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**RESOLUTION OF MINOR DISPUTES**

**JOINT HEARINGS**  
BEFORE THE  
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,  
AND THE ADMINISTRATION OF JUSTICE  
OF THE  
COMMITTEE ON THE JUDICIARY  
AND  
SUBCOMMITTEE ON CONSUMER PROTECTION  
AND FINANCE  
OF THE  
COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES  
NINETY-SIXTH CONGRESS  
FIRST SESSION  
ON  
RESOLUTION OF MINOR DISPUTES

JUNE 6, 7, 14 AND 18, 1979

**Serial No. 25**  
(Committee on the Judiciary)

**Serial No. 96-78**  
(Committee on Interstate and Foreign Commerce)



for the use of the Committee on the Judiciary and  
Committee on Interstate and Foreign Commerce

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(III)

# CONTENTS

<b>HEARINGS HELD</b>		<b>Page</b>
June 6, 1979.....		1
June 7, 1979.....		55
June 14, 1979.....		103
June 18, 1979.....		153
<b>WITNESSES</b>		
Brown, Earle F., Cleveland Center for Dispute Settlement.....		183
Cook, Dr. Royer F., Institute for Social Analysis.....		128
Prepared statement.....		138
Cuffe, Richard, Deputy General Counsel, U.S. Office of Consumer Affairs...		64
Eckhardt, Hon. Bob, a Representative in Congress from the State of Texas		56
Prepared statement.....		58
D'Alemberte, Talbot R., American Bar Association, Special Committee on Resolution of Minor Disputes.....		40
Prepared statement.....		40
Etheridge, Hon. Jack, Senior judge, Fulton Superior Court, Atlanta, Ga. Judicial Circuit.....		108
Prepared statement.....		104
Green, Mark, director, Congress Watch.....		83
Prepared statement.....		83
Johnson, Prof. Earl F., Jr., American Bar Association, Special Committee on Resolution of Minor Disputes.....		40
Prepared statement.....		40
Jones, Herbert, National Association of Counties.....		157
Malchon, Jeanne, National Association of Counties.....		160
Prepared statement.....		160
McGillis, Dr. Daniel, Center for Criminal Justice, Harvard Law School.....		128
Prepared statement.....		128
Meador, Daniel J., Assistant Attorney General, Department of Justice.....		23
Prepared statement.....		24
Murray, Donald, National Association of Counties.....		157
Nelson, Sharon, Legislative Counsel, Consumers Union.....		83
Prepared statement.....		86
Perlman, Jeffrey L., Associate Director, Consumer Affairs, U.S. Chamber of Commerce.....		74
Prepared statement.....		74
Peterson, Esther, Director, U.S. Office of Consumer Affairs.....		64
Prepared statement.....		64
Primm, Edith, deputy director, Atlanta Neighborhood Justice Center.....		108
Ratner, Bruce C., New York City Department of Consumer Affairs.....		165
Prepared statement.....		167
Ray, Larry E., assistant city attorney, Columbus, Ohio.....		183
Prepared statement.....		186
Rosenberg, Maurice, professor of law, Columbia University School of Law...		23
Sheran, Hon. Robert J., Chief Justice of the Supreme Court, State of Minnesota.....		15
Prepared statement.....		2
Shonholtz, Raymond, Community Board Program, San Francisco, Calif.....		183
Prepared statement.....		190
Singer, Linda R., Center for Community Justice.....		128
Prepared statement.....		142
Slayton, Linwood R., director, Atlanta Neighborhood Justice Center.....		108
Prepared statement.....		111
Swegel, Harry, Washington liaison, National Center for State Courts.....		15

(v)

**Preceding page blank**

VI

ADDITIONAL STATEMENTS

	Page
American Arbitration Association, (Robert Coulson)-----	180
American Friends Service Committee (Paul Wahrhaftig)-----	212
Association of the Bar of the City of New York-----	215
California, State of, Department of Consumer Affairs (Richard B. Spohn)-----	217
Council of Better Business Bureaus, Inc. (Dean Determan)-----	220
Equal Justice Foundation (Michael H. Sussman and Gregg Gordon)-----	224
Florida State Supreme Court (Hon. Ben F. Overton, justice)-----	4
Legal Services Corp. (Dan J. Bradley)-----	225
Motor Vehicle Manufacturers Association (V. J. Auddici)-----	228
National Home Improvement Council (Randolph J. Seifert)-----	229
National Manufactured Housing Federation, Inc. (William R. Keyes)-----	233
National Senior Citizens Law Center (Paul Nathanson)-----	235
New Jersey, State of (Public Advocate Stanley C. Van Ness)-----	154
Ohio Mobile Home and Recreational Vehicle Association (Gene Keener)-----	235
Sears, Roebuck and Co. (Philip M. Knox, Jr.)-----	242

APPENDIXES

APPENDIX 1.—BILLS

(a) H.R. 2863-----	247
(b) H.R. 3719-----	268
(c) S. 423-----	289

APPENDIX 2.—ADDITIONAL MATERIALS SUBMITTED BY WITNESSES

(a) By the American Bar Association: <i>Dup of 65228</i>	
(1) Sander & Snyder, Alternative Methods of Dispute Settlement: A Selected Bibliography (1979)-----	308
(2) Selected articles from ABA Special Committee on Housing and Urban Development Law, National Housing Justice and Field Assistance Program, on "Housing Justice Outside of the Courts: Alternative for Housing Dispute Resolution" (1979):	
(i) Dellapa, Alternative Dispute Resolution Mechanism and Housing Disputes: A Survey-----	332
(ii) Carney, The San Jose Housing Service Center: A "Comprehensive" Non-Judicial Model for Housing Disputes-----	337
(iii) Ebel, Landlord-Tenant Mediation: Project in Colorado-----	340
(iv) Drew and Williams, Resolution of Housing Disputes Outside the Courts: A Glimpse of Five Projects <i>65985</i> -----	343
(b) By Dr. Daniel McGillis: (1) McGillis & Mullen, Neighborhood Justice Centers: An Analysis of Potential Models (1977)-----	354
(c) By Linda R. Singer, Esq.: (1) Singer, The Growth of Non-Judicial Dispute Resolution: Speculations on the Effects on Justice for the Poor and on the Role of Legal Services <i>66986</i> -----	407
(d) By Larry E. Ray, Esq.: (1) Intake and the Night Prosecutors Program—The Year in Review (1978)-----	424
(e) By Earle C. Brown: <i>66987</i>	
(1) Smith & Smith, An Evaluation of the Akron 4 A Project (1977)-----	430
(2) American Arbitration Association, Cleveland Center for Dispute Resolution-----	442

