



MARCH 2009

## CASES & RESOLUTIONS:

### Minnesota Judge Orders Sunshine Act Exception for Mediation by City Council and County Commissioners

All five Houston County commissioners and the entire city council of Caledonia, Minnesota were to participate in mediation in an effort to resolve litigation over zoning issues for a new county jail. The judge in the case took the unusual step of issuing an order allowing the elected bodies to meet in a joint closed session without violating the state's open meetings law. A day-long mediation was then held that resulted in agreement on the size and location of the jail, and a plan for submission of applications that may result in a release of all claims.

[Winona Daily News](#) (January 25, 2009); [Houston County News](#) (February 3, 2009)

### Cities Resolve Litigation Plus More in Mediation

Intense mediation efforts between the city government leaders of Timnath and Fort Collins resulted in a comprehensive agreement resolving pending litigation over annexation and land-grab issues, as well as a number of other tensions and past disputes between the cities. The agreement, which still must be ratified by both city councils, adjusts each city's growth management area and includes provisions to roll back prior annexations if desired.

[ReporterHerald.com](#) (CO) (January 16, 2009)

### Anglican Bishops Agree on Mediation in Attempt to Avoid Church Schism

Thirty-eight senior Anglican bishops sent a communiqué to the Archbishop of Canterbury requesting a professionally mediated conversation in an effort to avoid a split in the Anglican Church over the ordination of homosexuals and blessing of gay marriages. The 80-million member group has been in conflict since the first openly gay bishop was elected in New Hampshire in 2003.

## Mediation Quote:

"One of the main barriers to resolution comes when people can't let the conflict go and move on with their lives. A dispute can become such an important part of an individual's life that he or she will not allow it to end. It feels as if something important is being lost. This is very similar to the process of grieving...."

- Gary T. Furlong, *The Conflict Resolution Toolbox* (Wiley 2005) at 24

## Other Cases & Resolutions:

**Opes Prime Case Settling in Australia for Over US\$100 Million; Mediation Continues to Finalize Legal Documents,** [Bloomberg](#) (February 9, 2009)

**Mediated Settlement of Lawsuit over Circuit Board Materials in Wireless Products Results in \$9 Million Payment, with \$4 Million Going to Bank Loan,** [Los Angeles Business Journal](#) (January 9, 2009)

**Court Orders Mediation in Multi-Million Dollar Pillsbury Winthrop Shaw Pittman Conflict of Interest Litigation,** [Law.com](#) (CA) (January 21,

[The Times](#) (South Africa) (February 8, 2009)

## Resort Development Disputes Expand to Squabbles over Mediation

Developers of a large ski resort in New York sought mediation in March 2008 in order to address objections by various groups, but after several joint sessions among the parties no further joint sessions have occurred since July, according to one of the parties in the mediation. The developer objected to that disclosure as a violation of mediation confidentiality and responded publicly, as well as telling the mediator that it is continuing to meet with various parties, including government agencies, to revise the draft mediation agreement. The developer described project modifications it is making as a result of the mediation, which other parties downplayed as insignificant or already under way prior to mediation.

[Plattsburgh Press Republican](#) (February 3, 2009); [Plattsburgh Press Republican](#) (February 5, 2009)

## NEWS & INITIATIVES:

### Missouri Introduces Legislation to Set Standards for Mediation

Legislation has recently been introduced in Missouri to create general standards for mediation that occurs as a result of statutes, regulations or contracts entered into in the state. The act allows parties to seek the court's help in obtaining a qualified mediator if they are unable to agree on one. Further, the act specifies the duties of mediators and provides that a mediator may not provide later representation, counseling or treatment on issues raised in mediation. Finally, the act provides for mediation confidentiality, but allows mediators to be called to testify about events following the mediation in order to enforce written settlement agreements.

[Missouri S.B. 444](#)

### Hawaii Considering Uniform Mediation Act

The legislature in Hawaii is considering the Uniform Mediation Act (UMA) in order to establish confidentiality for mediation communications, with specified exceptions. The legislation is intended to encourage greater use of mediation and closely follows the UMA language of the National Conference of Commissioners on Uniform State Laws. The Hawaiian proposal also incorporates the United Nations Model Law on International Commercial Conciliation, which is a supplement to the UMA for international commercial mediations, unless the parties agree otherwise. The UMA has been adopted thus far in the District of Columbia and ten states: Idaho, Illinois, Iowa, Nebraska, New Jersey, Ohio, South Dakota, Utah, Vermont and Washington state.

