

From: Tennessee Association of Professional Mediators [tapm@tennmediators.org]

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MEDIATION NEWS FOR THE 21ST CENTURY™



MEDIATION NEWS

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Tennessee Association of Professional Mediators



TAPM Board for 2008-09



**Andy Little -
Speaker at Annual
Conference**

SECOND ANNUAL TAPM CONFERENCE

By Regina Newson

TAPM's second annual conference on March 28, 2008, was a great success featuring high quality speakers for the seminar component and an opportunity for members to spend time together and exchange ideas at the lunch/business meeting. Attendees came from a wide range of career paths such as counseling, social work, human resources and labor unions as well as the legal community. From talking with attendees at the conference, it is clear that TAPM is now reaching a very wide audience that includes full-time mediators as well as others that are interested in using alternative dispute resolution processes in their businesses and professions.

The TAPM Membership accepted and voted in favor of the new TAPM Board for 2008-09, and the Board has subsequently approved new officers

**TAPM
QUARTERLY
MEETING
JUNE 26 2008
11:30 a.m.
Harper's Restaurant
2610 Jefferson Ave.
Nashville, TN 37208**

**\$15.00 - Members
\$20.00 - Non Members**

**1 Hr General CLE
1 Hr. Family Law CME**

for the coming year. The Slate of officers and directors are as follows:
(See accompanying photo that includes everyone with the exception of
Doris Brocker who was unable to attend the meeting.)

Randal Mashburn - President
Leigh Ann Roberts - President Elect
Marietta Shipely - Immediate Past President
Regina Newson - Secretary
Larry Bridgesmith - Treasurer
John Williams - Director
Paul DeHoff - Director
Emily Leonard - Director
Doris Brocker - Director

Getting Past Impasse: Making Money Talk

Andy Little, nationally known author and speaker in the field of mediation, discussed the changing landscape of mediation in North Carolina where he practices and focused on techniques that he has found successful. This summary could be used for Tennessee as well. North Carolina has a system of mandatory mediation in its legal system that results in dramatically more cases being mediated than in Tennessee. Hearing Mr. Little's insight was especially useful as this state considers ways to encourage more mediation.

In his book *Making Money Talk*, Mr. Little talks about the three basic models of mediation – problem-solving, achieving understanding and traditional bargaining. He stresses the importance of learning these models because the goal of the mediator is to facilitate the parties' negotiations. His discussion helped attendees have a better understanding of the negotiation process and how to assist the parties when their negotiations become difficult.

When parties feel that they are not in control they quickly reach an impasse. As mediators, we help each side facilitate a case analysis; make sure that each party is being heard -- not just the attorneys but their clients -- and help determine what the needs of the parties are; control the flow of information and facilitate movement for decision making. Mediators can encourage risk analysis and case evaluation by helping parties formulate the range of settlement and encouraging movement from the other side. Sometimes it is the mediator's job to push all the parties to look the B.A.T.N.A. (Best Alternative to A Negotiated Agreement). It is a very simple question, "What will I do, what will I get, if I don't settle this case?"

Mr. Little explored the dynamics of traditional bargaining about money in the context of the mediation of litigated cases. He offered creative ways to respond to advocates' statements that are very common in mediation such as, "They're just not here in good faith;" "It's not the money, it's the principle;" "I'm not going to bid against myself;" "We're not going to pay a dime more than the other companies" -- and other similar comments. Numerous helpful tips were provided for mediators and advocates alike.

The Messy Business of Finalizing the Agreement

Ann Barker, a University of Tennessee professor, conducted the afternoon breakout session for family mediators using the principals learned in the morning session from Mr. Little. Attendees received lots of

"HOT" CASES IN FAMILY LAW

Helen Rogers will present "HOT" cases in Family law 2007-08;

Steve Cobb will present summaries of legislation relevant to attorneys & mediators during the 2008 legislative session

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IT'S 2008 DUES RENEWAL TIME FOR TAPM!

\$100.00 - Professional
\$50.00 - Student

TAPM fiscal year
3/1/08 to 2/29/09

Mail to
TAPM
P.O. Box 150626
Nashville, TN 37215
383-TAPM (Voice
Mail)

CIVIL PEER GROUP

MEETS
SECOND TUESDAY
June 10, 2008
7:30 A.M.
Lipscomb University
Ezell Center - 3rd flr.
Brewer Conference Room

FAMILY PEER GROUP

MEETS
THIRD THURSDAY
(Except for March, June,
September & December)
July 17, 2008
12:00 NOON

helpful tips and how do address issues in the final agreements that arise out of a successful family mediation.