APPENDIX 3.—ADDITIONAL MATERIALS

(a) L. Nader, Disputing without the Force of Law, 88 Yale L.J. 998 (1979)-----	474
(b) Macaulay, Lawyers and Consumer Protection Laws: An Empirical Study (1979)----- <i>66988</i>	489
(c) Current Developments in Judicial Administration: Papers presented at the Plenary Session of the American Association of American Law Schools (Dec. 28, 1977)-----	617

*dup of 57154*

VII

APPENDIX 4.—ADDITIONAL CORRESPONDENCE

	Page
(a) Letter from Hon. Griffin B. Bell to Hon. Robert W. Kastenmeier and Hon. Richardson Preyer (July 19, 1979)-----	643
(b) Letter from Hon. Daniel J. Meador to Hon. Robert W. Kastenmeier (Aug. 3, 1979)-----	643
(c) Letter from Scott H. Green to Hon. Robert W. Kastenmeier (Apr. 24, 1979)-----	645
(d) Letter from Professors Macauley, Trubek, Kritzer, Grossman, and Ladinsky to Hon. Robert W. Kastenmeier (Oct. 4, 1979)-----	662
(e) Letter from Prof. William L. F. Felstiner to Congressman Robert W. Kastenmeier (Oct. 15, 1979)-----	662
(f) Letter from Hon. Robert Beresford to Chairman Robert W. Kastenmeier (May 31, 1979)-----	663
(g) Letter from Prof. Frank E. A. Sander to Hon. Robert W. Kastenmeier (Feb. 13, 1979)-----	665
(h) Letter from Fay Honey Knopp to Congressman Robert W. Kastenmeier (May 7, 1979)-----	666
(i) Letter from Dr. Bob Helm to Chairman Peter W. Rodino (June 12, 1979)-----	666
(j) Letter from Nordin F. Blacker to Hon. Robert W. Kastenmeier (July 10, 1978)-----	667
(k) Letter from J. Edward Day to Hon. James H. Scheuer (June 7, 1969)-----	669
(l) Letter from Joel Edelman to Hon. Daniel Lungren (Sept. 24, 1979)-----	669

**RESOLUTION OF HOUSING DISPUTES OUTSIDE THE COURTS:  
A Glimpse Of 5 Projects**

Ann Barthelmes Drew and Lynne Anita Williams\*

**Introduction**

By now it is a truism that housing problems are increasingly straining the judicial system and its responsiveness is inadequate in many respects. The increase in tenants' rights groups, housing shortages in many cities, and an increase in housing-related court filings have all contributed to this strain.

Although there has been an increasing interest in experimentation with innovative programs inside and outside the courts and although research in the housing dispute resolution area has been accumulating, much of what we know about it remains sprawled in a diffuse heap of newspaper articles and disconnected studies. The HUD-funded study being conducted by the American Bar Association's Special Committee on Housing and Urban Development Law is responding to this gap with its evaluation of the experience of cities where Landlord-Tenant or Housing Courts exist.

This committee has given the ABA Special Committee on Minor Disputes two modest subprojects to look at government and private sector sponsored dispute resolution mechanisms designed to avoid the litigation of housing-related disputes by utilizing informal techniques such as arbitration, mediation and special hearing panels.

First, a broad survey of more than 170 such mechanisms throughout the country has been carried out (see paper by F. Dellapa) in the course of this research. While the identifying and descriptive information being gathered in the broad survey clearly adds to the overall national profile being generated, a deeper cut is also needed. Thus secondly, this paper presents a more detailed, descriptive analysis of the role that a few of these programs play in housing-related dispute resolution. Except for the Office of the Rentalsman (Vancouver), these programs were chosen because they are among the oldest and most experienced minor dispute resolution programs in the country.

The goals of this [second] research paper have been:

- (1) to provide a picture of the history, structure, process, and substance of the programs selected for study;
- (2) to examine the strengths and possible pitfalls of these programs;
- (3) to provide a more educated foundation for planning additional in-depth research on nonjudicial housing dispute resolution;
- (4) to identify what types of housing disputes these projects currently handle and in what ways they can expand their role in this area; and,
- (5) to obtain some perceptions of various groups toward these mechanisms (i.e., courts, organized bar, tenants, landlords, community groups).

Our initial contacts were with the Directors of each program to be studied.

The interviewer explained the purpose of our research, stressing the housing aspect, and its goals and sponsorship and asked for his/her cooperation. We also described the types of people we wanted to interview about various aspects of the programs and requested some names. The Director's Information Request was then mailed to each Director and completed by him/her.

We began each telephone discussion with key contacts by explaining the purpose and goals of the research, again emphasizing the housing aspect. We asked for their cooperation and when they agreed we conducted the discussion immediately. None of the contacts whom we were able to reach by telephone refused to be interviewed.

**Columbus, Ohio: Night Prosecutor's Program**

**Project History.** The Night Prosecutor's Program began in March, 1973 with funding from LEAA.

Since 1975, the program has been totally funded through City Council - local funding.

When the project began, there existed a need for an alternative way of dealing with interpersonal disputes, rather than filing a complaint or ignoring the problem. The original project goals were: (1) to provide an opportunity for interpersonal disputes, principally family quarrels and neighborhood altercations, to be handled through conciliation and mediation; (2) to avoid unnecessary arrest records for parties; (3) to provide a convenient forum during evening and weekend hours to resolve these disputes; and, (4) to ease community tensions.

Initially the program sought to handle family and neighborhood disputes. At present, family and friend disputes, as well as bad check complaints, predominate. Most (82%) of the referrals come from the police, the court, or are self-referrals.

**Organization and Structure.** The Night Prosecutor's Program operates under the direction of the City Attorney's office.

It employs 35 law students and 2 clerical personnel. The law students act as mediators and are paid per hour. There are also 8 volunteer students. The law students receive 12 hours of training in crisis intervention and are then observed and the best are chosen to be mediators. The training is done by a professional social service consultant who utilizes the program staff. There are also assessments made by training coordinators as well as ongoing training which zeroes in on specific problem areas. Each 6 month period, the program conducts a landlord/tenant seminar in conjunction with the Tenants Union and legal aid.

