



# MEDIATION NEWS

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Tennessee Association of Professional  
Mediators

## Quarterly Meeting Reviews “Hot Family Law Cases” and Legislation

By Regina B. Newson

TAPM held its second quarterly meeting of the year on June 26, 2008, and the meeting was well-attended. The presenters were excellent – Steve Cobb, an attorney and a former legislator, and Helen Rogers, an attorney and practicing mediator.

Steve Cobb started off with a brief summary of legislation that is relevant to family attorneys and mediators which was passed during the 2008 legislative session. Some areas of interest: Public Chapter 793 (No permanent change in custody because of military service); Public Chapter 994 (New reason to avoid mediation – Judge may choose not to order mediation); Public Chapter 868 (Child Support continues beyond age 18 for disabled children especially in situations where the parents are financially able to contribute to the care of the child); and Public Chapter 1040 (Provides that children 17 in foster care be told which services are available to them when they leave foster care).

Steve told us that the most important part of this legislative session were the bills that did not pass, notably that certain legislators were trying to put fault back into division of property and the DADS group was attempting to once again have equal physical custody be the presumption. Likely these bills will come back next year for further consideration.

To read these bills, go to <http://tennessee.gov/sos/acts/index.htm> Scroll down to Public Acts. Insert Chapter Number, {must be 4 numerals, so add 0 at beginning if less than 4 numbers}, put Chapter in the search field. At bottom of page, click on Chap Number for full final statute. Click on SB or HB for history of the bill. This is a good way to follow legislation during the session. Usually you follow legislation with a SB or HB number or put in description of the



**Helen Rogers spoke at  
Quarterly Meeting**

**SAVE THE DATE!**  
**TAPM QUARTERLY MEETING**  
**Thursday, Sept 25, 2008**

**Harper's Restaurant**  
**2610 Jefferson Street**  
**11:30 Lunch Served**  
**12:00 Noon Program Begins**  
**1 hour CLE to be applied for**  
**\$15.00 TAPM MEMBERS -**  
**includes lunch!**  
**\$20.00 Non TAPM Members**  
**– includes lunch!**

We are pleased to invite Chris Guthrie, Law Professor at Vanderbilt University Law School. Prof. Guthrie is a wonderful speaker on the subject of Negotiation. He is the author of numerous articles about negotiation, particularly what are the principles and

bill.

Helen Rogers gave an excellent summary of new cases that have come before the Court in the last year. Her materials can be found on our website at the following link: <http://www.tennmediators.org/pg25.cfm>. (The page numbers next to the highlighted cases below refer to those materials.)

She began her presentation discussing alimony and the changing landscape of that area. In ***Stacy Davis v. Robert Davis, (P. 3)***, the Wife had to pay the Husband \$800 per month for 36 months plus attorneys fees.

In ***Bertuca v. Bertuca (p. 5)*** the Court of Appeals overturned a trial court decision on the valuation of businesses and the division of those business. In ***Keyt v. Keyt (p. 6)*** the Supreme Court chopped away at the notion that substantial contribution of the owning spouse may be given closer scrutiny than previously, before the court even gets to the contribution to appreciation of the non-owning spouse.

In a case where the father had been voluntarily paying higher child support and private school tuition, the court required him to pay the higher support but not the full private school tuition, as they did not have the financial capacity to pay. ***Billingsley v. Travis (P. 8)***

The case ***of In re: Adoption of F.M.B.P.W.(P.9)*** reminded us that in a case where there is no personal service, there must be due diligence to find the defendant, particularly when his rights are being terminated. Otherwise the Court of Appeals will send the case back and the parties must start over.

***Sampsel v. Sampsel (P. 14)*** gave out the worst parent of the year award to the mother in a case, where the child did not get along with the stepfather and consequently the child's grades dropped, behavior problems were very acute, child accused of stealing, etc. Consequently custody was changed to father.

The new grandparent visitation law was challenged in the case of ***Carr. V. McMillan (P. 18)***. The grandparents were awarded 78 days based upon the six criteria in the statute, primarily because the child had lived in the grandparents home and mother had died.