[Hawaii S.B. 120](#)

2009)

**Company Proposes Mediation, Offering \$10 Million to Resolve Failed Merger,** [National Business Review](#) (New Zealand) (February 17, 2009)

**Federal Litigation Between Arenas over Deal with Major Concert Promoter Set for Mediation,** [Michigan Business Review](#) (February 26, 2009)

**Claims of Brothers Mauled by Tiger at San Francisco Zoo Are Being Mediated,** [The San Francisco Examiner](#) (February 8, 2009)

**Mediation Continues in Dispute over Suspension of Trauma Surgeons at Florida Hospital,** [Florida Today](#) (February 18, 2009)

**Mediation Doesn't Resolve Complaint by Pre-Operation Transsexual Seeking to Use Women's Gym,** [The Toronto Star](#) (February 25, 2009)

**Judge Considering Whether Mediation Statements Can Be Used in Forgery Trial,** [Central Maine Morning Sentinel](#) (January 17, 2009)

**Appeals of Redevelopment Approval for Hospital and Retirement Village Headed to Mediation,** [Auckland stuff.co.nz](#) (New Zealand) (January 22, 2009)

**\$10 Million Settlement for Man Injured in Warehouse Accident after Four Days of Mediation,** [The Legal Intelligencer](#) (PA) (February 26, 2009) (Subscription Required)

**Claims of 32 Students Injured by School Bus Plunge off Overpass Settled in Mediation,** [Chicago Tribune](#)

## Texas Regulation Offers Mediation Option in Taxable Value Protests

Mediation of protests over the Texas Comptroller of Public Accounts' preliminary findings of taxable value may be requested by the petitioner pursuant to regulations adopted on January 23, 2009. The mediator is to be selected by the Comptroller and any agreements reached must be documented in writing and signed by all parties. If all issues are not resolved in mediation, either party may request a hearing.

[Regalert](#) (January 23, 2009) (Subscription Required)

## Insurer Reinstates Mediation Program for Resolving Hurricane Claims

To address the destructive 2008 hurricane season, Zurich is bringing back its mediation program which resulted in Zurich having the highest percentage of resolved claims (98.8%) of any insurer after Hurricane Katrina. As in 2005, Zurich has retained Kenneth Feinberg to administer the program. While the bulk of cases were directly resolved prior to mediation, a very small percentage went to mediation with a mediator selected or approved by Feinberg. The Zurich program includes a binding arbitration component as well, with an arbitrator selected or approved by Feinberg, but none of the 2005 cases went to arbitration.

[Business Wire](#) (January 26, 2009) (Subscription Required)

## Economy May Impact Mediation

Some counsel are noting that potential litigants are more interested in mediation rather than expensive commercial litigation as a result of the economic downturn. Others note that parties may be taking that trend a step further by using direct negotiations without involving a mediator. However, in some regions mediation is becoming so much the norm that many counsel are losing their skills at direct negotiation and tend always to rely on the assistance of a third party.

[Lawyers USA](#) (January 6, 2009)

## Update on Home Foreclosure Mediation Efforts

- **New Jersey** launched its mortgage foreclosure mediation program with the enactment of legislation in January. The Mortgage Stabilization Program and Housing Assistance and Recovery Program will be administered by the New Jersey Housing and Mortgage Finance Agency to give homeowners, who are trying to save their primary residence and who are not in bankruptcy, access to counselors, attorneys and mediators.