**Process.** In order to resolve housing-related disputes, the program uses telephone interviewing and fact-finding, telephone negotiations and mediation, in-person mediation, and fact-finding. All disputants must be residents of Franklin County and their complaint should be of a criminal nature or have that potential, were there no intervention.

The program screens all criminal complaints coming into the City Attorney's Office. If the situation is an emergency, such as a lockout, they attempt to resolve it immediately by calling the landlord. If there are additional issues to be resolved a mediation hearing is scheduled within 7 days.

If the complainant comes in person to file the complaint, a hearing is scheduled and a notice sent to the respondent. In 65% of the hearings scheduled the parties show up, and 93% of those hearings resolve the problems. The form of resolution is a parties' agreement, and infrequently a recommendation. The program attempts to enforce agreements by a system of call-backs and rehearings.

\*Ms. Drew and Ms. Williams are with the Social Science Research Institute of the University of Southern California (Los Angeles).

**Housing-Related Dispute Caseload.** In 1978, the Night Prosecutor's Program received 20,280 inquiries and opened and closed 17,950 files. 7 1/2% of the inquiries were housing-related, as were 6% of the files closed. The housing-related caseload has increased in proportion to the general caseload increase. The major increases have been in general landlord-tenant complaints, health-sanitation code violation, noise and utilities complaints. (See Table 1.)

Many of the complaints coming to the Night Prosecutor's Program are minor and would probably have to escalate before they received attention from any other agency. Besides helping to resolve these minor disputes the program attracts many disputants because the hearing is held almost immediately and the parties are able to avoid the delays and frustrations of the formal court.

The Night Prosecutor's Program has frequent contact, in terms of referrals both to and from the program, with various Tenant Organizations, mental health centers, counseling centers, and community organizations. However, it could handle a larger housing caseload and more publicity in the community at large might achieve this. Another possibility would be to create a landlord-tenant program component similar to their bad check component.

**Impressions.** Opinions of the Night Prosecutor's Program were elicited from five people.

These included the Director of the Columbus Tenant's Union, a Municipal Court Judge, a member of the County Committee on Criminal Justice, and two City Council members. These interviewees listed as the primary goals of the project: (1) relieve the burden on the court and prosecutor's office; (2) provide a working experience for law students; and, (3) screen and handle cases which appear to be minor but need to be resolved. Regarding the last goal, the court's relationship with the project is that of an overseer, and one respondent (Criminal Justice Committee member) observed that the court does not want to handle these cases and so gives them to the project; yet, it wants to keep the power to make final any settlement coming out of the project.

The interviewees were aware of all of the project's referral sources: the court administrator, the city attorney, landlord/tenant organizations, sheriff and police, self-referrals and social service organizations. The explanations for client usage of the project consisted of the following: informally, "the court told them to", low cost, speed and lack of fear of the project as opposed to the court.

All of the interviewees felt that the project was a proper forum for housing-related disputes except the director of the tenant's union. (She felt that the project was not appropriate for two reasons: the staff and mediators lacked expertise in housing law; and, the serious nature of landlord-tenant problems lent themselves to adjudication in court.) There was agreement that *in-person* mediation, if any, was the best way to resolve housing-related disputes. The respondents felt that the project could improve its ability to handle housing disputes by producing greater community awareness, increasing accessibility, instructing the staff and mediators about state housing law, increasing the staff and doing more advertising.

The project's strengths were thought to be its decrease of the court's caseload, its simplicity and the fact that it is free. Its weaknesses are its limited resources, space problems, community ignorance, lack of housing expertise and inaccessibility. Aside from a few negative comments by the tenant organizer regarding the role of the Night Prosecutor's Program in the resolution of housing disputes, all of the interviewees presented a highly positive picture of the interviewees presented a highly positive picture of the program in general and regarding housing disputes. It appears that with some relatively simple publicity and staff training in housing law, the Night Prosecutor's Program could play an increasingly larger role in the resolution of housing-related disputes.

#### Miami - Dade County's Citizen Dispute Settlement Center

**Project History.** Established in March, 1975, the project was originally funded by LEAA.

The Dade County's CDS Center was designed to provide a system which would effectively and quickly divert complaints of a civil or minor criminal nature from the court calendar, thereby decreasing court caseload. The majority of complaints are domestic, neighborhood, landlord/tenant and consumer altercations, with neighborhood disputes dominating.

**Organization and Structure.** The CDS program has been a part of Dade County's Circuit Court since January 1, 1979.

It presently employs 7 staff-members and 13 mediators. The Director of the CDS is an attorney, all of the mediators are college graduates and 75% have a background in either the law or the social sciences. Potential mediators go through a screening process of interviews and role-playing and are trained by observing actual hearings.

In order to use the services of the CDS a client must be a resident of Dade County. In 1978 the CDS closed 3,083 files most of which were referrals from the police and the D.A. or self-referrals.

The CDS has a close working relationship with Legal Aid, Legal Services, Citizen Information, Animal Control Safe Streets (a division of the Police) and Small Claims Court. It gets referrals from these agencies as well as referring clients to them. The CDS does not deal closely with any landlord organizations but it does make referrals to various tenant organizations in Dade County.

**Process.** The CDS uses *in-person* mediation and fact-finding to resolve housing disputes. Ninety percent of the housing complaints received by the CDS are mediated and approximately 80% of these are resolved at mediation. Resolution results in a written agreement between the parties; however, the CDS does not attempt to enforce these agreements, or to conduct a follow-up of the disputants.

The easiest housing cases for the CDS to handle are those which revolve around needed repairs. Once the landlord is notified by the CDS that these repairs need to be done, he usually complies. Those that are most difficult are collecting back rent and helping tenants involved in condominium conversions, due to the fact that the CDS does not have the power to force a tenant to pay back rent or a landlord not to convert his building.

If the CDS did not exist or if a disputant preferred not to use its services, there are other agencies to which he could take his housing-related disputes, such as Small Claims Court, the State Attorney's office, Tenant Education Association of Dade County or a private attorney. However, all of these remedies require either time and/or money and it is probably because the CDS is fast and free that so many disputants use it.