Ms. Rogers also covered areas in Civil Procedures such as personal service, spoliation, pleadings, court misconduct, sanctions to attorneys and local rules. It is impossible to cover all the topics in the newsletter, so you should take advantage of the our website for summaries of the important family law cases

predictors of why people come to settlements. He can teach us how these principles can be used to help our clients reach settlement in mediation. He teaches Negotiation and Alternative Dispute Resolution at Vanderbilt Law School

**FAMILY PEER GROUP  
MEETS THIRD THURSDAY  
(Except for March, June,  
September & December)  
July 17, 2008  
August 21 2008  
12:00 NOON  
OASIS CENTER**

## Mediation Quote:

"[W]e must understand that one person's positive insights may be another's distressing notions. Common sense may be only that which a particular individual fashions to fit the individual's emotional or intellectual needs. Nevertheless...the need to stand in the other person's shoes, to understand everyone's real interests and needs, to explore options in a genuinely non-judgmental manner, and to speak and listen empathetically, will not be lost on business people in the farthest corners of the world. We must prepare for the emotional component of mediation by understanding each other at the deepest levels. We must acknowledge emotion. We must use it constructively. So that we can talk."

- David W. Plant, *We Must Talk Because We Can: Mediating International Intellectual Property Disputes* (International Chamber of Commerce 2008)

in 2007-2008..

The new laws that Steve Cobb presented and the cases that Helen Rogers presented made this one of TAPM best informational meeting that I have attended for CLE.

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## **FOCUS ON THE MEDIATOR, BENJAMIN PAPA**

By Paul T. DeHoff, Attorney/Mediator, Murfreesboro

*(The TAPM Newsletter is beginning a series of profiles of its members. A different mediator will be highlighted in each issue.)*



**Benjamin Papa, Attorney/Mediator in Brentwood, Tennessee**, has a focus on family law that allows him to fully utilize his varied background and skills. His experience, education, and training in law, psychology, and religion allow him to see and hear his clients' stories from a multidimensional perspective—a perspective that allows him to understand his clients' needs and chart the proper legal course to smooth resolution of their legal, mediation, or consultation needs.

Prior to forming Forward Focus, PLLC with TAPM Vice-President Leigh Ann Roberts, Ben owned and operated Family Law Mediation Services where he successfully mediated dozens of disputes. Before becoming a mediator, Ben worked in Nashville as an attorney in private practice, where his legal work focused primarily on medical malpractice and other types of healthcare related litigation.

Ben earned a Bachelor of Arts in psychology from Vanderbilt University, a Juris Doctor from Ohio State University, and a Master of Divinity from Vanderbilt Divinity School. Working in a litigation law firm after law school, he represented clients in Davidson County and throughout the State of Tennessee. In addition to being listed as a Rule 31 Mediator for general/civil and family cases, Ben has also been trained through the Lombard Mennonite Peace Center to conduct mediation within churches and other religious organizations. (It is interesting to note that when President John Kennedy initiated the United States Peace Corps

## **Check This Out:**

“Collaboration Not Litigation Ale” may be perfect for toasting successful mediations; the ale is the product of collaboration between two microbreweries which resolved a potentially nasty dispute between them over Belgian-style ales each had developed and given the same name. [Mediationchannel.com](http://Mediationchannel.com) (May 23, 2008), [Avery Brewing Company](http://Avery Brewing Company)

## **Other Cases & Resolutions:**

**Ten Million Dollar Claim over Cheese on McDonald's Hamburger Sent to Mediation, [The Record](http://The Record)** (West Virginia) (May 23, 2008)

**Mediation Begins over Deaths of Six of Nine Firefighters Killed in Sofa Super Store Blaze, [Charleston Post Courier](http://Charleston Post Courier)** (June 17, 2008)

**Mediation over Large Development Opposed by City Hopes to Avoid Scheduled 40-Day Hearing of Ontario Municipal Board, [Guelph Mercury](http://Guelph Mercury)** (June 13, 2008)

**Mediation Team Making Progress on Alternatives to Evergreen Point Bridge, [Seattle Post Intelligencer](http://Seattle Post Intelligencer)** (June 19, 2008)

**Federal Appellate Court Sends Oklahoma State Officials and Businesses to Mediation over New Immigration Law, [Tulsa World](http://Tulsa World)** (June 30, 2008); [KTEN](http://KTEN) (Oklahoma) (June 28, 2008)

**State Legislator Presses All Parties and Agencies for Mediation of Tellavast Contamination Dispute, [Bradenton Herald](http://Bradenton Herald)** (Florida) (June 28, 2008) (Subscription Required)

**Federal Appeal Delayed Pending Mediation by Adult Superstore and County over Provisions in County**

Programs, he used as a model the organizational approaches and settlement techniques for world issues and dispute resolutions employed by organizations formed by the Mennonites and the Church of the Brethren.)

