

# The Supreme Court of Ohio

Testimony before the Senate Finance and Financial Institutions Committee  
On the Topic of Foreclosure Mediation  
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February 2, 2010

Good afternoon, Chairman Carey, Ranking Minority Member Dale Miller, and members of the Senate Finance and Financial Institutions Committee. I appreciate the opportunity to speak to you today with regard to the foreclosure mediation efforts of the Supreme Court of Ohio. I would also like to note that we have had the opportunity to assist Representative Dolan with HB 306. Each committee member has been provided with a copy of my testimony.

## I. Mediation in Ohio

- **1989** – Advisory Committee on Dispute Resolution appointed by Chief Justice Thomas J. Moyer
- **1992** – the Dispute Resolution Section was created. The Dispute Resolution Section provides consulting assistance to courts in Ohio that want to create or expand mediation services. Such assistance ranges from providing model job descriptions for program staff to assisting with program evaluation. The Section arranges numerous trainings for mediators and court staff and provides information on standards of practice and best practices.
- **1997-2009** – the Supreme Court provided grant funding for mediation programs in courts throughout Ohio.

While there is no mandate for any Ohio court to implement mediation programs or services, there has been a steady increase in both the numbers and types of courts that offer quality mediation services in Ohio. Mediation may not be new, but it is widely accepted and gaining new luster through new applications, such as with foreclosure cases.

A survey conducted by the American Arbitration Association and the *National Law Journal* reveals that 88 percent of corporate counsel and nearly 70 percent of the litigators prefer mediation. Mediation can preserve a valuable business relationship and results in resolutions that work because the parties create them with options available to them that go above and beyond those available through the court process.

## II. Foreclosure Mediation in Ohio

- **March 2007** – Creation of Governor’s Foreclosure Prevention Task Force
- **September 2007** – Task Force Report (seven themes; 27 recommendations)  
Theme: *Improve Ohio’s Foreclosure Process*  
Recommendation: Encourage mediation and alternative dispute resolution to maximize the early resolution of foreclosure actions
- **December 2007** – Chief Justice Thomas J. Moyer proposes that Ohio courts use mediation for foreclosure cases by developing foreclosure mediation programs

- **February 2008** – Supreme Court launches the 11-step Foreclosure Mediation Program Model (Model) designed for counties to modify based on their local needs, resources, community and stakeholders
- The Supreme Court continues to work with local courts and with other states assisting them with designing, training, and implementation of foreclosure mediation programs

### **III. Supreme Court of Ohio Foreclosure Mediation Program Model**

#### **A. Overview**

Mediation is defined in R.C. 2710.01 as: “any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.”

The Model provides local courts with the tools necessary to build foreclosure mediation programs with step-by-step directions including process, procedure, forms, and other resources using full-time staff, independent contractors, and/or volunteers as mediators.

In foreclosure cases where it is not economically feasible for the homeowner to stay in the home, mediation remains an effective option by creating a mechanism for the hand-over of the home. For example, some resolutions include what is called a “Cash For Keys” agreement whereby the lender pays the homeowner a small amount to assist in their transition within a timeline that is decided by the parties.

#### **B. Mediation Process and Procedure**

It is important to note that the Model is consistent with the rules of civil procedure and R.C. 2710 Uniform Mediation Act which governs mediation in Ohio, including provisions for privilege, confidentiality, and communications allowed by mediators to the courts.

Mediation processes and procedures in local courts are also governed by the *Supreme Court of Ohio Rules of Superintendence for the Courts of Ohio, Rule 16* which governs local court rules providing for mediation and mediator qualifications. Courts will also provide additional requirements through the use of court orders.

Due to variations in local court resources and procedures, the Model is designed to be flexible to enable local courts to modify it to fit their needs. As a result foreclosure mediation programs vary by county. For example, local courts determine who is required to participate and by what means such as by telephone.

It is important to note that successful mediation programs are due, in large part, to the intentional consistency between the Ohio Revised Code, court rules and other means of process and procedure which has ensured the efficient and effective operation of mediation programs throughout Ohio.

#### **C. Documents and Forms**

To promote consistency and quality, all necessary documents and forms are located on the Supreme Court Dispute Resolution Section Web site:

[www.supremecourtsohio.gov/foreclosure/](http://www.supremecourtsohio.gov/foreclosure/) Updates and new resources continue to be added.

#### **D. Training and Ongoing Professional Development**

Currently local courts determine training requirements. The Supreme Court recommends and provides the following minimum training courses (offered by the Supreme Court at no cost):

- Basic Mediation - minimum of 12 hours
- Foreclosure Mediation - approved by the Supreme Court
- Uniform Mediation Act – minimum of 2 hours

To further enhance the skills and quality of mediators, the Supreme Court provides both virtual and face-to-face foreclosure mediation roundtables to provide mediators and other professionals with the opportunity to brainstorm current issues, share expertise and success stories, discuss federal and state legislation, court rules, articles, training, policies and procedures, and share best practices.

**E. Assistance Filling Requests for Volunteer Mediators**

Due to limited funding, rural counties are not able to provide for mediation services without the help of volunteers. The Supreme Court Dispute Resolution Section fields requests for mediation and locates qualified mediators who are willing to give their time so local courts are able to provide mediation for foreclosure cases.

These volunteer mediators include mediators who not only have the minimum recommended training requirements, but have also been mediating for approximately 10 years or more, have extensive mediation training, credentials, and individuals who have subject matter expertise in the mortgage industry. Volunteer mediators are achieving excellent outcomes for parties in foreclosure cases.

**F. Marketing**

Homeowners who are facing foreclosure are informed of mediation through various means which vary by county. Examples include: a statewide hotline, local task forces, language in the summons, post cards, flyers, brochures, word of mouth, radio, and television.

**G. Ohio as a National Leader**

Ohio has been recognized as a national leader in the area of foreclosure mediation, assisting other states such as Florida, Wisconsin, Illinois (Chicago, Cook County), New Mexico, New Jersey, and others to create similar programs, provide training curriculum, and training services. The Dispute Section created the *Multi-state Foreclosure Prevention and Mediation Networking Group* which includes 98 members representing 18 states. Led by the Dispute Resolution Section, the group meets monthly via webinars.

**H. Additional Resources**

Other resources available on the Supreme Court Dispute Resolution Section at [www.supremecourtofohio.gov/foreclosure](http://www.supremecourtofohio.gov/foreclosure) include:

- *Ohio Foreclosure Mediation Contact Information by County* – each county has provided a contact person to answer questions with regard to foreclosure mediation
- *Directory of Foreclosure Mediators* - includes mediators who have completed the Supreme Court recommended training
- *Ohio Housing Counselor Contact Information by County*
- *Foreclosure Mediation FAQ - Foreclosure Mediation in Ohio: What You Need to Know* – provides commonly asked questions and answers for homeowners

#### **IV. Conclusion**

Dispute resolution produces a timely resolution to which all parties contribute. As a result, it promotes positive relationships, greater satisfaction, and long term successful and sustainable outcomes. Thank you for the opportunity to appear before you today.