Our interviewee (an intake officer of the CDS) believes that the CDS could handle a larger caseload of housing-related disputes, and that as more people become aware of the program, through public service announcements and the like, the number of cases will increase somewhat. However, there will still be a problem with disputants' reluctance to do anything about their disputes and with the CDS' lack of power to order compliance. The interviewee also feels that the CDS could and should become more aware of the various agencies that can help resolve housing-related disputes when the CDS is unsuccessful, but she does not perceive a need for a more formal referral relationship with the judicial system in Dade County.

**Housing-Related Dispute Caseload.** The number of housing disputes has remained fairly constant from the start of the program. Approximately 13% of the total caseload is housing-related. The major types of tenant complaints

in this category involve landlords' refusal to return security deposits and to make repairs. Landlords commonly complain that a tenant has vacated their apartment taking landlord-owned items with him, or leaving the apartment a mess. A breakdown of housing-related caseload, typical referral sources and resolution rates appears in Table 2.

**Impressions.** The interviewees for the Miami CDS were a judge, the Chairperson of the Tenant's Organization, and an informed community member.

Only the tenant organizer had any opinion on what the original goals of the project were and he thought that it was designed to establish better landlord-tenant relations and to provide a more convenient forum for resolving disputes. The judge commented that he thought the CDS was a good "dumping ground" for the State Attorney's office. He said that they refer many cases to the project which don't belong there.

There was agreement about why clients go to the project—because it's more efficient, cheaper, faster and less formal than the court. One interviewee felt that many clients go to the project because the State Attorney will not allow many of the cases to go to court.

These interviewees had a complaint common to those we interviewed about other community mediation programs—that they don't publicize themselves enough. They believed that many community members are not aware of the project and that publicity and outreach should be increased. One respondent felt that there should be more centers in other areas of Dade County, so that people who could not get to the current one, such as the elderly, would be able to use the CDS project's services.

The project makes no special effort to get clients with housing-related disputes, however, all of the interviewees feel that it's a proper forum for housing disputes. Some types are those involving security deposits, living conditions and needed repairs. All felt it was unsuited to eviction cases and that those should go to court which can force compliance with its decision.

Although all respondents were positive about the CDS project, one interviewee suggested that it should make more of an attempt to reach and help two groups of people—those who are renting apartments which are being converted to condominiums and the elderly. These groups comprise a large segment of the Miami tenant population and are presently experiencing a lot of problems and this interviewee sees the project as one potential source of aid for them.

#### Rochester, New York—AAA CDS Project

**Project History.** The Rochester Community Dispute Services Project began in July 1973 with LEAA funding and is operated by the American Arbitration Association.

Prior to the establishment of this project, the American Arbitration Association National Center for Dispute Settlement conducted some successful mediation in Rochester to resolve community disputes. Many community members felt that a local dispute settlement center would be helpful in resolving many types of disputes between community members as well as providing them an alternative process to court resolution.

Almost 75% of the CDS project's cases are either harassment, assault, or property disputes. The distribution of cases has not changed over time. Most of the cases are referred from the Court Clerk in Rochester, with some from the clerks of other Monroe County towns, as well as self-referrals.

**Organization and Structure.** The staff includes the following persons.

There is a Project Director responsible for the overall operation of the project, a coordinator responsible for training, a Tribunal Administrator responsible for scheduling dispute hearings, an Administrative Assistant responsible for clerical duties and maintenance of fiscal records, and an Intake Worker responsible for intake screening of cases at the clerk's and court's office. There are 88 mediators available and they are community members. The project provides extensive mediator training (40 hours) which includes role playing and case studies. (extra typed copy as an insert found on the last page of this article)

**Impressions.** There were 3 people interviewed regarding the Rochester CDS Program.

These included the Complaint Clerk, the Director of the Housing Authority, and an informed community member. One of these interviewees felt that the CDS was originally established as an advisory agency to help those who could not afford to go through the traditional dispute resolution process, and had then evolved into an independent third-party, designed to handle disputes. The others knew the historical facts described in the last section. The common consensus was that the project needs to get out into the community and make potential clients more aware that the CDS exists and is a viable means of resolving certain types of disputes.

All agreed that the CDS was a proper forum for handling certain types of housing disputes. These are the disputes, as one interviewee put it, "in the grey area, with no right or wrong. Usually there is some culpability on both sides, and the court cannot handle this type of problem well." The types of disputes that the CDS is well suited for were thought to be a broad range of landlord-tenant disputes including eviction, pet problems, problems about children, security deposit and code violations. Those problems not suited to be resolved through mediation were described as disputes with high evidentiary standards, discrimination cases, and contractual disputes.

Besides the problem of not publicizing itself in an attempt to get more cases, the lack of training in housing law was thought to be a problem, and one interviewee suggested increasing both legal and housing-related training for mediators. The interviews concluded with more suggestions that the project publicize itself and its methods as well as supply the mediators with more information about how to deal with public assistance and welfare tenants.

#### Dorchester, Massachusetts: The Urban Court Program

**Project History.** The Dorchester Urban Court Program was initially funded by LEAA in the Spring of 1975.

The original objectives of the program included resolving potential criminal disputes in a manner which would help prevent future criminal recurrences. Emphasis was to be placed on resolutions being affected as early as possible in the criminal justice process by providing for intake capacity at the Station House, the Prosecutor's office, and the Clerk's office so that the burden on the court would be decreased.

These objectives have not been fully realized. No intake capacity was ever developing at the Station House or Prosecutor's Office and most of the Court referrals come from the judge and not the clerk. The present objective of the program appears to be simply the processing of disputes between non-strangers in such a way that they are able to explore arrangements that might eliminate future conflict between them as well as mitigate the negative effects of past conflict.

**Organization and Structure.** The Urban Court has strong community ties, although it has been incorporated into the Dorchester Court.

There is a board composed of community members who deal with policy decisions concerning the Urban Court, and since the courts in Massachusetts are decentralized the Dorchester District Court, it is, in a way, a community-based Court. However, the Urban Court has not had a history of referrals from community organizations or agencies and it is not clear if publicity alone could change this.

The project currently employs 3 staff members and approximately 50 volunteer mediators. The staff and most of the mediators have a background in social service or community work. There are no specific prerequisites for becoming a mediator and the trainees are chosen on the basis of a personal interview. The training is quite extensive, consisting of approximately 70 hours of lecture, observation and role playing, conducted by IMCR, who has also trained mediators from other community mediation programs. The training of mediators does not cover housing-related issues, nor does the program employ either a legal or housing expert.