While having a broad range of contacts in other areas of his legal practice (in addition to local bar and mediation associations, he is a member of Mediators Without Borders, an international peacemaking organization), Ben continues to focus upon Family Law. Black's Law Dictionary defines "Collaboration" as, "The act of working together in a joint project; commonly used in connection with treasonably cooperative efforts with the enemy." Collaborative Family Law strives to resolve issues at the earliest practical opportunity by allowing each party a direct voice in resolving the conflict. This encourages opposite sides to work together to achieve a goal of common interest in a manner acceptable to both parties. Using a facilitative family mediation approach, Ben seeks to minimize "shuttle mediations," thereby seeking to avoid psychological separation. The goals are to be a peacemaker, minimize stress, minimize costs, and streamline the process of resolution and settlement.

Ben is the only attorney-mediator in Middle Tennessee to currently hold the distinction of *Advanced Practitioner* through the Family Section of the Association for Conflict Resolution, a national alternative dispute resolution organization.

Ben's mediation practice focuses on the areas of Family Law (e.g. divorce, post-divorce disputes, domestic partnership dissolutions), Family Mediation (parent/child conflict, house rules, and division of labor), Elder Law and Estate Administration (e.g. disputes related to wills, trust, property distribution, and other estate matters; disputes with hospitals, assisted living facilities, or nursing homes; disagreement about the appropriate level of care for an elderly family member; and disputes between caregivers and elders), and mediations with churches and other religious organizations.

As a parent, attorney, and mediator, Benjamin Papa draws upon a wide range of experience and training to facilitate an affective, focused resolution of the issues. He may be reached in Brentwood, Tennessee at telephone (615) 523-1327.

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**Book Review: By Marietta Shipley,  
The Mediation Group of Tennessee**

## **HOW TO MAKE MONEY AS A MEDIATOR** (And Create Value for Everyone)

Authors: Jeffrey Kravis and Naomi Lucks - 30 Top Mediators Share Their Secrets for a Successful Practice (2006) (Jossey Bass Publisher). May be obtained online at [www.amazon.com](http://www.amazon.com) or on [www.mediate.com](http://www.mediate.com). Cost: \$30.

Tennessee has over 900 mediators that have been trained and pay \$100 per year to remain on the list of Rule 31 Mediators. By the end of the year, we will know how many mediations are conducted in

**and State Laws, [Rome News-Tribune](#) (Georgia) (June 25, 2008)**

**Ohio Attorney General's Office Agrees to Mediate Sexual-Harassment Cases that Resulted in Attorney General's Departure, [RedOrbit](#) (June 17, 2008)**

**University of Hawaii and Former Head Football Coach Agree to Mediation Prior to Contractually Required Arbitration, [Honolulu Advertiser](#) (May 28, 2008)**

**West Virginia University's \$4 Million Lawsuit Against Ex-Football Coach Heading to Mediation, [Associated Press](#) (West Virginia) (May 30, 2008)**

**City Pushing Mediation in Order to Merge Firefighting Services, [Muskego Now](#) (Wisconsin) (May 21, 2008)**

**Judge Orders Mediation in Proposed Merger of Three Firefighting Services, [FirefightingNews.com](#) (Georgia) (May 22, 2008)**

**Progress in Mediation of Plan to Consolidate Fire Coverage, [The Stamford Advocate](#) (Connecticut) (May 21, 2008)**

**Developers of Senior Living Facility to Mediate with Neighbors, Despite City Approval, [Pleasanton Weekly](#) (California) (June 12, 2008)**

**City, Township and Landowners Mediate over Large Septic System, [Austin Post Bulletin](#) (Minnesota) (May 21, 2008)**

**Eleven-Year-Old Dispute over Neighborhood Access to Lake Sent to Mediation, [The Jackson Citizen Patriot - MLive.com](#) (Michigan) (May 7, 2008)**

**Builders Remedy Suit Ordered to Mediation, [Red Bank Hub](#) (New**

Tennessee, and how many mediators conduct those mediations. What does it take to be able to say “I’m a successful mediator who makes money at mediation and I’m passionate about mediation.” Do you aspire to be one of those persons?

