



Associates in Dispute Resolution, LLC

Mediation | Arbitration | System Design

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- Focus on ADR Associate, Michelle Minor
- Recent Mediation Cases & Resolutions
- Dispute Resolution News & Initiatives
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Dispute Resolution Update April, 2009

Dear Friends and Colleagues:

This edition of *Dispute Resolution Update* examines with special permission from Susan M. Hammer and the Oregon State Bar Bulletin, a review of a new study found in the *Journal of Imparical Legal Studies* finding that settling a dispute is generally more lucrative than taking a case to trial. The study looked at the outcomes of 2,054 cases that went to trial from 2002 to 2005 and found that plaintiffs were more likely to incorrectly opt for trial and defendants faced the biggest financial risk of foregoing settlements. The article, *Advising Clients on the Value of the Case: Let's Not Make a Deal* is written by Susan M. Hammer, a distinguished Fellow with the International Academy of Mediators. To review Susan's article, [click here](#).

This issue also features recent mediation news and initiatives gathered from around the country and around the world. The article notes a significant increase in mediation matters relating to home foreclosures and consumer protection. In addition, legislation in several states, including Missouri, are actively considering legislatively imposed mediation standards. This information has been summarized by Keith L. Seat, a respected mediator and editor of the International Academy of Mediator's Newsletter.

It has been our custom to focus on the background of experience of one of ADR's distinguished panelists. This month we are featuring Michelle Minor. For further information regarding Michelle, please [click here](#). Finally, we also feature upcoming ADR related training events in which our panelists are prominent speakers and presenters.

Larry R. Rute

Patrick R. Nichols

Distinguished Fellows
of the
International Academy of Mediators



2008-2009
Super Lawyers



FEATURED ASSOCIATE OF ADR, LLC



MICHELLE MINOR, KANSAS CITY OFFICE

Minor is an experienced mediator, facilitator and trainer specializing in the resolution of business and workplace issues. Michelle Minor Mediation was formed to provide a fair, confidential and timely forum for dispute resolution specific to the corporate environment.

Michelle has developed a well-deserved reputation as a skilled mediator bringing 20 years of corporate experience linked with a Masters of Arts in Conflict Management and Dispute Resolution. Minor's background in financial, IT, advertising and manufacturing has given her a unique understanding of corporate dynamics with strong skills in human resources, employee relations and compliance.

Minor is a member of several ADR panels, including the Equal Employment Opportunity Commission, FINRA, American Arbitration Association, the Better Business Bureau and Associates in Dispute Resolution.

[For more information and detailed biography information, please click here.](#)

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RECENT MEDIATION 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.

[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)



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

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](#) (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)

Update on Home Foreclosure Mediation Efforts (continued)

--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)

--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); [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)

Peer Mediation Useful to Reduce School Bullying and Even Liability

Peer mediation of schoolyard disputes by trained student mediators is a helpful solution to reduce or prevent acts of bullying and other forms of conflict and lack of respect among students. Society increasingly is finding schoolyard bullying and violence unacceptable, and schools increasingly are being held legally liable. Peer mediation helps address minor disputes before they escalate and boasts success rates of 65 to 75 percent. Further, peer mediation programs help reduce potential liability by showing that school districts are doing what they can to prevent problems among students.

[New Jersey Law Journal](#) (January 5, 2008) (Subscription Required)

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)

Mediation Progressing Well in Ghana

The Chief Justice of the Ghana Supreme Court reported that mediation has developed rapidly and gained popularity and acceptance in recent years within Ghana. Court-connected mediation programs were begun in 2005 and currently operate in 41 district courts across the country, providing better outcomes with less time and money. In 2008, the Accra mediation program succeeded in about half the cases sent to mediation by the court. The Chief Justice's remarks were delivered at the dedication of an ADR Centre at the Ghana Broadcasting Corporation, which is the first of its kind in the country. The new ADR Centre is to offer dispute resolution services for management and staff at the corporation using 75 trained mediators from within the company.

