



MEDIATION NEWS

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CASES & RESOLUTIONS:

Mediated Settlements of Sex Abuse Cases Involve Large Payments and Disclosure of Files

While many mediations focus on maintaining confidentiality, recent mediation settlements of six sex abuse cases involving the Archdiocese of Chicago require the disclosure of information and files as a term of the settlements. In the six cases, the Archdiocese also agreed to pay \$3.9 million for sexual abuse by four priests in the 1970s and 1980s. Counsel for the victims noted that they took comfort in exposing past crimes, while the Archdiocese stated that negotiation and mediation was the most compassionate way to proceed in order to spare victims and their families the stress of extended legal proceedings.

[Chicago Tribune](#) (July 22, 2009)

“Baseline” Mediation Agreement Reached over Development of Big Tupper Ski Area

The Franklin County (NY) legislature ratified a legislator’s signing of a “baseline” agreement that resulted from lengthy mediation over a proposed Big Tupper Ski Area development. The mediation came out of New York’s Adirondack Park Agency permitting process, and the agreement lists changes to be made to project plans. Permits are still required from the New York Department of Health and the Tupper Lake Planning Board. While the one legislator participated in the mediation and did disclose the agreement (which other participants held confidential), another legislator refused to engage in the process due to the confidentiality required. The latter legislator even suggested that the county might want to bar its legislators from agreeing to confidentiality provisions in the future, while recognizing the downside of not participating in important negotiations.

[Adirondack Daily Enterprise](#) (July 17, 2009)

California Attorney General Offers to Mediate Environmental Dispute

Mediation Quote:

“Silence at the right time can be one of the most powerful and influential negotiating tools. It can be used in almost any situation.... Most people feel uncomfortable with silence and want to fill the void by saying something – a fact you can use to your advantage.

Silence is deadly because the other person doesn’t know what you are thinking and begins to wonder: Are you thinking this is good or bad?

Are you going to leave or stay? This lack of knowledge can create a lack of control, and people hate not being in control....”

Steven G. Mehta, *112 Ways to Succeed in Any Negotiation or Mediation* (AuthorHouse 2009) at 104

Check These Out:

Mediators Beyond Borders to Assist Copenhagen Climate Change Negotiations

MBB will be in Copenhagen in December as an observer organization with the message that mediation is a viable option for climate change disputes. MBB president Ken Cloke says conflict prevention and resolution mechanisms should be a core part of Copenhagen climate change

Litigation brought by three environmental groups against Chevron over an upgrade of its refinery in Richmond, California resulted in an order to stop work, which led to layoffs of 1,000 construction workers. State Attorney General Jerry Brown offered to mediate and suggested the issues could be resolved quickly. The Richmond City Council unanimously passed a supporting resolution and the environmental groups stated they are willing to participate. Chevron is not interested, as private mediation is still under way making other mediation proposals premature, according to a spokesperson.

[CBS5](#) (July 22, 2009)

Parties in Dispute Have Difficulty Agreeing to Voluntary Mediation

The Maricopa County (AZ) Attorney, the Sheriff, the County Treasurer and the Board of Supervisors have been embroiled in six lawsuits against each other in the past year, costing more than \$1.1 million in attorneys' fees. In the apparent absence of court ordered mediation, the parties have proposed voluntary mediation and agreed to mediation at various times, and even proposed specific mediators. However, no mediation has occurred, for which the parties blame each other.

[Arizona Republic](#) (July 21, 2009)

Mediation of Staff Concerns with College President to Be Webcast

The president of Florida Keys Community College has brought in a professional mediator to address staff concerns in several days of mediation sessions, culminating in a public session which will be webcast. Concerns range from complaints of staff intimidation and retaliation by the president to over-reporting the number of students for purposes of state funding.

[KeysNet](#) (August 29, 2009)

U.K. Court Requires Mediator to Testify with Consent of Parties

Six years after mediation resulted in a settlement, the parties sought testimony from the mediator about whether the settlement had been achieved through economic duress. The mediator objected, but the U.K.'s Technology and Construction Court ruled that the mediator must testify in [Farm Assist Limited v. Secretary of State for Environment, Food and Rural Affairs \(No. 2\)](#), [2009] EWHC 1102 (TCC). The court concluded that mediation confidentiality can be waived by the court in the interests of justice. The court analyzed various possible privileges and concluded that even if there is a mediation privilege, it may be waived by the parties without the consent of the mediator. The court sidestepped the mediation agreement, which provided that the mediator could not be called as a witness in any litigation relating to the dispute, reasoning that the issue of economic duress was distinct from the underlying dispute.