These two authors have interviewed 30 “successful” mediators across the country and reveal their secrets. Most of the secrets are very logical, but we need to be reminded of them as we position ourselves as professional mediators.

The Five common elements of a “successful mediator” are

1. **They love to mediate and are very good at their job.**
2. **They are likeable and inspire trust. They never give up.**
3. **They cultivate champions, by having relationships with people who are in a position to refer cases.**
4. **They work hard not only in mediation but in building their network of contacts and marketing. They invest their time and capital. They are patient.**
5. **They charge more than the going rate, even for routine cases.**

Paul Monicatti sums up marketing by saying that his approach is the four R’s: Results that lead to Reputation that lead to Referrals that lead to Repeat business.

One of the most important things that good mediators do is to create value for their clients. Listening is not just a skill we learned in mediator school. It forms the basis for information that can be used when times get tough. Attorneys, especially, want someone who can get them out of a tough situation by being creative, finding options, and surprising ways to make things work. Krivis says that what every mediator is really selling is Hope - someone who picks up the pieces, gets the controversy back on track and hopefully finds results. If it doesn’t settle, he says, “come back, we’ll finish up, at no charge.”

In this book there are chapters on visible and invisible marketing and practical considerations on being a sole practitioner or part of a law firm or panel. The later chapters discuss setting your fees, how much money can you earn, finding your niche and marketing to that niche and finally Staying Alive.

The final admonition, which is a bit scary, is that mediations unlike lawsuits only last one day or a few days. You have to have “intestinal fortitude to keep doing the marketing when times are slow. Swim or die. You just have to get used to it.”

This book is well designed and a good read. It offers practical, inspirational, motivating and very forthright information about the perils of changing careers with a high steady income and becoming a successful mediator who makes money. But as we all knew, you got to love to mediate and you have to show results. They are your best

Jersey) (May 8, 2008)

**Houston Rodeo Rejects Justice Department Offer to Mediate Concerns of Minority Groups,** [Houston Chronicle](#) (May 21, 2008)

**Lack of Settlement in Mediation Leads to Competing Litigation in U.S. and Korea,** [Daily Report Online](#) (May 8, 2008)

**U.K. Human Rights and Equalities Commission Helps Churches Mediate Between Gypsies and Local Communities,** [Essex Echo](#) (May 9, 2008)

**ANZ and Opes Prime Agree to Mediate over Stockbroker’s Collapse,** [Business Spectator](#) (Melbourne) (May 22, 2008)

**New Zealand University Agrees to Mediate with Union over Layoffs in Restructuring,** [Stuff.co.nz](#) (May 24, 2008)

**Judge Delays Litigation for Mediation over Nonpayment of Royalties of €400,000 for Music Festivals over Several Years,** [Irish Times](#) (June 16, 2008)

## **Other News & Initiatives:**

**Ohio County Court Beginning New Mediation Foreclosure Program,** [The Plain Dealer - cleveland.com](#) (June 24, 2008)

**Kansas Agricultural Mediation Service Helps Hog Farmers Under Pressure from High Input Costs,** [CattleNetwork.com](#) (Kansas) (June 4, 2008)

**Elder Mediation Growing as Parents Live Longer and Families Fight,** [Long Island Business News](#) (May 23, 2008)

**Mediation Should Help Businesses Like Microsoft and**

marketing tools and provide the most satisfaction.

**Yahoo Put Together Deals, [The Christian Science Monitor](#)**

I highly recommend the book.

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## PRESIDENT'S MESSAGE



**By Randal Mashburn, TAPM President**

The TAPM Board is moving forward with a number of special projects this year that will enhance the value of membership in TAPM. In addition to the normal focus on presenting low-cost and free opportunities for training, CME and peer discussions through our annual meeting, quarterly meetings and frequent peer group breakfast and lunch meetings, the Board is trying to complete several new projects before year-end.

One exciting addition will be a Member Benefits Page that will include special discounts with various vendors and service providers available to TAPM members. We are also exploring several new public education projects to promote the role of mediation in Tennessee. Another project is expanding the web site to provide links to pro bono opportunities for TAPM members.

Of course, the new projects are in addition to the many existing benefits of being a TAPM member. In that regard, I would urge everyone to be sure they keep their profiles updated -- or provide the information if you have not previously done so. In recent times, we have heard from a number of members who are getting business from parties and attorneys who have located them through our web site. If you are not taking full advantage of this feature, you are missing a real opportunity. If you need help in setting up your profile or in making changes, please contact Lisa Smith at 615-383-8276 or e-mail her at [tapm@tennmediators.com](mailto:tapm@tennmediators.com).

