

The Muse

(ed. Note. This is an article, that although is directed toward a specific audience...might be something to think about within the realm of disaster preparedness.)

Disaster Mediation Program Available to Hurricane Matthew Victims

RALEIGH— Insurance Commissioner Wayne Goodwin today ordered activation of the Department of Insurance’s Disaster Mediation Program to help homeowners resolve disputed homeowners insurance claims for residential property damage resulting from Hurricane Matthew.

“I want those North Carolina consumers that have been impacted by this storm to know the Disaster Mediation Program is an option to you as we navigate the devastating effects of Hurricane Matthew,” said Commissioner Goodwin. “This is a specific tool but I urge anyone with any insurance questions to call and talk to one of our consumer service specialists at the North Carolina Department of Insurance.”

Consumer must request mediation within 60 days after an eligible claim is denied in whole or in part. Only homeowners in Counties covered by the President’s disaster declaration are eligible.

Consumers’ claims must meet the following criteria to be eligible for the Mediation Program:

- * The damaged residential property is located in a County covered by the disaster declaration.
- * The insurance company has denied all or part of the claim.
- * The dispute must be over the amount of the loss, or the insurance company’s findings on the cause of the loss.
- * The total amount of the claim is more than the consumer’s deductible.
- * The amount of the dispute (the difference in position between you and your insurer) is at least \$1,500, unless both parties agree to mediate a smaller claim.
- * Claims filed under commercial insurance policies, National Flood Insurance Program policies, motor vehicle insurance policies, or liability coverage contained in property insurance policies, are not eligible for the Mediation Program.

Consumers who wish to participate in mediation should first notify their insurance company, which will then send further information on the Mediation Program. Consumers may also call the American Arbitration Association (the Mediation Program administrator) at 866-293-4053. Additional information can be found on the Department of Insurance website at www.NCHurriClaims.com and on the American Arbitration Association website at www.adr.org

The Disaster Mediation Program was created to provide homeowners with a free resource to resolve disaster-related, residential property damage claims disputes in a fair and timely manner. During the mediation process, an independent mediator with no connection to the insurance company will be in charge of the mediation conference. The mediator cannot make any decision about the dispute, but rather will facilitate discussion and negotiation between the insurance company and the policyholder. Learn more about hurricane and disaster relief at www.NCHurriClaims.com or by calling the North Carolina Department of Insurance at 855-408-1212. Hurricane season begins June 1 and ends Nov. 30.

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Price: A Look at the Past, Present and Future of Mediation

By Gary Price

For those old enough to recall, alternative dispute resolution began in earnest when the Indianapolis Bar Association worked with the Marion County courts to establish “settlement week.” Volunteer lawyers would review court-identified files, meet with the counsel or litigant, and attempt to achieve a settlement. It worked. Following settlement week’s success, the first “class” of lawyers went through 40 hours of training and became registered mediators. The ADR rules and, now a select but growing body of caselaw, provide guidelines for the process, and mediation has become widely accepted and utilized. For example, there is mandatory application in Marion County cases with a jury demand. Contracts increasingly include mandatory mediation clauses. Pre-suit and “early mediation” is becoming more popular. Why the success? Simply put, it works. It relieves court docket congestion, saves time and resources, and directly involves the most important players: the client/litigants. They are in control of dispute resolution; not a judge or a jury.

In the early days, mediation followed a standard model that required the mediator to adhere to the “golden rule” — the parties must decide their fate and the mediator was there to assist in the process. From a pragmatic view, this model worked well, and reflected the roots of ADR in many non-legal contexts as seen in the Better Business Bureau and community-based organizations. It also suited the need and ability of lawyers in active practice to participate as mediators along with their traditional caseload requirements.

In time this model became labeled “facilitative” mediation. But a number of factors soon began the evolution of mediation to the robust process seen today. First, lawyers began to establish dedicated mediation offices and user-friendly facilities. Second, it became apparent that most lawyers *wanted* the mediator to become more involved; to have the ability to critique, interact with the client and the issues; to suggest outcome determinative solutions. Third, the “value added” by mediation became more evident to lawyers and institutional clients (the best example is the liability insurance industry) as a way to control the ever-spiraling costs of litigation and the delays attendant to court determinations. This model was soon labeled the “evaluative” mediation and appears to be the predominant model today.