[Philadelphia Business Journal](#) (January 9, 2009); [NBC40.net](#)

(March 3, 2009)

**Pre-Suit Mediation Yields \$200,000 Settlement for Woman Hit by City Bus**, [Park Record](#) (UT) (March 3, 2009)

**Washington County Agrees to \$300,000 Settlement for Injured Bicyclist in Mediation**, [Seattle Post Intelligencer](#) (February 9, 2009)

**Court Sends Church Dispute over Authority to Fire Minister to Mediation**, [Fairbanks Daily News-Miner](#) (AK) (January 3, 2009)

**Court-Ordered Mediation over Construction of 77-Foot Cross by Highway Unsuccessful**, [Kerrville Daily Times](#) (TX) (January 6, 2009) (Subscription Required); [Kerrville Daily Times](#) (January 30, 2009) (Subscription Required)

**Mediation Between Cork Hurling Squad and Cork County Board May Continue If Coach Excluded**, [RTE Sport](#) (Ireland) (January 8, 2009)

**Florida County Commission and Public Access Television Network Mediate Tentative Settlement over Budget Cuts in Alleged Effort to Silence Critics**, [MSNBC](#) (January 6, 2009)

**Agreement on New Police Force for Maryland County Reached in Mediation**, [WHAG](#) (February 17, 2009)

**Louisiana Mayor Indicates Final Issues that Must Be Resolved Before Signing Agreement Worked Out in Mediation for Cutting Energy Costs by \$60 Million**, [Alexandria Town Talk](#) (January 11, 2009)

(January 9, 2009)

- A new home foreclosure mediation program takes effect March 13 in the **Florida counties of Indian River, Martin, Okeechobee, St. Lucie** under an administrative order which provides free mediation and counseling services to homeowners who live in their homes. Banks will pay a flat fee of \$750 in the program administered by the Collins Center, which handled the mediations of insurance disputes resulting from hurricanes in 2004. The program responds to a doubling of foreclosure cases between 2007 and 2008, and an increase of ten to twenty-fold since 2005. In contrast with mediation, proceeding with foreclosure through the courts is estimated to cost \$75,000 per home.

[WPEC](#) (February 19, 2009); [Administrative Order 2009-01](#); [Vero Beach Press Journal](#) (February 13, 2009) (Subscription Required)

- Mediation is mandatory for all homeowners who go into foreclosure in **Orange and Osceola Counties in Florida** pursuant to an order by the Chief Judge. The mortgage lender must negotiate in good faith within 45 days and must pay for the cost of mediation.

[My Fox Orlando](#) (February 26, 2009)

- **Philadelphia, Pennsylvania's** mortgage foreclosure mediation program has been visited recently by a group from Kentucky and previously by delegations from Maryland, New York and New Jersey. Philadelphia's program is believed to be successful due to direct outreach to homeowners, rather than simply relying on mailings about the court program. ACORN and 14 other organizations are conducting repeated door-to-door outreach to owners whose homes are in foreclosure.

[The Legal Intelligencer](#) (January 16, 2009) (Subscription Required)

- **Indiana** is training lawyers and judges about loan modification programs and mediation opportunities, with 100 signed up for a March training. A later training will cover mediators. The Chief Justice of the Indiana Supreme Court has promised to have 700 judges, pro bono mortgage lawyers and mediators in place by summer.

[Chicago Tribune](#) (February 27, 2009)

- **Nevada** is considering legislation to require lenders to enter mediation at the request of homeowners seeking terms to avoid foreclosure. Mediations would be overseen by a judge or magistrate and would halt foreclosure proceedings. Nevada is a nonjudicial foreclosure state, which does not require court involvement before a lender can sell a house, and has the worst foreclosure rate in the country. Some in the industry fear that requiring mediation would be a move towards judicial foreclosures.

[Reno Gazette Journal](#) (February 10, 2009); [Las Vegas Sun](#) (February 16, 2009)

**Rather than Ruling on Motions to Dismiss, Judge Orders City of Tulsa and Tulsa County to Return to Mediation over a New Jail Agreement, [Tulsa World](#)** (February 24, 2009) (Subscription Required)

**Local School Officials Hire Mediator to Address Concerns that District Was Short-Changed on Special Ed Money, [St. Helena Star](#)** (CA) (February 19, 2009)

**New Mexico County Commission Agrees to Suspend Appeal and Mediate Hospital Funding and Contracting Issues, [Valencia County News Bulletin](#)** (January 10, 2009)

**\$53 Million Lawsuit Between County Commission and Casino Company Not Settled in Mediation, [Joplin Globe](#)** (MO) (February 17, 2009)

**Mediators to Address Conflict Between Members of Town Council, [Wilts and Gloucestershire Standard](#)** (UK) (January 22, 2009)