**Process.** The project uses in-person mediation to resolve disputes. There is an initial complainant intake, then a respondent intake and a mediation session is scheduled, usually within a week.

If an agreement between parties is reached at mediation, it is in the form of a written agreement and both parties receive a copy. The Urban Court does a follow-up 30 days and 90 days after the mediation session, and if the 90 day follow-up is positive, the charges (if any had been filed) against the respondent are dropped at that time.

The prerequisites for becoming a client of the project are simply an ongoing relationship with the other disputant (in actuality there have been some cases where the parties were strangers or barely knew each other) and an agreement by both parties to have the dispute mediated.

**Housing-Related Dispute Caseload.** The project handles approximately 300 cases a year. The majority of the cases (71%) involve either assault, threats or property damage, and 60% of the cases are referred by the Judge. 61% of the disputants are either married, romantically involved, or neighbors. The frequency of housing related disputes has remained fairly constant over time. About 10% of the caseload can be considered landlord/tenant problems.

The Urban Court could handle a larger caseload of housing-related disputes and in fact their caseload of all types of disputes is less than they would be able to handle. Part of the problem lies in the low frequency of self-referrals, likely due to inertia on the disputants' part combined with lack of knowledge about the whole process of mediation. There is also a reluctance on the part of the clerk to refer cases and almost a refusal by the police to make referrals. More cooperation by these referral sources would likely increase general caseload and consequently housing-related caseload.

**Impressions.** Interviews were conducted with five people who were knowledgeable about the Dorchester Urban Court.

These included the Dorchester District Court Administrator, the Executive Director of the Criminal Justice Foundation (who originally conceived the idea of the Urban Court), manager of the Dorchester Little City Hall, and two mediators (one of whom is presently a U.C. staff member). The respondents see the U.C. as having had two original goals: to relieve the court of the burden of minor criminal offenses and to give the community a chance to participate in the criminal justice system. The U.C. is presently a part of the Dorchester District Court and most of its referrals are criminal or potentially criminal cases which come from the judge. Most of these interviewees felt that the court should expand the scope of the project and handle both criminal and civil cases as well as encourage referrals from sources such as the police, social service organizations, schools, YMCA and special interest organizations (e.g., landlord/tenant groups).

All agreed that the primary reason disputants went to the program was because the court directed them. Other reasons were the program's informal structure, its impartiality, its responsiveness to the needs of the disputants, and the fact that it is free. The Court Administrator pointed out that the mediators and disputants were not required to comply with the standard rules of evidence and no criminal records resulted from mediation. All respondents assured the interviewer that a good rapport existed between the community and the program, that a majority of the users were well satisfied with their experience, and that most community members supported the program's continued existence.

These interviewees seemed unsure about the role of the U.C. in the resolution of housing disputes. They felt that the major source of housing-related disputes at present is the Court, the major source of all their cases, with only a very small number of referrals from social service agencies or self-referrals. All agreed that in-person mediation, as conducted by the U.C., was a proper forum for most housing disputes, although the respondents thought that cases involving large sums of money or major housing code violations were not amenable to mediation. The respondents suggested that if the project wanted to handle more housing disputes it would have to make more of a conscious effort to get referrals of civil cases, which most housing disputes are.

Other suggestions included conducting more follow-up after mediation, having more involvement with the community, instituting some means of enforcing settlements, tying into the Housing Court the way it now is with the Dorchester District Court, improving accessibility, and increasing outreach. Only one respondent (the original creator) had a suggestion about future housing-related goals or directions for the U.C. He suggested that one way of getting involved with housing disputes would be for the U.C. mediators to go directly to housing projects and tenant associations and conduct mediation for them.

The interviewees were aware that the police have a very negative attitude towards the U.C. They feel that police officers view it as a more liberal extension of what they consider a too liberal court. They stated, however, that all other groups they could think about were positive and that the U.C. has made the community closer and more aware of itself. Its major strength was thought to be this benefit to community and its lessening of both direct and indirect cost to litigants. Its weakness appeared to be primarily a lack of funds, overstaffing, and being forced to keep within court guidelines and directives. (These were five highly positive respondents, however, it must be remembered that they are all presently, and have been for years, involved with the Urban Court in either a direct or indirect capacity.)

#### Vancouver, B.C.: The Office of the Rentalsman

**Project History.** This provincial government agency was established in July, 1974 and has exclusive jurisdiction to rule on all landlord-tenant cases in British Columbia.

It evolved out of a timeliness of developing a mechanism to resolve landlord-tenant disputes (because of an extreme housing shortage) as well as the government's desire to extend security of tenure to tenants. An administrative "tribunal" appeared to be a more viable forum than the Courts. The Office of the Rentalsman is unique among programs studied in that it is devoted exclusively to housing-related problems. Its client population represents a cross-section of tenants (low, middle, high income) and landlords (large, middle-sized, "Mom and Pop"). There are no prerequisites for being a Rentalsman client other than being a party to a tenancy agreement in British Columbia.

The Rentalsman's goals continue to be:

(1) to provide a fast, easily usable alternative to the courts in the area of landlord and tenant law; (2) to provide adjudication, mediation, public counseling, on-site investigation (a unique feature of this office), and research; and, (3) to increase the self-governing of tenancies. Goals have been changing their drift in the sense of emphasizing "service" rather than "regulations."

**Organization/Structure.** The Office reports to the Provincial Government's Minister of Consumer and Corporate Affairs.

It is also responsible to the judicial system in the sense that judicial appeal is available on all Rentalsman orders on a point of law or jurisdiction. It has no Advisory Committee and it has no specific relationship to the local Bar.

The Office maintains liaison with landlord organizations, tenant organizations, management corporations, the Housing Ministry, the Human Relations Ministry and the Law Society. Most landlord organizations (except some of the large ones) and management corporations like it, Tenant organizations—whose thrust was hugely diluted by the advent of the office—tend to dislike the Rentalsman.

The Rentalsman's office employs 44 fulltime professionals and 25 fulltime clerical people. Legal expertise is provided by local practicing attorney consultants. Legal consultants are used mainly for judicial reviews, drafting legislative amendments and interpreting legislation on related common law when "new" issues arise. A housing expert is used to (1) estimate annual increases in operating costs; (2) formulate and assess methods of removing rent controls; (3) analyze rental housing trends and new construction; and, (4) analyze trends in rent increases and need for subsidies.