Family mediators can often use the attorneys involved to help in the process. They can help formulate the BATNA for their clients. They can help them drive home the merits of their cases. "This is what the judge has done in previous cases when I have been before him" is often heard in these discussions. They can remind clients of how the judge received them when they were last in Court. Every mediator should see the clients as a team (disputants, lawyers, therapists, pastors, financial advisors and etc) and focus the communications within the team. The purpose of the caucus is to find out what has been withheld that is blocking settlement. This is true in family and civil cases. Determine what causes the block and refocus the clients and what needs to happen to settle the case. Use questions – reframe and summarize, use general questions in joint sessions, specific questions in caucuses. Questions should come from what was said in the joint session. Ask for help from the lawyers. The advantage of having the lawyers present is that they can see their clients in action. They may be able to talk with their clients and facilitate movement in the case. Take the offer and divide it into sections. Things that can be agreed on, take first. Those that will require more discussion take last. Be encouraging to both sides. Show them the movement. Talk about what they have agreed on. Ask the clients what they need to settle the case i.e. an admission of wrong doing. Again go back and ask more questions, do more summaries, keep the communication going until they begin to see the settlement.

Ms. Barker covered the Rule 31 Standards of Professional Ethics. This generated a lot of questions and general discussion of the ethics from both the attorneys and the non-attorney mediators.

PRESIDENT'S MESSAGE



By Randal Mashburn, TAPM President

TAPM is poised to have another good year, and I look forward to efforts to continue strengthening the organization and looking for more ways to better serve our members' needs.

As you know, TAPM is still a very young organization – we are just beginning our third full year of operation. During that short time, I believe we have made great strides -- establishing a structure for the organization, obtaining a strong core membership group, hiring a part-time executive director, creating a web site and promoting

OASIS CENTER

Mediation Quote:

"What we believe about ourselves can hold us hostage....[A] belief is more than just an idea – it seems to shift the way in which we actually experience ourselves and our lives. According to Talmudic teaching, 'We do not see things the way they are. We see them as we are.' A belief is like a pair of sunglasses. When we wear a belief and look at life through it, it is difficult to convince ourselves that what we see is not what is real.... Knowing what is real requires that we remember that we are wearing glasses, and take them off. One of the great moments in life is the moment we recognize we have them on in the first place. Freedom is very close to us then. It is a moment of great power."

- Rachel Naomi Remen,
Kitchen Table Wisdom
(Berkeley Publishing 1996)
at 77.

Other Cases & Resolutions:

Restoration Project Back on Track After Mediation Resolves Litigation Against City over Permitting, [Marshall News Messenger](#) (Texas) (April 19, 2008)

Mediation Continues in Defective Design and Construction Claims by County Against Eleven Contractors in Four Cases, [Beaufort Gazette](#) (South Carolina) (April 4, 2008)

County Authorizes Mediation over Land Deal with School Where Intentions Not Included in Contract Language, [The](#)

individual members through profiles on the web site. During the first two years, TAPM started a bi-monthly e-mail newsletter, established a regular schedule of monthly peer meetings, and has conducted quarterly CLE/CME lunch meetings. Most importantly, we have had annual meetings that have featured nationally recognized speakers at a very low cost to our members.

Now TAPM is looking for ways to enhance its efforts on behalf of our members. Recently the outgoing and incoming board members met together to brainstorm about the coming year. There were lots of good ideas, and I hope we will be able to bring to fruition this year some enhancements that will make membership in TAPM even more important than ever for Tennessee mediators. In the meantime, please pass along any thoughts you have on what TAPM can do to improve the organization or be of greater benefit to you. My e-mail address is rmashburn@bakerdonelson.com and my direct phone number is 615-726-7336. Please feel free to contact me at any time.

Swifter Justice: "The Last Tennessee Jury Trial?"

Commentary by Mike Sadler

As I did, many of you may have had the pleasure of reading former Tennessee Bar Association president Bill Haltom's tongue-in-cheek, yet insightful, column, "The Last Tennessee Jury Trial," in the March *TBA Journal*. From my perspective as a Rule 31 Mediator, his entertaining style also revealed some central advantages of our artful profession and highlighted trends in the area of mediation.