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JULY 2008

## **CASES & RESOLUTIONS:**

## **California Court Tells Insurers with Potential Coverage to Attend Mediation in Person**

Noting the benefits of appellate mediation and the desirability of participants attending in person, a California appellate court warned insurers in [Campagnone v. Enjoyable Pools & Spas](#) that even the potential of coverage requires a representative with full settlement authority to attend court-ordered appellate mediations in person, unless excused in writing by the mediator. Further, the court warned parties and counsel that they may also face sanctions if they fail to notify insurers with potential coverage about appellate mediations. The court noted that California's strict mediation confidentiality provisions prevent mediators from disclosing whether anyone fails to attend, but that an aggrieved party may do so in seeking sanctions from the court. The court withheld sanctions in this case only because no previous opinion had spelled out these requirements, even though the insurer was only liable for amounts in excess of \$3 million and the judgment in the trial court was \$2.4 million.

[Campagnone v. Enjoyable Pools & Spas](#), No. C055050 (Cal. App.3d Dist., May 30, 2008)

## **California Court Penalizes Lack of Mediation Attempt with Absent Party**

A California appellate court overturned a lower court and denied attorneys' fees because the prevailing party did not attempt mediation prior to filing suit, as required by the standard California residential purchase agreement. Even though defendant had moved away, and plaintiff did offer mediation when defendant was found by an investigator to serve the complaint, the court ruled that plaintiff should have hired its investigator prior to filing suit, in order to seek pre-suit mediation as required by the form agreement. The court emphasized the importance of mediation in order to avoid results like the outcome of this case, in which plaintiff spent more than \$113,000 in attorneys' fees to recover a \$13,000 judgment.

[Lange v. Schilling](#), No. C 055471 (Cal. App. 3d Dist., May 28, 2008)

## **Mediation Clause Enforced, Despite Maneuvering over Judicial Forum Selection**

The contract between a U.S. licensee and an Australian licensor provided for disputes to be resolved through mediation in Sydney and, if necessary, litigation in New South Wales. But when a dispute arose, the U.S. company quickly filed suit in the U.S. and the Australian court later stayed its case pending the U.S. proceedings. However, the Australian court required the parties to comply with the mediation provision in their contract and proceed with mediation in Sydney, noting that if they had difficulties choosing a mediator the court would do so.

[Armcel Pty Ltd. v. Smurfit Stone Container Corp.](#), [2008] FCA 592

(Australian Fed. Ct., May 2, 2008); [Mondaq Bus. Briefing](#) (May 27, 2008) (Subscription Required)

## **Subpoena of Mediator Upheld on Appeal in New York**

A New York appellate court affirmed the appellate division's upholding of a subpoena of a mediator in [Hauzinger v. Hauzinger](#), stating that one party signed a waiver releasing the mediator from maintaining confidentiality and the other party waived confidentiality by seeking disclosure from the mediator. The mediator was not allowed to assert a qualified privilege, since the privilege was waived by the parties, but the court expressly did not rule on the applicable state statute.

[Hauzinger v. Hauzinger](#), [43 A.D.3d 1289, 842 N.Y.S.2d 646](#) (NY App. 4th, Sept. 28, 2007), [aff'd](#), [2008 NY Slip Op. 05781](#) (NY Ct. App., June 26, 2008)

## **Extensive Water Rights Mediation Resolving Decades-Old Dispute**

Over 60 representatives of conservation groups, power producers, federal agencies, ranchers, boaters and downstream communities reached a tentative settlement of water issues in Colorado's Upper Gunnison Basin, which have been in contention for decades and in litigation for the last seven years. The mediation lasted nine months and the representatives still must obtain final approval from principals and final decision-makers. The proposed settlement will resume annual peak flows in the springtime from upstream dams to return the Gunnison River to a more natural condition, even though that leaves less water for hydropower during high demand periods in July and August. Final settlement is sought by September in order to avoid a lengthy and contentious trial.