The majority of mediators have completed at least a University education. Twenty-five percent of them have graduate degrees. Only 10% are lawyers. Although most of the mediators are lay people, they all receive inhouse legal and counseling training which consists of 30 days of paralegal, legislative and communication training as well as workshops and counseling. Senior management staff and specialized lawyers provide the training, which is totally housing-related. Mediators are retrained continuously through workshops, file reviews, policy reviews, and staff meetings.

**Housing-Related Dispute Caseload.** In 1978, 15,490 files were opened, 14,896 files were closed. 225,264 inquiries were received. All of these were, by definition, housing-related.

Most cases come to the Office by self-referral and walk-in. Landlord organizations and tenant organizations follow as the most significant referral sources. Moreover, each mediator (Rentalsman Officer) handles about 800 cases per year. (Prerequisites for becoming a mediator/officer are paralegal, communication and counseling skills and the mediators are selected through public (civil) service competitions.)

The Rentalsman's office seeks out a comprehensive range of housing-related cases, including evictions, security deposit claims, repairs, covenants of a tenancy agreement, abandonment. Security deposit disputes have increased both in number and in their percentage of total caseload.

There has been a tripling in security deposit cases in the past four years and a modest increase in the other types of housing-related cases. The form of resolution for housing disputes ranges from pure information giving, through mediation to binding orders. (See Tables 3, 4 and 5.)

**Process.** The Office utilizes a wide range of special procedures in resolving disputes including telephone interviewing, fact finding, telephone negotiation/mediation, on-site investigation, telephone investigation, telephone mediation, and arbitration/"adjudication."

More specifically, the process works like this: most initial contact is by telephone, where an attempt is made to obtain sufficient information to resolve the issue. Most disputes are resolved initially. Otherwise, a file is opened and an attempt is made to resolve the issue by talking to or writing to each party. If explaining rights and obligations, or mediation does not resolve the matter, a hearing is held and a decision made by a presiding officer. There are no follow-up procedures.

The Rentalsman staff thinks that its most important function in teaching disputants how to resolve their future disputes without third party intervention lies in providing education on rights and obligations to avoid future disputes.

The project has been very successful in its efforts to encourage the public to bring its housing disputes for resolution.

Advertising, brochures, public meetings, mass mailings, media coverage of certain cases are a few of its public relations strategies. In a nutshell, the average person on the street knows where to go with a housing-related conflict. Still, there may be some landlords and tenants who are not aware of the legislative and the Office continues to broaden its outreach. With additional manpower, it could handle even more cases than it does.

The Rentalsman can most easily resolve rent arrears or troublesome tenant problems, since eviction can be accomplished in a relatively short time and rent arrears are easy to establish. The most difficult cases to handle are security deposit claims. Although individual disputes may not be difficult, the high volume, subjective nature, and often trivial amounts in dispute create a substantial drain on the tribunal's resources.

Under new leadership, the Office is currently engaged in trying to improve its operations.

A large number of changes are in the making, including: implementation of a relatively "flat" modified matrix organization; decentralization; installation of a video word processing system; upgrading officers; installation of an on-line computer system; reduction of certain procedural requirements of the legislation (removing unnecessary regulations for landlords, closing several loopholes); increasing the jurisdiction of security deposit claims to that of the Small Claims Court; and, implementing a filing fee to discourage trivial disputes.

The Rentalsman staff see no reason for a more formalized relationship with the judicial system. The Office has more cases than it can handle efficiently. And, since officers are both mediators and adjudicators, if mediation doesn't work, a dispute is adjudicated with the same effect of a court decision.

**Impressions.** Interviewees spoke with an attorney, a judge, a landlord organization director and a tenant's organization director about the research.

Although there are many criticisms voiced about the Rentalsman's Office by virtually all publics (policy makers, attorneys, judges, landlord organizations and tenant organizations), on balance it is considered an excellent concept albeit needing improved administration and services. Improvements are expected under the new leadership.

The Office's major strengths, according to our interviewees, are accessibility, the provision of legal advice and "rights", availability to educate and back-up "Mom and Pop" landlords, and investigative power. Weaknesses mentioned were that it is too slow, requiring too much paper-side, and being understaffed. Not surprisingly, landlord and tenant organizations each think that the Office is biased toward the "other side", although other research indicates that individual tenant users think it is fair, while at least some landlord users think it is tenant biased. There is also a worry that the legal expertise of the Rentalsman staff is inadequate.

Overview

In general, tenant organizations are less positively disposed towards these projects because of housing shortages which reduce landlords' motivation to have cases mediated. Experience has shown that it is extremely difficult to convince landlords to agree to mediation even if it is explained that it can reduce costs to have the dispute settled quickly and outside of court.

Data returned to us indicate that, on the average, 11% of the projects' caseloads consist of housing-related disputes. Landlord-tenant, security deposit, and property damage cases and neighbor assault/harassment cases are the common kinds of housing disputes handled by these projects, although there are also varying opinions as to whether these are, in fact, "housing" cases. There was, however, consensus that eviction and discrimination cases are too difficult to mediate and should be handled by the appropriate judicial or administrative forums.

Although we were told that these projects are a proper forum for handling many types of housing-related disputes, we were also told (ironically, by a lawyer-run operation as well as others) that more legal expertise and training (especially in housing codes) is needed. There was also general agreement that the projects would be strengthened if there was some kind of enforceability mechanism.

Across the board, it was agreed that these projects' major strengths are their informality and speed; their major weaknesses are lack of funds and lack of cases as a result of inadequate community awareness of their existence and functioning.

After discussing their collective data-gathering from all of the projects, our interviewers felt that public education through TV, radio, newspapers and outright advertising would dramatically increase the housing dispute (and other types, for that matter) caseload. They also thought that, given a prevailing push for preventative law, it might be useful to have a clause in any tenancy lease stating that any dispute arising between landlord and tenant within the life of the lease must go to mediation or arbitration. (This is common in many types of contracts but would have to be made to appear beneficial to both landlord and tenant.)