Mr. Haltom's article lamented the fact that "crusty old geezers who love to stand before juries" were being replaced "by litigators, mediators, conflict resolution facilitators, and holistic creative alternative dispute resolution consultants." He also noted that trial judges should be added "to the endangered species list."

While it is my impression that over the last decade or so there has been an actual increase of trial judges at levels far from any trend toward endangerment, it is also obvious that there has been a quantum increase in cases being mediated and, to a lesser degree, arbitrated. I would respectfully submit that the increased activity in A.D.R. is not because trial judges are less inclined to conduct trials, but primarily due to 1) delays and stress on courts in processing cases due to overload; and 2) the enhanced popularity of mediation resulting in large part from cost considerations as well as the growing realization of its inherent value in resolving disputes of all types.

Using Mr. Haltom's article as our point of reference in which he, in his normal humorous way, sees the virtual extinction of trial judges and trial lawyers, let's instead assume public resources were miraculously "earmarked" to assure a supply of judges adequate to guarantee a jury trial for every civil case within 180 days of its

[News-Press](#) (Florida) (April 6, 2008)

Efforts to Obtain State Approval to Build Hospitals Four Miles Apart Headed to Mediation, [The Business Journal](#) (North Carolina) (March 13, 2008); [Winston-Salem Journal](#) (March 15, 2008)

Mediation Set over Sonoma County Wheelchair-Accessible Trail Plan Pitting Hikers Against Cows, [Santa Rosa Press Democrat](#) (California) (March 16, 2008)

Dispute over Scope of Archdiocese Documents to Be Disclosed in \$72 Million Sex Abuse Settlement Goes to Mediation, [Catholic Sentinel](#) (Portland, Oregon) (March 21, 2008)

Dispute Among Owner, Neighbors and City over Three-Story "Garage Mahal" Being Mediated, [New Bern Sun Journal](#) (North Carolina) (March 14, 2008)

Bankruptcy Judge Orders Mediation Between Owner Seeking to Develop Property and Holdout Tenant, [Business Review](#) (Albany, NY) (March 14, 2008)

Appearance of Mediator Conflict of Interest in Eye of Mediation Party, [South Florida Sun-Sentinel](#) (April 10, 2008)

Court Sends Complex Dispute over Grand Bahama Port Authority to Mediation, [The Bahama Journal](#) (March 8, 2008)

Mediation Set over Development of Motorsport Park that Neighbors Oppose as Excessively Noisy,

filing. (Is that fast enough?) Let's further assume that the funds were also committed for jurors and clerical staff to support such an accelerated process. And let us also, in our hypothetical, think of a world where there was an inexhaustible supply of trial lawyers available – at a cost to the parties, of course.

However, this leads us to thinking about the actual clients being served and their limited resources -- which could not be financed from public sources. Therefore, the financial impact to them would probably not be altered substantially, and certainly not unless discovery could be drastically streamlined to fit the time frame and reduce costs.

As is the case with client's expenses, although frustration resulting from delay would be largely eliminated, other frustrations derived from other dynamics would be largely unabated. The client's general anxiety would likely be as intense as ever, but in a shorter time period. Consequently, the "pain" of litigation would be about the same for the parties themselves, but of shorter duration.

And to complete the comprehensive picture, I must point out the impact on the facilities tied to the litigation process. There would have to be more courtrooms to handle the volume in our hypothetical world in which trial judges and trial lawyers were unlimited instead of heading toward the endangered species list. Of course, added space could be owned or rented, and maybe the "fake" courtrooms Mr. Haltom mentioned as being found in the litigation sections of large firms could be utilized in a crunch. And do you think we'll need more parking garages as well?

Briefly reflecting on what we have created, where would that put us? This model would assure the longevity of jury trials, trial judges and trial lawyers no doubt -- unless we run out of money. And, certainly, justice would be still served, if only in a quantitative sense. But I suspect that the enhanced process would not improve the perception of the number of actual "winners" in the litigation process as there would always be the feeling of victory not being "complete" irrespective of the speed with which it was achieved.