[Farm Assist Limited v. Secretary of State for Environment, Food and Rural Affairs \(No. 2\)](#), [2009] EWHC 1102 (TCC); [Mondaq](#) (July 8, 2009)

negotiations and international implementation efforts,

[The Copenhagen Climate Change Conference: UN Climate Change Conference, December 7-18, 2009](#)

Mediators Support President's "Beer Summit"

Various mediation organizations and mediators spoke out in favor of mediation of the conflict between Professor Henry Gates and Sergeant James Crowley; some supported President Obama's specific efforts to bring the men together in an effort to improve their communication and understanding of each other. However, while food or beverages can benefit a mediation, beer was questioned as a general purpose mediation tool.

[Newsplex.com](#) (July 30, 2009); [Forbes.com](#) (July 30, 2009); [Wall Street Journal Law Blog](#) (July 24, 2009); [Boston.com](#) (July 24, 2009); [Settle It Now Blog](#) (July 24, 2009)

Marriage License Fees Increasing to Fund More Family Court Mediation

The Solano County (CA) Board of Supervisors is holding a public hearing on whether to increase the cost of marriage licenses to provide more funding for family court mediation services. The court plans to establish a permanent mediation center with the funds. Six other California counties already charge the additional fees, while another six counties are seeking to add the fees.

[The Reporter](#) (July 19, 2009)

Other Cases &

(Subscription Required)

U.K. Court Imposes Mediation Costs when Party Refuses to Participate

In the absence of prior agreement by the parties on how mediation costs were to be handled, U.K.'s Technology and Construction Court concluded that a party who refused to appear at a mandatory mediation should bear the costs from late cancellation. The court found insufficient the party's explanation about the futility of mediation in the absence of another entity.

[Commercial Litigation Wire](#) (July 2009)

NEWS & INITIATIVES:

West Virginia Grievance Board Adds Mediation to Streamline Process

The West Virginia Public Employees Grievance Board was created two years ago by the state legislature to improve a slow and expensive system. The new Board reduced the existing four-step system to only three steps, but added mediation as the second step prior to an administrative law judge hearing. A mediator from the Board or a private mediator chosen by the worker is used for the sessions. Although some 2,500 grievances are filed each year, the Board has eliminated the backlog through the mediation process, which resolves about thirty percent of the cases that get to that step.

[Daily Mail](#) (July 29, 2009)

Farm Mediation Spikes in Minnesota

A University of Minnesota study shows that mediation over farm debt has dramatically increased in the last year, with a jump from 133 open cases in July 2008 to 488 cases in July 2009. In total, 2,000 mediation matters were opened in 2008, with negotiation of over \$150 million in debt, and 2009 has seen significant increases. Creditors with secured debts over \$5,000 against agricultural property in Minnesota are required to offer mediation prior to judgment collection, repossession or foreclosure. Farmers choosing mediation have 90 days to work with lenders to renegotiate their debts.

[Business Journal](#) (August 21, 2009); [Hutchinson Leader](#) (August 15, 2009)

Update on Home Foreclosure Mediation Efforts

- Implementing legislation that went into effect July 1, the **Nevada** Supreme Court has appointed 97 mediators in the state's new home foreclosure mediation program, and expects to increase the number to about 400 mediators over the next year. The current group included 37 Supreme Court settlement judges, along with other retired judges, attorneys and existing mediators. Mediation sessions

Resolutions:

Federal Bankruptcy Judge Requires Mediation in Lehman Derivatives Dispute, [Law360](#) (August 26, 2009)

SemGroup's Secured Lenders Holding Billions in Liens Seek Mediation with Bankrupt Energy Company, [Tulsa World](#) (August 27, 2009)

Woman Struck by Tractor-Trailer Settles in Mediation for \$5.4 Million, [Daily Report](#) (August 3, 2009)

Public Dispute Between Insurance Company and Hospital Headed to Mediation at Request of New Jersey Governor, [NJ.com](#) (August 21, 2009)

Indiana State Medical Association Seeks Mediation with WellPoint over Alleged Systematic Underpayments, [IndyStar](#) (July 17, 2009)

Philadelphia Newspapers and Creditors Return to Mediation over Interim Financing, [Philadelphia Inquirer](#) (August 25, 2009)

United Airlines, Pilots and Machinists Seek Mediation Assistance from U.S. National Mediation Board, [ATW Online](#) (August 4, 2009)

Vermont Judge Pushes Mediation to Resolve Difficult, Old Cases on Docket, [Burlington Free Press](#) (August 6, 2009)

Mediation Ordered in ACLU Litigation Against School System for Denying Peace Group Same Access to Students as Military Recruiters, [Journal Patriot](#)

are expected to last between one and six hours, with mediators paid a flat rate of \$400 split between the parties. The first mediations are scheduled for mid-September.