[Gunnisontimes.com](#) (Colorado) (June 12, 2008)

## **Alaska State Senator Proposes Mediation over Pipeline**

In an effort to avoid a difficult decision over an exclusive license and \$500 million incentive for a natural gas pipeline from the North Slope to Alberta, an Alaska state senator has proposed mediation among interested parties in order to provide a pause and an opportunity for creative alternatives to emerge. The senator stated she would ask senate and house leaders to hire a professional mediator. The state revenue commissioner and others oppose mediation and seek an up or down vote on the license.

[Anchorage Daily News](#) (June 19, 2008)

## **Telecom Companies Seek Further Extension for Mediation**

AT&T Nevada and Sprint were ordered by the Nevada Public Utilities

Commission to mediate and try to resolve a dispute over interconnection agreement terms based on FCC merger terms. The parties were required to report to the PUC by July 1 on their mediation progress, but are seeking an extension until September 1 to permit further time for mediation.

[TR's State NewsWire](#) (June 24, 2008) (Subscription Required)

## **NEWS & INITIATIVES:**

### **Final Rules of Civilian Board of Contract Appeals Cover ADR**

The Civilian Board of Contract Appeals (which resulted from the 2007 consolidation of numerous contract appeals boards) published final rules to clarify procedures for alternative dispute resolution, among other things. The Board encourages ADR even on matters not before it, noting that mediation is most often used, but many other processes are available. The rules permit a panel judge to act as an ADR neutral and then (if ADR has not been fully successful) to resume work as a judge, if desired by the parties. The parties are to enter an ADR agreement specifying the neutral, the type of ADR desired, scope of related discovery and timing and location of ADR. However, use of ADR does not toll any statutes of limitation.

[Wileyrein.com](#) (May 14, 2008); [Explanation of Final Rule](#) (May 12, 2008); [48 C.F.R. 6101.54](#) (Subscription Required)

### **Michigan Law Establishes Mediation of Property Tax Disputes**

New Michigan legislation authorizes the Michigan Tax Tribunal to mediate appeals of agency decisions, if the parties agree to mediation and select a certified mediator. The Tribunal will establish a process for creating a roster of certified mediators, who must have five years of tax experience in the previous seven years. The Tribunal may charge mediators an annual certification fee, as well as charging parties a fee for mediation. Mediators must disclose their rates and experience to parties, and report the results of mediations to the Tribunal.

[Michigan H. 4433](#) (Enacted May 8, 2008)

### **Connecticut Enacts Foreclosure Mediation Program in Mortgage Relief Bill**

On June 18, Connecticut enacted wide-ranging mortgage relief and industry reform legislation, which included a foreclosure mediation program. The law requires lenders to tell delinquent borrowers about the mediation program when seeking foreclosure. If the borrower chooses mediation, lenders are required to participate, which could delay foreclosure by 60 days or longer.

[Hartford Courant](#) (June 20, 2008)

## **Iowa Reactivates Flood Claim Mediation Program**

Iowa's Insurance Commissioner met with insurers to reactivate a flood claim mediation service in response to extensive flooding since May that resulted in 42 counties being declared disaster areas. While full details on implementation will be available soon, the Iowa Insurance Division plans to provide mediators under contract for consumers and insurers with settlement disputes. The Iowa flood mediation service was first begun after mammoth floods in 1993. State officials believe the damage from the current flood is even greater, calling it a 500-year event.

[NU Online News Service](#) (June 20, 2008) (Subscription Required)

## **Kentucky Mediating Serious Criminal Cases**

Felony criminal cases are being mediated regularly in a pilot program of Kentucky courts, despite opposition from prosecutors. Prosecutors are used to negotiating plea arrangements without outside assistance and chafe at confidentiality restrictions which prevent use in court of any admissions in mediation. However, state judges are pleased with the mediation program, which is reducing both court and prison congestion, while achieving outcomes that satisfy victims and their families without the burden of lengthy trials.

[The Legal Intelligencer](#) (May 26, 2008)

## **Caseload of Oklahoma Supreme Court Reduced by Mediation**

The total number of cases handled by the Oklahoma Supreme Court is down 28% from 1999 to 2006, with the number of written opinions dropping from 250 a year in 2000 to only 99 in 2006. The Chief Justice attributes the decline to mediation, as well as legislative reforms and the rising cost of litigation.