Now, in contrast to that hypothetical system of unlimited resources to have every case tried to a jury, consider the administration of justice at another extreme; a system where mediation and arbitration are the dominant features. In this scenario, jury trials are reserved for that small percentage of cases that actually deserve and require them. Having such an A.D.R.-dominated system might be achieved by having two levels of mandatory mediation (or arbitration) implemented as the standard.

The first level would provide mandatory mediation to be completed within 45 days of the original filing of the lawsuit with extensions being granted only in compelling circumstances. Forty-five days would allow enough time for limited discovery. Costs for the mediation would be shared equally by the parties with possibly some support from governmental resources otherwise devoted to the litigation process.

Since we as professionals are well-aware that studies show 70-80% of all mediated cases settle the day of the mediation, the

[Drivesouth](#) (New Zealand)
(March 27, 2008)

Other News & Initiatives:

Mediation Voluntary in Large Civil Cases in Madison County, Illinois, But Nonbinding Arbitration Required, [Edwardsville Intelligencer](#) (March 10, 2008)

Marin County Courts Embrace Mediation for All Civil, Probate and Family Law Disputes, [Marin Independent-Journal](#) (California) (March 21, 2008)

Legal Culture Shifting Towards Mediation in Michigan, [MLive.com](#) (April 4, 2008)

Ohio's Foreclosure Mediation Programs Continue, [Mansfield News Journal](#) (March 26, 2008); [Kentucky Post](#) (April 1, 2008); [U.S. News & World Report](#) (April 21, 2008)

Publicity Grows for Hospital Mediation Plan, [Pennsylvania Law Weekly](#) (March 17, 2008) (Subscription Required); [The Intelligencer](#) (Philadelphia) (March 28, 2008); [6abc.com](#) (Philadelphia) (March 28, 2008)

Mediation Policy of Large Bulk Chemical Transporter's Risk Management Team Minimizes Costs with 75% Settlement Rate, [Business Insurance](#) (March 24, 2008)

Need for Clarity in Mediation on Existence and Scope of Insurance, [New Jersey Law Journal](#) (March 31, 2008) (Subscription Required)

CPR Initiative Promotes Mediation for Policyholder-

resulting 20-30% of cases that do not settle in the first round would go to a second level of mediation. The second mediation would be required to be completed within 90 days of the first one. The intervening period should provide for more than adequate discovery to enhance the prospects for settlement at the second tier. Again, the expenses for the mediation hearing would be shared.

If the generally accepted figure of 70-80% settlement rate is applied (naturally, a more conservative figure might be used), then roughly 90% of the total number of cases filed would essentially be off the docket after a mere four and a half months. Of the remaining number, another appreciable percentage would still settle through the accustomed process of settling cases, and mediation or arbitration would still be available.

The savings achieved due to the vastly reduced docket, and shorter time for managing the caseload, would be the primary financial lever. Although this would presumably result in fewer judges, the quality of those jurists who remained on the bench would, no doubt, be dramatically improved!

If, in a more ideal world, the public could vote on which of these two options it prefers, which of the models do you think they would vote for – dramatically more trials and the expense associated with that option or greater use of A.D.R.? My guess is that they would strongly favor the option that consumes less time and resources -- both financially and emotionally. If that were the case, there should be little disagreement that the system of justice should operate to serve the best interests of the public and they are best suited to decide for themselves. Perhaps, over time and with public support, we can move toward a system that would fit within the approach that stresses more A.D.R. and puts even less emphasis on the courtroom.

Mr. Haltom in his *TBA Journal* article worries about the jury trial process totally disappearing only to be rediscovered some day when a time capsule is opened. While few people would really want to see the total elimination of the right to a jury trial, the benefits and efficiencies of A.D.R. are easy to see compared to the time, expense and stress of a jury trial. Jury trials may never actually reach the extinction level that Mr. Haltom fears, but we can hope that A.D.R. ultimately receives the respect and judicial system encouragement that makes the necessity of a trial a very unusual situation.