**City Council to Hire Mediator to Address Strained Relations with City Manager, [KFSK](#)** (AK) (February 18, 2009)

## Other News & Initiatives:

**Obama Appoints First Native American as Deputy Assistant Director to Act as Mediator of Indian Affairs Between Administration and State, Tribal and Local Governments, [The Missoulian](#)** (February 8, 2009)

**Colorado Regulation Allows**

- The mayor of **Milwaukee, Wisconsin** is working with courts and lenders to create a foreclosure mediation program that would allow owners facing foreclosure to meet with lenders in a mediation to seek to renegotiate their loans. The mayor has pledged \$100,000 towards establishing the program, and stated the program is likely to be spearheaded by the Legal Aid Society and others.

[Milwaukee Journal Sentinel](#) (January 16, 2009); [Milwaukee Journal Sentinel](#) (February 25, 2009)

- The mayor of **Providence, Rhode Island** has proposed ordinances to protect both owners and tenants in home foreclosures. The first would require lenders to mediate with homeowners prior to foreclosure, with the assistance of a state agency. The other ordinance would protect renters from having to vacate foreclosed properties before their leases end. The proposals are said to be similar to what the Philadelphia County Court has mandated, but concerns have been raised about the enforceability of the mediation ordinance.

[Providence Journal Bulletin](#) (February 3, 2009) (Subscription Required)

## States Using Mediation for Consumer Restitution

- The attorney general's office in **Washington** state helped consumers recover nearly \$6.9 million through mediation. The attorney general received 25,000 written complaints in 2008, with the greatest number concerning telecommunications.

[Seattle Post Intelligencer](#) (March 4, 2009)

- The Consumer Protection Division of the **Iowa** attorney general's office obtained benefits of over \$1.3 million for consumers in 2008.

[Omaha World-Herald](#) (January 23, 2009) (Subscription Required)

- In **Florida**, the Miami-Dade Consumer Services Department obtained \$1.2 million in consumer redress in 2008 through investigation and mediation of nearly 4,000 complaints.

[US State News](#) (January 9, 2009) (Subscription Required)

- The Consumer Affairs Mediation Center of the **Nebraska** attorney general's office handled over 4,100 complaints and recovered almost \$1 million for consumers in 2008. With fifteen full-time staff members, the Nebraska Mediation Center also helps consumers avoid scams and sends consumers on to counsel in the attorney general's office if the circumstances warrant litigation.

[Lincoln Journal Star](#) (January 4, 2009) (Subscription Required);

**Parties in Administrative Proceedings to Request Mediation, [Regaler](#)** (January 10, 2009) (Subscription Required)

**New Hampshire Legislation Would Allow Court's Mediation Office to Provide Pre-suit Services, [New Hampshire S.B. 70-FN](#)**

**New York Proposes to Enact Land Use Mediation Program, [Assembly.state.ny.us](#)** (January 23, 2009); [New York A 3147](#)

**New York Legislation Would Resolve Public Disputes Using Alternative Dispute Resolution, [Assembly.state.ny.us](#)** (January 21, 2009); [New York A 2909](#)

**Parties Praise IRS Expansion of Mediation Options with Post-Appeals Pilot Program, [Accounting Today](#)** (January 26, 2009)

**Mediation Is Alternative in Financial Industry Regulatory Authority (FINRA) Cases Against Brokerage or Security Firms, [Associated Press](#)** (NY) (February 25, 2009)

**Illinois County Court Pleased with 62% Settlement Rate in Mandatory Mediation Program for All Medical Malpractice Cases, [Renal and Urology News](#)** (January 23, 2009)

**Pennsylvania County's Newly-Established Mediation Program for Property Reassessment Challenges Resolve 16 of First 18 Cases, [The Times Leader](#)** (January 6, 2009) (Subscription Required)

**Court's Annual "Settlement Week" Relies on Quick Pro Bono Mediations to Help**



[Omaha World-Herald](#) (January 23, 2009) (Subscription Required)

- **Kansas** has begun a Consumer Mediation Program to obtain refunds and restitution for consumers without litigation. The Kansas attorney general is focusing on mediation to limit costs for all parties and to save state resources.

