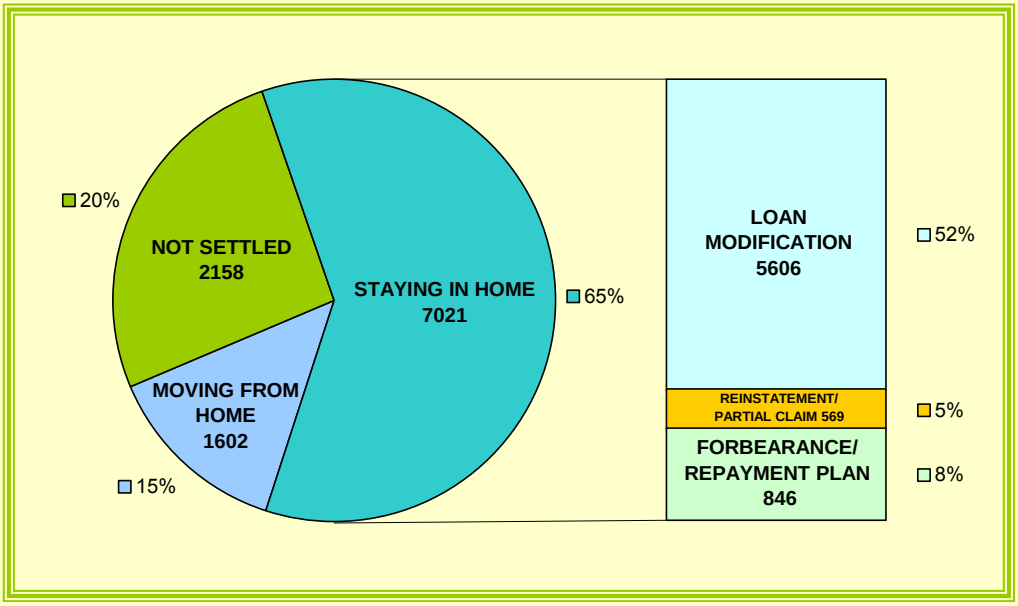
Notes from Information Gathering Efforts:

- Date and time specific scheduling viewed as convenient
- Well trained mediators
- Helps self-represented litigants be informed
- Positive image for the Branch
- Process too lengthy
- Banks do not participate adequately

Foreclosure cases with mediation scheduled (9/1/10 through 5/31/11)		
District	**# of cases**	
Ansonia-Milford	175	
Danbury	142	
Fairfield(Bridgeport)	377	
Stamford	237	
New Britain	212	
Hartford	477	
New London	233	
Litchfield	125	
Middlesex	121	
New Haven	390	
Meriden	30	
Tolland	104	
Waterbury	265	
Willimantic	139	
Statewide	**3027**	

F. Outcomes:

Foreclosure Mediation Program (FMP) Results
As of May 31, 2011



- STATEWIDE, 10,781 CASES HAVE COMPLETED MEDIATION FROM JULY 1, 2008 THROUGH MAY 31, 2011. THIS CHART ILLUSTRATES THE OUTCOME OF THESE CASES.
- THE CATEGORY "MOVING FROM HOME" INCLUDES AGREEMENTS FOR A SHORT SALE, A DEED IN LIEU, OR AN EXTENSION OF THE LAW DAY OR SALE DATE.
- THE CATEGORIES "MOVING FROM HOME" AND "STAYING IN HOME" WHEN ADDED TOGETHER RESULT IN A **SETTLEMENT RATE OF 80%.**

X. MEDIATION SPECIALISTS – HOUSING MATTERS

A. Legal Authority:

- C.G.S. Sec. 47a-69

B. Eligibility Criteria:

- All contested housing matters eligible for placement on the housing docket (e.g. summary process cases, housing civil matters, entry and detainer actions)

C. Referral:

- Mandatory for all eligible cases

D. Other Characteristics:

- Court staff assigned as mediators. (parties do not choose)
- Staff required to refer self-represented litigants to community based assistance programs.
- Mediators available on short calendar to mediate any cases refer by the presiding Judge.
- Confidential (with exception of information requested by Judge)

E. Cost:

- 8 Full Time Staff Mediators (unable to get fiscal breakdown)

Notes from Information Gathering Efforts:

- Professional staff
- Great settlement rate
- Reduces questions that come to clerks' offices
- Allows resources to be used in more efficient ways
- Increases the public trust

F. Outcomes:

Total Cases Mediated Statewide in 2010:

Total Settled	7289
Total Not Settled	803
Total #	8092
% Settled	90%
% Not Settled	10%