MAY 2008

CASES & RESOLUTIONS:

Eleventh Circuit Holds Federal Arbitration Act Cannot Compel Mediation

A contract requiring either mediation or nonbinding arbitration prior to litigation cannot be enforced using the Federal Arbitration Act, because the FAA only applies when the parties have agreed to arbitrate, the U.S. Court

Insurer Disputes, [Business Insurance](#) (March 24, 2008)

Technology Contracts Should Include Mediation and Arbitration Provisions, [ITBusiness.ca](#) (Ontario, Canada) (March 24, 2008)

Ten Years After Controversial Beginning, Judicial Mediation Celebrated in Quebec, [The Gazette](#) (Canada) (April 11, 2008)

Mediation Needs to Become Mainstream in U.K. Planning Disputes, [Planning \(U.K.\)](#) (March 20, 2008) (Subscription Required)

U.K. Family Farm Disputes Are Focus in Mediation, [Farmers Guardian](#) (U.K.) (April 21, 2008)

American Named as U.N. Ombuds, Will Mediate Issues Involving U.N. Staff Around World, [China View](#) (March 14, 2008)

of Appeals for the Eleventh Circuit concluded in [Advanced Bodycare Solutions, LLC v. Thione Int'l, Inc.](#) The court carefully examined the attributes of arbitration, since processes are sometimes mislabeled. In dicta, the court emphasized the desirability of mediation, including courts requiring mediation and staying litigation pending mediation, noting that its holding was merely that the FAA cannot be used to compel mediation.

[Advanced Bodycare Solutions, LLC v. Thione Int'l, Inc.](#), No. 07-12309 (11th Cir. April 21, 2008)

North Carolina Court Requires Disclosure of Insurance Coverage Remaining Prior to Mediation

The North Carolina Business Court in [Harco National Ins. Co. v. Grant Thornton LLP](#) required the defendant to disclose the amount of insurance remaining under its liability policy immediately prior to mediation, even though the court did not require disclosure of all insurance information sought. The court relied on the requirement to mediate in "good faith" and held that refusing information about available insurance coverage was not good faith. The court noted that the North Carolina Supreme Court's governing interpretation of the discovery rule, which requires disclosure of the "true facts" of insurance coverage, is broader than the analogous federal rule.

[Harco National Ins. Co. v. Grant Thornton LLP](#), 2008 NCBC 5 (N.C. Bus. Ct. March 4, 2008)

Mediation Resolves Pet Food Multi-District Litigation in Principle

A comprehensive, cross-border settlement in principle addressing all major terms has been reached through mediation in the Pet Food Multi-District Litigation. While approval of a definitive settlement agreement is required, along with approval of both the U.S. federal court and Canadian courts, the parties reported to the New Jersey court that they are confident of final resolution. Once finalized, the administrator of a settlement fund will provide details to pet owners on how to submit individual claims.

[Marketwire](#) (April 1, 2008)

Mediation During Trial Yields \$7.5 Million Settlement for Injuries from Stepping into Hole

Five defendants ultimately agreed to pay \$7.5 million after mediation to resolve claims by a man with severe injuries from stepping into a hole left by the removal of an electrical pole on a construction site. Defendants blamed each other, and asserted that plaintiff was trespassing when he was injured. Trial was initially delayed to permit mediation, but settlement efforts continued during the trial proceedings. When the trial began, plaintiff's counsel stated that his demand would increase by a quarter million each day, and the case ultimately settled at the end of the week a million dollars higher, just before plaintiff's mother was to testify. Plaintiff's counsel agreed to use a mediator from a law firm that had represented another defendant in the case who had settled prior to the last minute mediation.

[The Legal Intelligencer](#) (April 30, 2008) (Subscription Required)

Lawsuit Filed to Spur More Insurance Mediation

Litigation has begun asserting that property insurers deliberately failed to inform Florida policyholders that they can seek mediation for hurricane claims, allegedly saving the insurance industry \$400 million in mediation and extra claims settlement costs. The case was brought on behalf of a homeowner against the Florida Office of Insurance Regulation and the Department of Financial Services, alleging that the agencies allowed insurers to ignore their obligations to offer mediation. While class action certification is not being sought, plaintiff's counsel hopes the state agencies will become more diligent in enforcing the mediation notification requirement. The state disputes the claims, stating that it does focus on getting homeowners with insurance disputes into mediation. Over 13,000 requests for mediation of hurricane claims have been submitted in the last 27 months, and about 140 are still arriving monthly. The mediation program, which has been extended to July 31, 2008, has resolved 80-90 percent of the claims.