The data collected and analyzed so far indicate that these projects are able and, with a few changes, willing to handle housing-related disputes . . . although there is some difference of opinion as to which kinds of disputes, aside from evictions, they should not handle. It also seems that only a small portion of their caseloads is related to housing (except in Vancouver: a special case). It appears that poor public awareness of projects' specific capabilities to handle housing disputes is at least at the root of their small caseloads. Individuals with whom we spoke indicated that if the projects acquired more expertise in housing problems and legislation as well as promoted themselves more, they would find themselves playing an increasingly important role in the resolution of housing-related disputes.

TABLE 1  
COLUMBUS NIGHT PROSECUTOR'S PROGRAM  
HOUSING-RELATED DISPUTES

Type	Estimated % of Total Monthly Filings	Typical Referral Source	Usual Procedure	% Resolved By Program
Code Violations: building, health, sanitation, etc.	4%	City Department	Mediation	78%
Tenant v. Tenant, Neighbor v. Neighbor	Frequent	.	Mediation	.
Repair bills by Tenant	Some	.	Mediation	.
Tenant initiated complaints	Some	Tenant's Union	50% Phone 50% Mediation	93%
Owner v. Builder/ Developer	Some	.	Mediation	.

\*No information available.

MIAMI CITIZEN DISPUTE SETTLEMENT CENTER  
HOUSING RELATED DISPUTES

Type	Estimated % of Total Monthly Filings	Typical Referral Source	% Resolved by CDS	Alternate Resolution Mechanism
Tenant: Suit for Rent Deposit	4.5%	State Attorney	60%	Small Claims Cour
Landlord: Suit for Back Rent	2.5%	Police	40%	Small Claims Court
Tenant: Repair Bills by Tenant	1.5%	State Attorney	75%	Small Claims Court
Tenant (defense in eviction)	1.5%	Police	50%	Municipal Court
Neighbor against Owner/Tenant	1%	Police	50%	Municipal Court
Neighbor vs. Neighbor	1%	Police	80%	Small Claims or Municipal Court
Condominium Conversion	.5%	Word-of-Mouth	10%	Would not be handled formally
Tenant initiated Complaints	.5%	Police	80%	Small Claims or Municipal Court
	13%			



TABLE 3  
OFFICE OF THE RENTALS MAN  
HOUSING-RELATED DISPUTES

Type of Dispute	Estimated % of Total Monthly Filings	Referral Source	How Dispute Is Usually Handled by Project	Special Problems
Eviction-nonpayment of rent	1%	Landlord	Adjudication	Tenant has either paid or not
Eviction-to recover possession	10%	Landlord	Mediation/adjudication	
Eviction-early violation offense (early termination)	9.5%	Landlord	Mediation/adjudication	
Landlord: suit for back rent	N/A	Landlord	Send to Small Claims Court except security deposit disputes	
Tenant: suit for rent deposit	36%	Tenant	Mediation/adjudication	Attitude of protagonist—"Principle, not money."
Tenant-related; repair bills by tenant	9%	Tenant	Onus on landlord to repair	Procrastination by landlord
Rent control actions/decisions	23%		Reference to Act	
Tenant initiated complaints	4%	Tenant	Landlord directed pursuant to Act	Landlord reluctance to comply
Tenant (defense in eviction)	13%	Tenant		
Tenant vs. Tenant (e.g., noise)	.64%	Tenant		
Tenant housekeeping violations (damage)	.13%	Tenant		
Subjects: building, health, sanitation, noise, etc. (misc. and general information)	11%	Landlord/Tenant	Telephone Intake Person	
Other subjects: a) essential services	3%	Tenant	Landlord ordered to restore or rent redirected	Oral tenancy agreements can make it hard to establish liability
b) abandonment	3%	Landlord	Landlord directed pursuant to the Act	Storage and disposal of chattels

TABLE 4  
OFFICE OF THE RENTALS MAN

Type of Dispute	Who Typically Initiates Dispute	Where Dispute Would Typically Have Been Resolved If Not By Rentalsman's Office
Eviction: nonpayment of rent	Individual landlord	Small Claims Court
Eviction: to recover possession	Individual landlord	Small Claims Court
Eviction: violation of lease	Individual landlord	Small Claims Court
Landlord: suit for back rent	Individual landlord	Small Claims Court
Tenant: suit for rent deposit	Individual tenant	Small Claims Court
Related: repair bills by tenant	N/A	Small Claims Court
Rent withholding and reduction	Individual landlord or tenant	Small Claims Court
Rent control actions/decisions	Individual landlord or tenant	Housing Court; Municipal Court
Condominium conversion	Individual landlord	Housing Court; Municipal Court
Condemnation and demolition	Individual landlord	Municipal Court
City agency-initiated complaints	N/A	
Tenant-initiated complaints	Individual tenant	Housing Court
Tenant (defense in eviction)	Individual tenant	Small Claims Court
Neighbor against owner/tenant	N/A	Small Claims Court
Tenant vs. tenant (as noise)	Individual tenant	Municipal Court
Tenant housekeeping violations	Individual landlord	Housing Court; Municipal Court
Subjects: building, health, sanitation, noise, zoning, some environmental cases, etc.	Individual tenant	Housing Court; Municipal Court
Co-tenancy suits and counterclaims	Individual tenant	Small Claims Court
Neighbor vs. neighbor	N/A	Small Claims Court
Owner vs. owner (condo & HOAs)	N/A	Small Claims Court
Owner vs. condo management	N/A	Small Claims Court
Owner vs. builder/developer	N/A	Small Claims Court
Contract purchaser vs. realtor	N/A	Small Claims Court
Applicant vs. financial agency	N/A	Small Claims Court
Other subjects: amenities, aesthetics, security, upkeep, assault & battery, harassment	N/A	Small Claims Court

TABLE 3  
OFFICE OF THE RENTALS MAN  
HOUSING-RELATED DISPUTES

Type of Dispute	Estimated % of Total Monthly Filings	Referral Source	How Dispute Is Usually Handled by Project	Special Problems
Eviction-nonpayment of rent	1%	Landlord	Adjudication	Tenant has either paid or not
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Eviction-early violation offense (early termination)	9.5%	Landlord	Mediation/adjudication	
Landlord: suit for back rent	N/A	Landlord	Send to Small Claims Court except security deposit disputes	
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Tenant initiated complaints	4%	Tenant	Landlord directed pursuant to Act	Landlord reluctance to comply
Tenant (defense in eviction)	13%	Tenant		
Tenant vs. Tenant (e.g., noise)	.64%	Tenant		
Tenant housekeeping violations (damage)	.13%	Tenant		
Subjects: building, health, sanitation, noise, etc. (misc. and general information)	11%	Landlord/Tenant	Telephone Intake Person	
Other subjects: a) essential services	3%	Tenant	Landlord ordered to restore or rent redirected	Oral tenancy agreements can make it hard to establish liability
b) abandonment	3%	Landlord	Landlord directed pursuant to the Act	Storage and disposal of chattels