Total Cases Mediated Statewide in 2011:

Total Settled	3430
Total Not Settled	331
Total #	3761
% Settled	91%
% Not Settled	9%

XI. MEDICAL MALPRACTICE MEDIATION

A. Legal Authority:

- C.G.S. 52-190c (enacted 2010)

B. Eligibility Criteria:

- Cases alleging personal injury or wrongful death, whether in tort or in contract, as a result of the negligence of a health care provider

C. Referral:

- Prior to close of pleadings the Presiding Judge (P.J.) shall refer the action to **mandatory** mediation or any other ADR program agreed to by the parties

D. Other Characteristics:

- Mediation must begin within 20 days of referral of the P.J.
- First mediation session is conducted by a judge
- Parties and a representative of insurer(s) must attend mediation session(s) unless permitted to participate by telephone or electronic means is permitted by the judge or mediator

E. Cost:

- If the parties agree to subsequent mediation sessions, it is referred by the judge to an attorney experienced in such actions; cost is split 50% plaintiff(s) and 50% defendant(s)
- Judge time

Notes from Information Gathering Efforts:

- Occurs too early in the process to be productive
- Mediation should not be “mandatory” – needs to be choice of the litigants
- May be helpful because parties get an opportunity to “tell their stories” and case may settle earlier in the process

XII. SUMMARY JURY TRIAL

A. Legal Authority:

- C.G.S. sec. 51-5a**

B. Eligibility Criteria:

- Jury cases

C. Referral:

- Consent of the parties required

D. Other Characteristics:

- Non-binding
- Abbreviated summary of the case presented

- Judge or JTR presides

E. Cost:

- Rarely used – unable to quantify

Notes from Information Gathering Efforts:

- Amount of work for the judge is disproportionate to the benefit
- Requires a lot of staff resources
- Almost never used

Appendix E: Tabulation of votes on recommendations

TALLY OF VOTES ON SUBCOMMITTEE RECOMMENDATIONS PRIOR TO 12/19/11 MEETING (20 members voting)

UTILIZATION SUBCOMMITTEE

All the recommendations (A-K): 18 votes in favor
Those who voted on individual recommendations:
Recommendations A, C, E, F, I and K: 2 votes in favor:
Recommendations B, D, G, H, and J: 1 vote in favor, 1 abstention:

DELIVERY SUBCOMMITTEE

Note: Recommendations I. A.4 and 8 and I. B. 6 were tabled
All the recommendations: 6 votes in favor
Those who voted on individual recommendations:
Recommendation I: 13 in favor, 1 abstention
Recommendation I.A (except 4 and 8): 11 in favor, 1 against, 2 abstentions
Recommendation I. B (except 6): 13 in favor, 1 abstention
Recommendation I. C: 13 in favor, 1 abstention
Recommendation I.D: 12 in favor, 2 abstentions
Recommendation II: 12 in favor, 1 abstention
Recommendation II.A: 13 in favor, 1 abstention
Recommendation II.B: 13 in favor, 1 abstention

TRAINING SUBCOMMITTEE:

All the recommendations: 18 votes in favor
Those who voted on individual recommendations:
Recommendation I: 1 in favor, 1 split vote (in favor for fact finding/arbitration and against for mediation/settlement)
Recommendation II: 1 in favor, 1 abstention
Recommendation III: 1 in favor, 1 against
Recommendation IV: 2 in favor
Recommendation V: 1 in favor, 1 abstention

EVALUATION SUBCOMITTEE

All the recommendations: 20 in favor

TALLY OF VOTES AT 12/19/11 MEETING (14 members voting)

DELIVERY SUBCOMMITTEE:

Recommendation I.A.4: 2 in favor, 12 against
Recommendation I.A.8: 14 in favor of keeping it tabled
Recommendation I.B.6: 14 in favor of keeping it tabled

ADDITIONAL COMMISSION RECOMMENDATIONS:

Recommendation I (outside providers): 14 in favor
Recommendation II (standing committee): 13 in favor, 1 against