[Las Vegas Sun](#) (August 28, 2009); [News 3](#) (July 24, 2009)

- **Nevada's** new foreclosure mediation program began modestly, with only ten requests for mediation in the first weeks, although by mid-August 450 requests had been filed. Nevada officials still expect 1,000 or more requests per month once the program is under way. Nevada has the highest rate of home foreclosures in the country, followed by California and Arizona. Nevada set a record for foreclosures in July, with a 94% increase over July 2008. A former casino executive has been hired as Nevada's program administrator.

[Review-Journal](#) (Aug 10, 2009); [Las Vegas Sun](#) (August 14, 2009); [13 Action News](#) (July 26, 2009); [Las Vegas Sun](#) (August 21, 2009)

- The governor of **Connecticut** signed legislation making mandatory the state's home foreclosure mediation program for all foreclosures after July 1. The state's mediation program has helped over 2,000 borrowers stay in their homes – a 60% success rate – since it began in July 2008 as a voluntary program. In Connecticut, 10.8 percent of all residential loans are late or in foreclosure, compared to 13.1 percent nationally. The Connecticut Bankers Association had initial concerns about the mediation program, but now considers it a success.

[Hartford Courant](#) (August 21, 2009); [Los Angeles Times](#) (August 21, 2009)

- A **Florida** task force on residential foreclosures issued a report proposing mandatory mediation unless the borrower and lender agree to opt out. Mediation would be free to borrowers. Vacant and abandoned properties would be exempt from the mediation program, while properties occupied by tenants or other non-borrowers which could involve several parties in mediation would be considered on a case by case basis.

[The Move Channel](#) (August 25, 2009)

- **New York** state is considering expanding its foreclosure mediation program for subprime borrowers to include all homeowners, but faces challenges due to its legislature's leadership crisis.

[New York Times](#) (July 10, 2009)

- A backlog of 46,000 foreclosure cases in **Cook County, Illinois** has caused the presiding judge to order a two-month suspension on initial court appearances by lenders in default cases. While Cook County judges grant individual mediation requests from the parties, an advisory committee is being formed to determine how to increase court-backed mediation.

[Progress Illinois](#) (July 1, 2009)

(August 11, 2009)

Department of Justice Convening Mediation over Confederate Battle Flag in Parade, [Miami Herald](#) (July 19, 2009)

Zoning Appeal to New Jersey Council on Affordable Housing Triggers Mandatory Mediation Between Council and Developer, [Independent Press](#) (September 1, 2009)

Georgia House Subcommittee Recommends Mediation over Transfer of Parks to City, [Crier](#) (August 4, 2009)

Dispute over Future of Miami River Heading to Mediation, [Miami Today](#) (July 23, 2009)

Groups Arguing over How to Promote Kingsport Enter Mediation, [Times News](#) (August 1, 2009)

As Ordered by High Court, Ohio Judges Begin Mediation with Youngstown Officials over Adequacy of Court Facilities, [Vindy.com](#) (July 29, 2009)

Other News & Initiatives

New York Nonprofit Expands with Mediation Program to Help Indebted Consumers and Creditors, [Newsweek](#) (August 20, 2009)

Virginia Tech Begins Mediation Partnership to Provide Workplace Mediation Services, [Newsleader.com](#) (August 21,

- On the first anniversary of **Philadelphia's** foreclosure mediation program, court officials say that the program has helped 1,400 people keep their homes and another 700 to postpone sheriff's sales.

[Mercury](#) (July 1, 2009)

- The mayor of **Providence, Rhode Island** signed a city ordinance requiring lenders to mediate with borrowers prior to foreclosure.

[Boston Herald](#) (August 6, 2009)

Rutgers Law School Adds Mediation Center

Due to growth in the field of dispute resolution, Rutgers School of Law-Camden is adding a Mediation Center to provide classes for both the law school and Rutgers School of Business-Camden, as well as provide training to practitioners, with an emphasis on family mediation. The Center will also provide mediation services to the public and businesses.

[Rutgers](#) (July 13, 2009)

Kentucky Mediating Criminal Cases

Mediation of criminal cases is expanding in western Kentucky, with a retired judge mediating one day a month to resolve cases in which prosecutors and defense attorneys have not been able to reach a plea bargain, such as an assault charge that resulted in a deadlocked jury at trial and then settled in mediation. The program was first begun in 2005 by a judge who prefers to include the crime victims in the mediations so they feel they are being heard, which can promote their healing. The American Bar Association is issuing grants elsewhere for new criminal mediation programs based on the Kentucky model.

