



# Future Trends in State Courts



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## Making Room for Mediation: ADR Facilities in Courthouses

Anne Endress Skove, Court Information Resource Analyst, Knowledge and Information Services, National Center for State Courts

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The growing use of alternative dispute resolution (ADR) processes, particularly mediation, has led to a need for more space in courthouse facilities.<sup>[1]</sup> Meeting in hallways, various empty rooms, or other courthouse areas has not been a sufficient response to address the burgeoning needs of ADR programs. Needs of court-annexed ADR programs include space that allows for the necessary confidentiality, access, and comfort that such programs require.

### What Should an ADR Space Look Like?

What kinds of facilities should be provided? According to Don Hardenbergh, et al, **The Courthouse: A Planning and Design Guide for Court Facilities** (Williamsburg: NCSC, 1999): [ADR] programs have added a new dimension to court services and have altered the design of new courthouses. Space needs include offices for administrative staff, several conference rooms where mediation sessions or arbitration hearings may take place, and waiting areas for parties and their counsel.

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### Space and Confidentiality

Privacy is a concern. Mediation and other ADR processes demand confidentiality, not only for and from parties, but also from trials. Those attending mediations or other ADR sessions could include victims, juveniles, attorneys, or divorcing parents. Sensitive issues such as child protection, substance abuse, custody, or finances may be discussed.

Mediators are required to keep proceedings and records confidential. For example, Rule 10.080(a) the Florida Rules for Certified and Court-Appointed Mediators states "[a] mediator shall preserve and

maintain the confidentiality of all mediation proceedings except where required by law to disclose information." Rule 10.080(b) states: "A mediator shall keep confidential from the other parties any information obtained in individual caucuses, unless the party to the caucus permits disclosure." Those involved in planning rooms and other space must keep privacy concerns and confidentiality mandates in mind.

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## ADA Compliance

A courthouse, or any service (such as ADR) offered by the court, must be in compliance with the Americans with Disabilities Act (ADA).<sup>[2]</sup> Mediation has a special intrinsic reason to accommodate parties: a fundamental goal of mediation is to enhance communication and understanding between parties.

There is a strong push toward resolving ADA issues with ADR.<sup>[3]</sup> Many mediators specialize in ADA mediation; however, any mediation could involve individuals with disabilities, regardless of the issues in dispute.<sup>[4]</sup> An elderly woman participating in a guardianship mediation may have trouble hearing the other participants. A man in a wheelchair participating in a mediation about issues related to an allegedly shoddily-built ramp may not be able to get through a narrow doorway to the mediation. A juvenile with developmental disabilities who is participating in a victim-offender mediation may have difficulty locating the meeting room or understanding the process. All such individuals must be accommodated not only by the mediator and process but also by the ADR courthouse facility. Failure to do so not only violates the ADA but the spirit of the process as well.<sup>[5]</sup>

Other ADA issues may also come into play. A local neighborhood group meeting with AIDS activists may experience discomfort or fear of contagion (however unwarranted), particularly in close quarters. Such groups are not entitled to an accommodation under the ADA; however, the activists are protected from discrimination.<sup>[6]</sup> And always, space to comfortably accommodate and facilitate communication between groups should be made available.

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## Which Courts Have ADR Facilities?

Many court-connected ADR programs now have their own place in the courts in which they operate. The district court in Montgomery, **Alabama**, uses four rooms for mediation. They were built for other purposes but are used for mediation at least twice a week. Most **Florida** courthouses, particularly those built within the past five to ten years, have mediation rooms. **Georgia** courthouses make space available for ADR processes, but it does not seem that any have been built with space specifically for this purpose. Many courthouses in **Hawaii** have rooms set aside for ADR. At least one **Maryland** court plans to include a room specifically for ADR in a future courthouse.

**Maine** has mediation rooms in all district courthouses except one, where a "court annex" next door is used. Mediation is mandatory in small claims and contested domestic relations cases, and most mediation sessions take place in the courthouse. Some rooms in the older courthouses are too small to accommodate mediation sessions, but newer courthouses have larger rooms with windows.

In **New York**, many courts provide space both in the courthouse as well as off-site. Courthouse space is used mainly for intake and screening following a judicial referral (e.g., for custody & visitation in

family court). Mediation is usually conducted off-site at dispute resolution centers funded by the court.

In **Ohio**, all grant-funded programs are required to provide suitable space for the mediator(s), clerical support, mediation sessions, and caucusing. **Lucas County** Juvenile Court (**Toledo**) and **Lorain County** Common Pleas Court plan to put mediation space in new facilities.

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## Conclusion

Most courts now offer or use some form of ADR to parties. Creative problem-solving and consensus-building, the hallmarks of ADR, are in demand as program managers and court administrators work together to make room for ADR.

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[1]. Don Hardenbergh, Michael Griebel, Robert W. Tobin, and Chang-Ming Yeh, *The Courthouse: A Planning and Design Guide for Court Facilities* (Williamsburg,: NCSC, 1999), first identified this as a trend

[2]. USC 12101, et seq. See also Deanna Parker, "Implementing the Americans with Disabilities Act," *Report on Trends in the State Courts*, 1998-99, pp. 47-50.

[3]. 42 USC 12212, §513 Alternative means of dispute resolution. Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

[4]. See the ADA Mediation Guidelines, issued by the Kurkin Program for Conflict Resolution at the Benjamin N. Cardozo School of Law, in the [Cardozo Online Journal of Conflict Resolution](#).

[5]. See Erica Wood, et al, *Court-Related Needs of the Elderly and Persons with Disabilities: A Blueprint for the Future* (Washington, D.C.: ABA and NJC, 1991); and Kristi Bleyer, et al, *Into the Jury Box: A Disability Accommodation Guide for State Courts* (Washington, D.C.: ABA, 1994).

[6]. 42 USC 12102(2)(C).