[Orlando Sentinel](#) (April 3, 2008); [Business Wire](#) (April 2, 2008)

Movie and TV Stars Pursue Mediation

"Desperate Housewife" star Nicollette Sheridan has avoided a June 30 trial date by reaching a confidential settlement through mediation with her ex-manager over his claim for ten percent of her earnings, after a Los Angeles judge ordered the parties into mediation last October. In separate litigation against Keanu Reeves by a paparazzo photographer who claims severe injuries from the actor backing into him with a Porsche, Reeves' lawyer has sought mediation of the claims and requested that legal proceedings be suspended in the meantime.

[E! Online](#) (March 25, 2008); [E! Online](#) (March 25, 2008)

NEWS & INITIATIVES:

European Parliament Approves Mediation Directive for Cross-Border Civil Disputes

After many years of effort, a Mediation Directive for cross-border civil and commercial disputes was approved by the European Parliament on April 23, 2008. The new Directive (i) requires member states to encourage training of mediators and development of codes of conduct and other quality control measures for mediation services, (ii) gives all judges the right to invite parties to mediate, (iii) requires member states to provide judgment-like status for mediated agreements, (iv) requires mediation confidentiality and protects mediators from compulsion to give evidence, and (v) ensures that statutes of limitations and prescription periods will be suspended during mediation. Member states have three years to implement the Directive for most issues, and may choose to apply the Directive to internal as well as cross-border disputes.

[European Parliament](#) (Brussels) (April 23, 2008)

Idaho Enacts Uniform Mediation Act

Idaho has enacted the Uniform Mediation Act (UMA), effective July 1,

2008, in order to establish confidentiality for mediation communications, with specified exceptions. The legislation is intended to encourage greater use of non-judicial mediation by providing confidentiality protections that are uniform with the recent rules adopted by the Idaho Supreme Court for court-annexed mediation. The Idaho legislation 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 now been adopted in the District of Columbia and ten states: Idaho, Illinois, Iowa, Nebraska, New Jersey, Ohio, South Dakota, Utah, Vermont and Washington state.

[Idaho S.B. 1261](#)

Minnesota Adds Mediation to Fight Against Home Foreclosures

The governor of Minnesota is emphasizing voluntary mediation in response to high levels of home foreclosures and as a further step after foreclosure counseling programs. Under his program, Minnesota agencies are to offer grants to pay for mediation if counseling has not resolved the issues, but a home-saving deal may still be possible.

[Post-Bulletin](#) (April 16, 2008)

California Legislation Would Require Mediation of Public Works Disputes

Pending California legislation would require mediation at the option of the claimant for disputes of \$50,000 or more arising from public works contracts involving local agencies, cities and counties, followed by binding arbitration if mediation is not fully successful, unless another dispute resolution process was provided in the contract. If the parties are unable to agree on the mediator or arbitrator, the legislation mandates selection through the American Arbitration Association. If litigation is required to enforce the provisions, the legislation provides attorneys' fees and costs to the prevailing party.

[California S.B. 1642](#) (April 3, 2008)

Resignations Undercut Florida's Open Government Mediation Program

Florida's Open Government Mediation Program began in the early 1990s with the Attorney General's office acting as an intermediary to assist requesters in getting access to documents or meetings of government agencies, rather than agencies spending substantial resources fighting public access. The process was so successful that it was enacted by the state in 1996 and grew to over 120 cases per year. Recently, Florida's Attorney General McCollum has not made the program a priority and top-level turnover has resulted in a one-third reduction in the cases being handled, raising concern among media groups. However, Attorney General McCollum stated that the mediation process has been very successful and promised it will continue.

[Orlando Sentinel](#) (March 16, 2008)

Missouri Bar Begins Mediation Program

for Attorneys in Office Conflicts

Attorneys in disputes due to economic changes at their firm or communication problems will be offered free mediation by the Missouri Bar in a program beginning June 1, 2008. The process requires the consent of both parties and will be confidential unless serious ethical violations are uncovered. The Bar will only pay out of pocket costs for mediators, but more than 100 attorneys have volunteered.

[Missouri Lawyers Weekly](#) (April 28, 2008) (Subscription Required)

Maryland County Mediating Misdemeanors

Maryland's Worcester County has been sending misdemeanor criminal complaints to mediation and discovered that the results are excellent. Since the mediation program began three years ago, over 360 cases have been referred to the one-person mediation office after review by prosecutors. About two-thirds of the cases were mediated and all but one were successfully resolved. The mediation program, which is free to the parties, has been supported by a modest grant from the Maryland Judiciary's Mediation and Conflict Resolution Office, and hopes to become a permanent county program.