[Insurance Journal](#) (June 10, 2008)

## **Mediation Gaining in Employment Disputes as Arbitration Declines**

Employers are increasingly turning from arbitration in employment disputes, due to the increased costs of discovery, potential for rogue outcomes that cannot be appealed, and uncertainty over whether mandatory arbitration provisions will be upheld. With overtime litigation continuing to increase around the country, many defense lawyers are encouraging clients to turn to mediation instead of arbitration. Wage-and-hour litigation increased over 200% between 2001 and 2007 and overtime lawsuits have displaced employment discrimination as the most common form of employment litigation.

[The National Law Journal](#) (June 9, 2008) (Subscription Required)

## **Disclosure and Apology for Medical Errors Reduce Claims**

Medical providers are increasingly offering earnest apologies and full disclosure of mistakes to their patients, along with fair compensation, in an effort to resolve matters promptly and avoid contentious medical malpractice litigation. Medical centers report that claims and lawsuits drop substantially when such practices are followed, and that overall costs are significantly reduced even while more patients are compensated. The American Medical Association, the American Hospital Association and other medical groups now encourage disclosure. Further, 34 states now prevent use in litigation of apologies for medical errors.

[New York Times.com](#) (May 18, 2008)

## **Litigation Funding of Smaller Parties Provides Mediation Counterweight**

A litigation funding company in Australia provides resources in carefully selected cases to individuals and small businesses involved in disputes with larger entities who may try to use their advantage in resources to obtain procedural wins or force unfair settlements. The funding company sees itself as helping to level power imbalances, but selects only cases it feels are likely to generate a good return. The managing director believes mediation is the best option for resolving business disputes, but that mediation works better when the smaller party has options.

[Sydney Morning Herald](#) (June 7, 2008)

## **Debt Collector Grows Using Mediation**

A debt recovery service in the U.K. attributes its rapid growth to focusing on mediation rather than litigation. In addition to obtaining payment, the service seeks to rebuild business relationships between its clients and their debtors, and brings a friendly approach to its work. However, the service emphasizes that it has a 100% win rate in the small number of cases it is forced to take to court.

[Wales Online](#) (May 30, 2008)

## **Other International Mediation Developments**

- Mediation's hidden benefits useful to minimize both financial and non-financial burdens of U.K. employment disputes, [HRZone.co.uk](#) (May 22, 2008); [TrainingZone.co.uk](#) (June 12, 2008); [Abeceder](#) (July 2, 2008)
- U.K. Law Commission proposes mediation for housing disputes, based on "triage plus" system, [Liverpool Daily Post](#) (May 20, 2008)

- **Australia** simplifies bidding for government legal work and requires agencies to use more alternative dispute resolution, [The Australian](#) (May 23, 2008)
- **Malaysia** encouraging use of mediation, among other judicial reforms, and plans to soon draft a Mediation Act, [Malaysia Star](#) (June 18, 2008)
- Olympic Council of **Malaysia** now includes alternative dispute resolution in its constitution and encourages national sports associations to seek mediation of disputes, [OCM News](#) (June 30, 2008)
- After long reliance solely on arbitration in **Vietnam**, newest arbitration organization also offers mediation, [Thanh Nien Daily](#) (Ho Chi Minh City) (May 23, 2008)
- U.S. college seeks to provide culturally appropriate mediation training in **China**, [Boston.com](#) (May 29, 2008)
- **Uzbekistan** and United Nations Development Programme are organizing seminars around country on business arbitration and mediation, [Journal of Turkish Weekly](#) (June 19, 2008)
- Groundbreaking decision by the High Court for the **Indian** states of Punjab and Haryana allows mandatory mediation order despite objection of parties, [The Statesman](#) Kolkata, India (May 26, 2008)
- World Bank providing funds to International Centre of Alternative Dispute Resolution in **India** to train mediators to settle commercial disputes, [Press Trust of India](#) (June 30, 2008)
- Karachi Centre for Dispute Resolution holds six-day mediation workshop for judges, [Pakistan Press International](#) (June 30, 2008) (Subscription Required)
- **Abu Dhabi** seeking to establish world-class commercial court with specialized mediation capabilities, [AME Info](#) (United Arab Emirates) (June 30, 2008)
- Thirty-one Ethiopian judges and registrars receive three-day mediation training; Federal Supreme Court of **Ethiopia** agrees to send 80 cases to mediation, [Allafrica.com](#) (May 23, 2008)
- Debt mediation company launched to help heavily indebted **South African** consumers recover from debt load, [Business Day](#) (June 14, 2008) (Subscription Required)

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