Appendix F: Bibliography of materials

Bibliography of materials

1. Boulle, “Diagnostic Factors in Mandatory ADR Referrals,” ADR Bull., Vol. 4, No. 3, Art. 2 (2001).
2. Brazil, “Comparing Structures for the Delivery of ADR Services by Courts: Critical Values and Concerns,” 14 Ohio St. J. on Disp. Resol. 715 (1999).
3. Bush, “Mediation and Adjudication, Dispute Resolution and Ideology: An Imaginary Conversation,” 3 J. Contemp. Legal Issues 1 (1989-1990).
4. Florida Standards for Court Connected Mediation.
5. Frenkel & Stark, The Practice of Mediation (Aspen Publishers, Inc. 2008).
6. Kiser, Asher & McShane, “Let’s Not Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiations,” 5 J. Empirical Legal Stud. 551 (2008).
7. McAdoo & Welsh, “Court-Connected General Civil ADR Programs: Aiming for Institutionalization, Efficient Resolution, and the Expertise of Justice,” ADR Handbook for Judges, chapter 1.
8. McCormack, Schultz & McCormack, “Probing the Legitimacy of Mandatory Mediation: New Roles for Judges, Mediators, and Lawyers,” 1 St. Mary’s J. on Legal Malpractice & Ethics 150 (2011).
9. Model Standards of Conduct for Mediators, approved by the American Arbitration Association, American Bar Association & Association for Conflict Resolution (September, 2005).
10. National Alternative Dispute Resolution Advisory Council, Alternative Dispute Resolution in the Civil Justice System, Issues Paper – Summary (March, 2009).
11. Netherlands Council for the Judiciary, “Customized Conflict Resolution: Court-Connected Mediation in The Netherlands, 1999-2009,” The Judiciary Quarterly (2011).
12. Podgers, “Sustaining Justice, 10 Experts Tell How Courts Can Do More With Less,” A.B.A. J. (June, 2011).
13. Quek, “Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program,” 11 Cardozo J. Conflict Resol. 479 (2010).
14. Riskin, “Decisionmaking in Mediation: The New Old Grid and the New New Grid System,” 79 Notre Dame L. Rev. 1 (2003).
15. Riskin & Welsh, “Is That All There Is?: ‘The Problem’ in Court-Oriented Mediation,” 15 Geo. Mason L. Rev. 863 (2008).
16. Sander & Rozdeiczer, “Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation-Centered Approach,” 11 Harv. Negot. L. Rev. 1 (2006).
17. Shack, “Bibliographic Summary of Cost, Pace, and Satisfaction Studies of Court-Related Mediation Programs, 2nd Edition,” Resolutions Systems Institute (March, 2007).
18. Stark, “The Ethics of Mediation Evaluation: Some Troublesome Questions and Tentative Proposals, from an Evaluative Lawyer Mediator,” 38 S. Tex. L. Rev. 769 (1997).
19. Uniform Mediation Act, drafted by the National Conference of Commissioners on Uniform State Laws (last revised or amended in 2003).

20. Welsh, “The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?,” 6 Harv. Negot. L. Rev. 1 (2001).
21. Wissler, “Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research,” 17 Ohio St. J. on Disp. Resol. 641 (2002).
22. Wissler, “Court-Connected Settlement Procedures: Mediation and Judicial Settlement Conferences,” (draft, August 10, 2010) to be published in 26 Ohio St. J. on Disp. Resol. (2011).
23. Yates, “Elements of a Successful Court Mediation Program,” Resolutions Systems Institute (2008).
24. Websites:

http://courtadr.org/manual/monitor.php#evaluate
http://gsociology.icaap.org/methods/evaluationbeginnersguide.pdf
http://gsociology.icaap.org/methods/Evaluationbeginnersguide_qual.pdf
http://gsociology.icaap.org/methods/Evaluationbeginnersguide_surveys.pdf
http://managementhelp.org/evaluatn/fnl_eval.htm
http://meetings.abanet.org/webupload/commupload/DR030450/relatedresources/IADRWGConfGuide-Final.doc

25. Additional sources:
    a. American Arbitration Association Qualification Criteria for Admittance to the AAA National Roster
    Alabama Center for Dispute Resolution, Arbitrator Standards

    b. North Dakota Supreme Court Rules regarding alternative dispute resolution neutrals

    c. Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators, American Arbitration Association, Federal Mediation and Conciliation Service

    d. United States District Court, Northern District of California rules on Applying to be a Neutral: Application Process, Training, and Qualifications

    e. Circuit Court of the State of Oregon for Multnomah County Arbitration Commission Application to Serve as Arbitrator in Court Mandatory Arbitration Program

Appendix G: Index of documents distributed to Commission members

Index of Documents Distributed to Commission Members

1. Final Survey Results from Chief Clerk and Caseflow Coordinator in each Judicial District – March 31, 2011

2. Draft Final Report of the Connecticut Bar Association Standing Committee on Dispute Resolution in the Courts – January 2006

3. Connecticut Bar Association Report of the Task Force on Confidentiality and the Courts – December 14, 2004

Documents may be obtained upon request from the Judicial Branch's manager of ADR programs.

