Question: Can expanded mediation reduce overcrowding and help remedy space difficulties in the Historic Courthouse?

Answer: Yes, but only marginally.

Background: Both the Iowa Judicial Branch, and the District Court in Polk County have been supportive of mediation as an alternative to formal litigation in minor civil disputes (i.e. small claims matters), and as a more relaxed, less expensive, facilitated way to resolve contentious issues in family law matters. Mediation in Iowa, according to state statute, is "a process in which a third party facilitates communication and negotiation between parties to assist them in voluntary agreement regarding their dispute."[1]

Court-annexed mediation is available in small claims[2] and is mandated by court rule in domestic relations cases prior to formal litigation in Polk County. A sliding fee, depending on income, is assessed to pay for the nonprofit services. The Iowa Bar Association manages the mediation program statewide. The mediation program for the fifth judicial district is administered and coordinated out of an office at the Riverpoint small claims court, a few blocks south of the historic courthouse. Mediations are conducted by trained mediators at the Riverpoint facility as well as other locations around the county. The mediation program had 2145 small claims cases, settling 1713 disputes (80 percent) in FY 2009. In Family law matters, mediators were involved in 1616 cases (185 were pro bono cases), settling fully 55 percent. Occasionally when requested by the Court, mediations are scheduled for civil cases in excess of $4,000.

Mediation is confidential; positions, statements and information generally cannot be revealed in court should the matter not settle and proceed to a judicial hearing, nor can mediators be forced to testify. The only exception to strict confidentiality involves child abuse or actual or threatened criminal acts. Parties who enter into mediation do not forfeit any legal rights or remedies. If the mediation process does not result in settlement of one or more issues, those matters still in dispute can be formally litigated.

Analysis: Mediation is a substantial and effective part of the dispute resolution solutions offered by the Court. The settlement rates appear to be healthy and probably reduce some congestion and traffic in the courthouse to the extent that mediations are done off-site. There are additional variations on mediation processes in civil cases that a growing number of urban state courts are exploring which may additionally diminish formal litigation slightly, helping to decrease additional trips to the courthouse by litigants and lawyers.

[1] Iowa State Statutes, Chapter 68, Uniform Mediation Act, § 679C.102.1.
[2] Small claims jurisdiction in Iowa is currently capped at $4,000.

Among general jurisdiction courts there are three basic practices regarding alternative dispute resolution for civil matters. Specifically, there are:

- *Early neutral evaluation* is a mediation technique generally focused on complex commercial cases which leads to better case management or possible resolution early in the process. In early neutral evaluation, the parties and judge agree on an expert or panel of experts with knowledge and experience in the subject-matter under dispute to assess the strengths and weaknesses of each of the parties arguments and discuss their findings with the litigants so they gain awareness (via independent evaluation) of the merits of their case.

- Mediation has sometimes been utilized to good effect when coupled with arbitration, particularly binding arbitration, in a process commonly called "*med/arb*." In this process, if the parties are unable to reach resolution through mediation, the dispute is referred to an arbitrator. Normally, the arbitrator is not the same person as the mediator. Where that is the case, significant ethical and process problems can surface since arbitration requires witnesses, the introduction of evidence, and an independent decision regarding the outcome of the case by the arbitrator.

- Lastly, *short trials* are mini one-day, non-binding jury trials using only a few jurors (i.e. 4 jurors) selected from a limited number of prospective candidates (i.e. 10 or less) sent from the jury pool. Civil cases selected for this process are generally complicated with higher money damages in dispute. The judge may order a short trial where he/she believes there is a good chance of settlement, or the lawyers may request it as an issues resolution forum. There are no witnesses or experts who testify. Rather, the attorneys summarize the evidence and may read directly from the depositions. Each side generally has two hours to present their case and ten minutes for opening and closing arguments. Jury deliberations must be concluded by the end of the day. Jury instructions are general and usually standardized, not requiring a great deal of pre-development.

Advice: Mediation and variations of it (i.e. early neutral evaluation, med/arb and short trials) are enlightened and efficient ways to employ ADR practices in the District Court. More extensive off-site use may slightly reduce traffic and overcrowding in the Courthouse, but not to an extent that it would permit noticeable relief. The most promising alternative would be to increase small claims jurisdiction from the current $5,000 limit. Many of the states around Iowa have higher jurisdictional limits, namely Minnesota at $7,500 and South Dakota at $12,000; Illinois at $10,000, and Oklahoma at $6,000.[3] The state Judicial Branch should consider an increase for Iowa. Raising the limit would move additional low-end civil cases out of the Courthouse to the Riverpoint small claims court.

[3] There are some neighboring states that have lower jurisdictions including Nebraska at $2,700, Missouri at $3,000 and Kansas at $4,000. The highest dollar limit for any state is Tennessee at $15,000. Source: National Center for State Courts.