[The Daily Times](#) (March 21, 2008)

Tennessee Judges Training in Mediation

Reflecting the growing importance of mediation and the pressure on court dockets, 29 Tennessee judges, including four Supreme Court justices, are attending a five-day mediation training. State court figures indicate that 1,500 cases were mediated in the first quarter of the year.

[The Tennessean](#) (April 15, 2008)

Online Mediation Moves to "Second Life"

Law students in a dispute resolution class at the University of Dayton Law School are honing their skills in mediations held in the online world of Second Life, where each participant is shown as an avatar or animated character who communicates through its user's voice or by text messages. In addition to the general communication among the group, separate private Instant Messages can occur simultaneously. Compared to communicating through conference calls, personality can come through in how the avatars are dressed and move. Biases based on appearance or voice can be eliminated, but gestures and facial expressions that are important to communication are also lost.

[Dayton Daily News](#) (March 16, 2008)

Timing Flexibility for Mandatory Mediation Increases Settlements in Toronto

Evaluation of Toronto Superior Court's mandatory mediation requirements shows greater success by allowing more flexible timing, rather than requiring mediation to occur too quickly, although some practitioners think the delay sometimes results in parties incurring excessive legal fees which

can impede settlement. Counsel have shifted perspective and appear to now be mediating to get cases settled rather than merely as a necessary step to get to trial. The Chief Justice behind the program has concluded that “mediation is the cornerstone of the justice system” in the province.

[Law Times](#) (Canada) (April 21, 2008)

Victoria, Australia Expanding Court-Connected Mediation

Australian Supreme and County Courts will be able to send cases to mediation for the first time in a pilot project being started in Victoria, which will include large commercial disputes. Based on a Canadian model, senior judges will be involved to give the mediation process their imprimatur. The project is allocated A\$3.7 million in the current budget package for the judicial system. In addition, the budget includes a A\$5.8 million expansion of the mediation program in Magistrate Court and A\$6.2 million to expand alternative dispute resolution regionally in Victoria.

[The Age](#) (May 4, 2008)

U.K. Group Urges Mediation to Remedy Design Theft

The leading U.K. trade organization opposing design theft has launched a national campaign to encourage mediation of intellectual property disputes. The organization, known as ACID (Anti Copying in Design), launched its pro-mediation campaign with the slogan “Mediate to Resolve” on the group’s tenth anniversary in April. However, ACID has long been involved in resolving disputes, with a mediation panel chaired by a former High Court Judge and a countrywide network of mediators. ACID has handled 2,000 mediations and states that only a handful have gone on to court, as most result in royalty or licensing agreements. ACID’s mediation campaign is supported by the Minister for Intellectual Property.

[ITNews](#) (Rome) (April 7, 2008)

Other International Mediation Developments

- **U.K.** market becoming saturated with retired judges seeking to become mediators and arbitrators, [The Lawyer](#) (March 24, 2008) (Subscription Required)
- **Czech** dispute resolution program begins for consumer complaints, [Prague Post](#) (March 19, 2008)
- Mediation spreading to state of Andhra Pradesh, **India**, with mediation centers being set up in 11 of 23 districts, [Hindu](#) (March 23, 2008) (Subscription Required)
- Bar association opposes judicial involvement in mediation in Delhi, **India**, [Hindustan Times](#) (March 16, 2008) (Subscription Required)
- Chief Justice of **India** encourages mediation at conference on Alternative Dispute Resolution to bolster public confidence in judicial system, [Howrah News Service](#) (March 29, 2008)
- Commercial mediators being trained in **South Africa** to respond to new Companies Bill and provide better alternative to arbitration, [AllAfrica.com](#) (March 25, 2008)
- Victoria’s Office of the Small Business Commissioner is unique in **Australia**, using mediation to resolve over 4,000 disputes in five years, including many franchisee-franchisor conflicts, [Herald Sun](#) (May 1, 2008) (Subscription Required)

- Australia funding pilot community mediation programs in **Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu** and **Vanuatu**, [Radio New Zealand International](#) (March 19, 2008)
- Trial lawyers are becoming scarcer in the **Philippines** due to high demand for tax and corporate lawyers, resulting in the judiciary putting greater emphasis on court mediation programs, [Inquirer.net](#) (May 6, 2008)

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