Appendix H: Court-Connected ADR Programs in Seven Neighboring States: A Capsule Summary

Court-Connected ADR Programs in Seven Neighboring States: A Capsule Summary

A. Maine: http://www.maine.gov/COURTS/maine_courts/adr/index.shtml

- Has a Standing Committee on Court DR Services as well as a statewide office to administer DR programs.
- Standing Committee adopts rules, standards, qualifications and evaluation procedures.
- Judicial Department contracts for services of qualified ADR providers.
- Providers are persons and organizations who are "not employees of the state for any purpose" and are entitled to a "reasonable per diem fee, plus expenses."
- Roughly 100 neutrals and neutral organizations are currently approved by the Standing Committee.
- ADR available in every county and in all types of civil matters-- required in some (e.g. family); available in all.

B. New Hampshire: http://www.courts.state.nh.us/adrp/superior/index.htm

- Began using voluntary mediators in early 1990's.
- Has had a standing Office of Mediation and Arbitration for each level of court operations since 2007—Supreme Court, Superior Courts, Civil Writ Courts and Small Claims Courts.
- Supreme Court cases are mediated exclusively by retired full-time judges.
- In all other courts, cases are mediated and arbitrated by private neutrals.
- Courts maintain rosters of "volunteer" and "market-rate" neutrals—volunteer for cases valued at less than $50K and market rate for cases valued higher.
- Mediation in civil writ and small claims courts supported by small filing fee surcharge ($5, $10 or $60) to defray expenses.
- No predetermined criteria to assign cases to mediation or arbitration; mediation is the process most commonly selected by litigants.

C. Massachusetts: http://www.mass.gov/courts/admin/adr.html

- Has had a standing committee on dispute resolution programs since 1994--comprised of judges, court administrators, academics and members of the legal and private ADR communities.
- Passed Uniform Rules in 1998, setting forth qualifications and training standards for neutrals who provide court-connected ADR services (rules, training, evaluation, mentoring, continuing ed.)
- Seven kinds of DR processes are provided--goal to serve all litigants regardless of their ability to pay. Many courts provide screening and evaluation at start of each case to select an appropriate process for that case.
- As of 2009, 54 ADR programs have been approved by the courts, 38 of which are offered on a free or non-fee basis.

- Court officials serve as neutrals for free; parties share the cost of private, fee-for-services providers.
- Private attorneys required by Court rule to advise their clients about available court-connected DR services.

D. New York: http://courtadr.org/court-adr-across-the-us/state.php?state=472&gclid=CKb1j6jzhK0CFaQRNAodpiM4Sw

- Maintains a statewide Office of ADR Programs.
- DR services offered in all types of civil disputes.
- Courts heavily rely on non-profit Community Dispute Resolution Centers (CDRCs), which, even after severe budget cutbacks, resolved 44,000 cases statewide last year.
- Beyond CDRCs, each administrative judge in each county maintains a roster of neutrals to provide court-connected DR services. Details vary from county to county.
- E.g. the NY County Supreme Court-Commercial directs all litigants to choose an ADR process; 95% select mediation. Roster consists of 275 attorney mediators, plus some non-attorney mediators. Roster members must complete 24 hours of training and agree to take 2-3 court-connected cases a year on a pro bono basis; after that may accept payment.
- ENE or nonbinding arbitration for torts cases in some counties.
- Volunteer attorney mediation for matrimonial.

E. New Jersey: http://www.judiciary.state.nj.us/services/cdr.htm

- Established in 1992, maintains a statewide, court-annexed ADR program (called Complementary Dispute Resolution" or CDR) described on the Judicial Department website as "one of the most extensive in the nation."
- Offers full range of DR processes, including adjudicatory, evaluative, facilitative and hybrid process, in all Civil, Municipal and Family Courts.
- Maintains rosters of hundreds of qualified neutrals, organized by subject matter specialties and type of process handled.
- Qualified neutrals subject to detailed training, continuing ed. and ethical standards, including Standards of Conduct for Mediators in Court-Connected Programs, enacted by Supreme Court Committee in 2000.
- Litigants may be ordered to attend mediation by court order; may select mediator from court approved roster or not; may opt out of process after 2 hours if not successful; parties share fees unless waived by court.

Note: Neither Vermont (http://courtadr.org/court-adr-across-the-us/state.php?state=485) nor Rhode Island (http://courtadr.org/court-adr-across-the-us/state.php?state=479) appears to have a statewide program or to utilize private neutrals or Community Mediation Centers on an ongoing basis in court-connected ADR. Each state has a variety of DR programs, but they appear to be no more ambitious than Connecticut's.