[KAKE](#) (February 19, 2009); [Lawrence Journal World](#) (February 24, 2009)

## Baltimore Safe Streets Program Using Mediation to Reduce Murders

The Baltimore Health Department began its Operation Safe Streets program in August 2007, relying on ex-offenders and counselors to mediate disputes between armed gangs in four communities. Fifty-three “high-stakes” disputes have been mediated. A newly-released interim report notes that one of the communities has gone 17 months in a row without a homicide and attitudes have shifted against using guns to settle disputes. However, nonfatal shootings did not drop as much as in other communities where police have relied on a violent crime task force. Baltimore’s health commissioner would like to expand Operation Safe Streets, which has received over \$3 million in federal, city and private funding, but is facing budget cuts.

[The Baltimore Sun](#) (January 14, 2009)

## New Zealand Considering Ongoing Mediation Role for Online Piracy Disputes

A possible last minute compromise between copyright holders and internet service providers would rely on independent mediators to help resolve internet piracy complaints. Mediation would replace an obligation on ISPs and server operators to investigate piracy complaints and bar clients from the web, which would be imposed by the revised Copyright Act. Advocates of internet freedom marched on Parliament to protest the legislation, which was set to take effect at the end of February.

[New Zealand Herald](#) (February 20, 2009)

## Other International Mediation Developments

- **Indian** Supreme Court Justice urges greater use of mediation to benefit both parties and overburdened court system, [Calcutta Telegraph](#) (January 3, 2009)
- Mediation and Conciliation Centre opened in Kottayam, **India**; Chief Judge urges alternatives to litigation, [Hindu](#) (January 12, 2009) (Subscription Required)
- **China** establishes mediation desk to address intellectual property rights at large IT and telecom trade fair in Europe, [People’s Daily Online](#) (March 4, 2009)
- **Chinese** city of Tainjin begins mandatory mediation for medical

**Clear Docket**, [Providence Journal](#) (January 19, 2008)

**In Current Economic Climate, Mediation Particularly Helpful, Even in Bankruptcy Litigation**, [Broward Daily Business Review](#) (January 22, 2009) (Subscription Required)

**Companies Increasingly Using Mediation to Avoid Litigation and Control Own Destiny**, [Augusta Chronicle](#) (February 21, 2009)

**UK Court Considers Reasonableness of Party’s Mediation Position When Awarding Costs**, [Mondaq](#) (February 23, 2009) (Subscription Required)

**UK Case Determines When Litigation Will Be Suspended If Parties Have Agreed to Mediate**, [Contract Journal](#) (UK) (February 17, 2009)

disputes, [China Business Newswire](#) (January 20, 2009)  
(Subscription Required)

- **Singapore** police gain power to refer squabbling parties to a community mediation center, [Today Online](#) (February 14, 2009)
- **Singapore** Ministry of Health and Singapore Mediation Centre have a year's experience with mediation program addressing health care disputes, [Straits Times](#) (January 28, 2009) (Subscription Required)
- National University of **Singapore** wins 4th ICC International Commercial Mediation Competition, [Finchannel](#) (February 24, 2009)
- **Malaysian** court recommends mediation for jilted businessman's claims against fiancée, [Malaysia Star](#) (February 17, 2009)
- **Australian** government urged to allow use of independent mediators and arbitrators in employer-union disputes, [The Australian](#) (January 9, 2009)
- Popularity of mediation in **Australia** results in fewer opportunities for lawyers to gain courtroom advocacy skills, [Courier Mail](#) (January 17, 2009) (Subscription Required)
- **Taiwan's** Environmental Protection Administration urging mediation rather than protests after injuries from gas leaks, [Taipei Times](#) (January 20, 2009) (Subscription Required)
- **Angola** approves statute of the Association of Ombudsmen and Mediators of Africa to support mediation institutions and human rights, [Angola Press](#) (January 15, 2008)
- Mediation has gained popularity and acceptance in recent years within Ghana, [All Africa](#) (February 20, 2009) (Subscription Required)
- Mediation service for gang members being opened in London, **England**, based on success in West Midlands, [PA News](#) (January 21, 2009) (Subscription Required)
- Proposal would eliminate fee charged solicitors for mediation in effort to encourage quicker resolution of matters brought to the **Scottish** Legal Complaints Commission, [Scotsman](#) (January 19, 2009) (Subscription Required)

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