[All Africa](#) (February 20, 2009) (Subscription Required)

Singapore Police Gain Power to Push Mediation

Upcoming changes in the Singapore Criminal Procedure Code will give police the power to refer squabbling parties to a Community Mediation Centre. Parties who reject a police referral to mediation would have the refusal counted against them if the dispute ends up in court. Founded in 1998, the mediation center successfully mediates about three-fourths of its cases.

[Today Online](#) (February 14, 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 disputes, [China Business Newswire](#) (January 20, 2009) (Subscription Required)
- 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 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)

UPCOMING TRAINING EVENTS



On Friday, May 1, 2009, during the conference join
Dennis Egan, Charlie Harris, Kara Dorssom, Victoria Schatz and Larry Rute for:

**Business & Corporate Law Track: Preparing for and Surviving a
Reduction in Force with Expert Tips Better than Kryptonite**

Faced with a declining national and local economy, employers, unions, and employees confront multiple workplace dilemmas including workforce reductions or even plant and branch closings. This expert panel will explore the legal challenges involved when employers must reduce their workforce such as: complying with the anti-discrimination provisions of the Age Discrimination in Employment Act and the Older Workers Benefit Protections Act; mass layoff/plant closing obligations under the Worker Adjustment and Retraining Notification Act.

Moderator: Victoria Schatz, Kansas City Power and Light Co.

Panelists: Charlie J. Harris, Jr., *Seyferth Blumenthal & Harris LLC*

Dennis E. Egan, *The Popham Law Firm, PC*

Kara Dorssom, *Kansas City Power and Light Co.*

Larry R. Rute, *Associates in Dispute Resolution, LLC*

Registration Information

10.0 CLE Hours including 3.0 Ethics Hours in MO and KS (pending)
for the latest information – www.kcmba.org.

When the Attorney-Client Relationship is
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Sponsored by the KCMBA CLE Advisory Committee

Wednesday, May 20, 2009

Lantz Welch Education Center, KCMBA Headquarters,
1125 Grand Blvd., Suite 400, Kansas City, MO 64106

Registration: 12:30 p.m. Seminar: 1 p.m. to 2:50 p.m.
2.0 CLE Hours in Missouri and Kansas (pending)

Fees: \$35 for KCMBA Member \$70 for Non-member

Most lawyers can remember the clients they have had over the years who presented countless obstacles, refused to conform to the norms of behavior, standards and expectations, and with whom our relationship was (or is) enormously troubled. This program is designed to identify certain personality and emotional behaviors that typify four categories of such clients and provide strategies and specific approaches that are effective with each. While this program is perhaps of most interest to those in mediation or family law and general practice, nearly any attorney with clients will benefit.

Presenters:

Larry R. Rute, Partner and Co-Founder, Associates in Dispute Resolution LLC

Patrick R. Nichols, Partner, Associates in Dispute Resolution LLC

[Register on-line](#)

Visit the web site: <http://www.kcmba.org>

Developing Effective Internal Dispute Resolution Systems

with

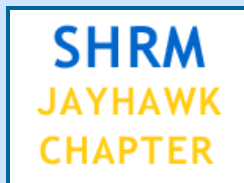
Larry Rute and Michelle Minor

June 9, 2009

11:15 a.m.

Lawrence Country Club

<http://www.jayhawkshrm.org>



Pricing Member - PrePaid: \$0.00

Member - In Advance: \$12.00

Guest - In Advance : \$15.00

Member - Late Registration (6/4 or later): \$15.00

Guest - Late Registration (6/4 or later): \$20.00

[Click Here to Register for this Event](#)

OTHER AREA TRAINING EVENTS:

**Kansas Water Office Dispute Resolution Services
Resolving Water and Natural Resource Disputes for Kansan's**

Utilization of Arbitration in Public Policy Disputes (Larry Rute)

May 7, 2009—Kansas Water Office, Topeka, Kansas

KCMBA Labor & Employment Law Seminar

Watch for more information in future newsletters.

June 18, 2009

For more information: www.kcmba.org



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