TABLE 4  
OFFICE OF THE RENTALS MAN

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Eviction: to recover possession	Individual landlord	Small Claims Court
Eviction: violation of lease	Individual landlord	Small Claims Court
Landlord: suit for back rent	Individual landlord	Small Claims Court
Tenant: suit for rent deposit	Individual tenant	Small Claims Court
Related: repair bills by tenant	N/A	Small Claims Court
Rent withholding and reduction	Individual landlord or tenant	Small Claims Court
Rent control actions/decisions	Individual landlord or tenant	Housing Court; Municipal Court
Condominium conversion	Individual landlord	Housing Court; Municipal Court
Condemnation and demolition	Individual landlord	Municipal Court
City agency-initiated complaints	N/A	
Tenant-initiated complaints	Individual tenant	Housing Court
Tenant (defense in eviction)	Individual tenant	Small Claims Court
Neighbor against owner/tenant	N/A	Small Claims Court
Tenant vs. tenant (as noise)	Individual tenant	Municipal Court
Tenant housekeeping violations	Individual landlord	Housing Court; Municipal Court
Subjects: building, health, sanitation, noise, zoning, some environmental cases, etc.	Individual tenant	Housing Court; Municipal Court
Co-tenancy suits and counterclaims	Individual tenant	Small Claims Court
Neighbor vs. neighbor	N/A	Small Claims Court
Owner vs. owner (condo & HOAs)	N/A	Small Claims Court
Owner vs. condo management	N/A	Small Claims Court
Owner vs. builder/developer	N/A	Small Claims Court
Contract purchaser vs. realtor	N/A	Small Claims Court
Applicant vs. financial agency	N/A	Small Claims Court
Other subjects: amenities, aesthetics, security, upkeep, assault & battery, harrasment	N/A	Small Claims Court

TABLE 5  
OFFICE OF THE RENTALS MAN  
NATURE & NUMBER OF RESIDENTIAL TENANCY FILES OPENED

Type Case	DECEMBER, 1978	YEAR TO DATE
Security Deposit	597	5,612
Rent Increases	2	35
Service of Facility	30	458
Tenant Damage	3	20
Repairs	113	1,326
Privacy	7	136
Noise & Disturbance	10	99
Abandonment	30	433
Illegal Eviction	2	78
Distrain	13	245
Subletting & Assigning	—	15
Locks and Access Restrictions	9	97
Attornment	—	1
Disputed Termination 24(2)	142	2,040
Application for Order for Possession 14(2)	112	1,535
Miscellaneous	130	1,570
General Information	6	160
Rent Arrears	13	155
Application to order Early Termination	138	1,475
TOTAL	1,357	15,490

## Footnotes

- For the purposes of this research "housing problems" encompass the relationship a person has to his dwelling unit, neighbors, owners and managers, beyond the purely landlord-tenant relationship.
- Fred M. Dellapa, *Alternative Dispute Resolution Mechanisms (ADRM) and Housing Disputes*, March 1979, submitted to the American Bar Association Special Committee on Housing and Urban Development Law.
- The programs chosen for study were: The Columbus, Ohio, *Night Prosecutor's Program*, the Miami *Citizen Dispute Settlement Program*, The Rochester, New York, *American Arbitration Association Community Dispute Services Project*, the Dorchester, Massachusetts, *Urban Court Program*, the New York *Institute for Mediation and Conflict Resolution Dispute Center*, the San Francisco *Community Board Program* and the Vancouver, British Columbia, *Office of the Rentalsman*. Information regarding the New York and San Francisco program was not received in time for this paper but will be incorporated into the final draft.
- William L. F. Felstiner and Lynne A. Williams, *Preliminary and partial report on mediation as an alternative to criminal prosecution: a case study of the Dorchester project*, Report to NILECJ, LEAA (1979).
- If one includes neighbor v. neighbor another 23% is added. However, at present we have no statistical breakdown of what proportion of the neighbor cases involve housing issues, since many of them involve non-housing (e.g. racial) issues.
- Office of the Rentalsman, Monthly Statistical Report.
- Ann Barthelmes Drew, *Draft report on the Office of the Rentalsman*, Report to NILECJ, LEAA (1979).

## ROCHESTER, NEW YORK -- INSERT ABOVE PARAGRAPH TITLED "IMPRESSIONS"

Of the 85 mediators, 20 are

A specifically trained in housing-related dispute resolution. The project does have access to a housing expert who advises the staff and mediators on such matters as housing technicalities, appraisals and repair estimates. These services are now rendered voluntarily but future plans involve retaining them on a contractual basis.

Process

The Rochester CDS considers on-site investigation as standard procedure where a housing-related dispute is involved. Very little telephone interviewing is done unless it is for follow-up purposes. The CDS focuses primarily on in-person mediation, fact-finding, and arbitration, if needed. If a resolution is reached it is in written, notarized form and it reflects either a consent between the parties (mediation) or an award issued to one party (arbitration). The project attempts to enforce these agreements/awards through follow-up procedures.

Follow-ups are conducted for a total of 20 weeks (first at a 4 week interval after the hearing, then 2 weeks later, then 10 weeks later). There is a telephone interview or personal visit with the complainant and the respondent; if the agreement is not working, the complainant is advised to refer the case to court.

Housing-Related Dispute Caseload

The CDS has handled housing disputes from the beginning, but the number of these disputes has increased over the years. There have been large increases in cases which involve general landlord/tenant or management/tenant matters, faulty warranties, overdue rent and eviction. Eviction more often than not escalates to harassment or assault before it reaches the CDS. The project claims a 78% resolution rate for housing-related disputes. The other 22% are referred to court for judicial resolution.

Mediation is the most commonly used method for the resolution of housing disputes, however the CDS will arbitrate if requested to do so. The majority of referrals come from the court (Judge and District Attorney) with the remaining mostly walk-ins; most complainants are landlords.

**END**