[Cincinnati.com](#) (August 8, 2009)

Parliamentary Inquiry Proposes Mediation to Resolve Disputes Between Police and Protesters

Following one death and hundreds of complaints about police conduct in controlling demonstrators at the April G20 summit in London, a parliamentary inquiry by the Joint Committee on Human Rights proposed that independent mediators be used. The Committee report blamed both police and demonstrators for failing to communicate prior to the protests, leading to excessive violence, and noted that improved communication and resolution of disputes may be achieved through mediation between the police and protestors in the future.

[Reuters](#) (July 28, 2009); [Guardian](#) (July 28, 2009)

WIPO Opening Arbitration and Mediation

2009)

Workplace Mediation Program in Maui Receives Grant, [Maui News](#) (August 19, 2009)

Utah Mediation Program Focuses on Cultural Differences and Additional Information Needed by Refugees in Disputes, [Salt Lake Tribune](#) (July 7, 2009)

Justice Court in Arizona County Establishes Volunteer Mediation Program after Mediation Coordinator Position Eliminated, [Arizona Republic](#) (August 25, 2009)

Mediation of Complaints Against Denver Police Considered Successful by Lawmakers and Others, But Criticized as Mere Show by Some, [Denver Daily News](#) (Aug 12, 2009)

New York City Police Commissioner Urges Police to Mediate Civilian Complaints, [Newsday](#) (September 3, 2009)

Texas College Launches Mediation Training Program, [Woodlands Online](#) (August 25, 2009)

Maryland Community Mediation Center Temporarily Closing to Re-establish Leadership and Support, [SoMDNews.com](#) (July 24, 2009)

Community Mediation Program Gives T-shirts, Recruits for Trainings at Annual Neighborhood Party in Portland, Oregon, [Oregon Live](#), August 5, 2009; **Maryland Community Mediation Program Uses Billboard with Free Movies**

Center in Singapore

The World Intellectual Property Organization is opening its first arbitration and mediation center outside its Geneva headquarters, with a new Singapore office opening in January to serve the Asia-Pacific region. WIPO administers mediations relating to patent, trademark and copyright issues, as well as telecommunications, engineering and domain name disputes. The Singapore WIPO office will also collaborate with Singapore's Media Development Authority to address film related disputes, along with providing training and advice on mediation and arbitration.

[Bernama.com](#) (July 28, 2009)

New Zealand Court Mediation Turning to Private Mediators

The High Court in Auckland, New Zealand is introducing a pilot program using private mediators for court-ordered mediations in certain civil disputes. Judges had previously conducted all mediations and settlement conferences, which were quite successful but took a great deal of judicial time. The Chief High Court Judge is creating a roster of 12 to 15 mediators, who will be paid NZ\$1,500 (US\$1,000) for half-day and NZ\$3,000 for full-day mediations. The pilot begins on November 1 and will be reviewed in June 2010.

[Law Fuel](#) (August 10, 2009)

Other International Mediation Developments

- Mediator appointed to Parades Commission in **Northern Ireland** after upsurge in parade violence, [Ireland On-Line](#) (July 23, 2009)
- **Nigeria** celebrates tenth anniversary of Citizens' Mediation Center with evaluation of past and strategic planning for future, [AllAfrica.com](#) (July 27, 2009)
- **Mauritius** seeking to become mediation hub to serve African and Indian companies, [Le Defi Media Group](#) (July 16, 2009)
- Two doctors' groups in **Pakistan** have formed a committee to mediate between the government and the Provincial Doctors Association to address ongoing doctors' strike, [News](#) (August 2, 2009)
- **Indian** Police in Dehli turn to mediation in family matters, with mediations conducted six days a week, [Express India](#) (August 24, 2009)
- Chief Justice of Allahabad High Court encourages judiciary in **India** to see benefits of mediation beyond reducing court dockets, [Times India](#) (July 20, 2009)
- **China's** Supreme People's Court issues regulation giving mediation settlements the weight of legal judgments; mediation encouraged to deal with 13% increase in lawsuits, [China View](#) (August 4, 2009)

and Food, [Cumberland Times](#) (July 18, 2009)

Successful Pilot Project for Appellate Mediation of Family Law Cases in Minnesota Being Extended, [Minnesota Lawyer](#) (September 3, 2009)

West Virginia Juvenile Mediation Program Helps Kids Avoid Court, [Review](#) (August 1, 2009)

- **Mexican** resort opening English-language mediation center to amicably resolve expat and tourist disagreements with local businesses, [Wichita Eagle](#) (August 31, 2009)
- High Court judge in **St. Kitts and Nevis** emphasizes success of court-connected mediation, which is still unknown by many, [ZIZ](#) (August 29, 2009)

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