The newest trend is “collaborative” or “transformative” mediation. The broad notion is to take the best feature of mediation, the ability to be a self-determinant of the solution, and marry it to model in which the parties interact to a greater degree, including specific directives and requests for mediator assistance, and often engage in multiple mediation sessions. Whether the labels are justified, or even if this constitutes a “new model,” the best examples can be seen in the rapid growth of ADR, (mediation) in family law and complex litigation cases. “Family law” is obvious. A partner, or partners, in a marriage may decide to end the partnership, but the years of living in a relationship are difficult to unbind without a modicum of common respect. Complex disputes often involve parties who need to continue aspects of commercial relationships, while attempting to resolve a dispute without “destroying the village in order to save it.”



Price: A Look at the Past, Present and Future of Mediation, Continued.

Whether experience will show one “model” prevailing or whether we have an environment where mediation is an amalgam of each type driven by the circumstances of the case, one thing is beyond dispute: Mediation is here to stay.

Yet, we must be vigilant to keep the mediation process moving in the right direction and not become “just another thing to get through.” Here are my comments about mediation today.

There is no such thing as a failed mediation. Properly approached and prepared, it is a dress rehearsal for your trial or arbitration. You can get a gauge on your case from a qualified “expert,” the mediator. Before a mediator can do her work, you must do yours. You will always learn something about your case, your client, or your adversary if you come fully prepared and committed to the process. Mediation should not become a static process, simply going through the motions and hoping for a result.

The beauty of mediation is that you have the ability to structure it to your client’s best advantage. You can call the mediator or meet and confer about your case. You can work with opposing counsel to shape the mediation to address any unique or sensitive elements of the dispute. In this regard, take a moment to review ADR Rule 1.1 and note ADR Rule 2.1’s explanation that a mediator “... assists the litigants in reaching a mutually acceptable agreement.” For the participants and the mediator, the contours of the process are limited only by your imagination, the resources you can bring to bear, and your ability (and the willingness) to work together with opposing counsel for the benefit of the respective client(s). You don’t have to have an opening session, or you can have multiple joint meetings. More lawyers are agreeing to exchange mediation statements as they would trial briefs and reply to those submissions. The possibilities are endless. (The books and articles will keep on coming.)

Finally a word to those of us who mediate: “Mediator fatigue” can be deadly, especially in recurring cases where insurance is involved. There is a tendency to take the “cookie cutter” approach. Get it in, go through the motions and expect the parties to achieve the classic “settlement that no one is happy about.” The best mediators understand this “dark side” and avoid it. The best mediators are committed to innovation so mediation, a prime tool of ADR, maintains and increases its value to the bar and the clients we serve. And the best mediators will continue to work in creative fashion to meet the goal of the process, a resolution based “... on the autonomous decisions of the parties ...” *Id.* Rule 2.1. Our clients deserve no less. •



Hello Professionals in Conflict Resolution,

HMA Fall Training / Manhattan, KS

November 11, 2016

**Family and Finances in a Troubled Population:
What the Demographics of Kansas Families Mean to the
Attorneys
and Mediators Who Serve Them**

Flint Hills Discovery Center

315 S. 3rd Street | Manhattan, KS 66503

785.587.2729

Registration: 12:15-12:45 p.m.

Workshops: 12:45 p.m. to 4:50 p.m.

Cost: HMA Members: \$50 Non-members: \$75 Students: \$25

Approved 4 KS CME Hours

Approved 4 KS CLE Hours + 1 Ethics Hour

Approved 4 MO CLE Hours + 1 Professionalism Hour

12:15pm – 12:45pm - Registration

12:45pm Opening/Introductions

1:00pm - 1:50pm - Specialized Family Populations of Central Kansas - Tonya Ricklefs, Ph.D., MSW

2:00pm - 2:50pm - Divorce and the Family/Co-Parenting - Mindy Markham, Ph.D.

3:00pm - 3:50pm - Family and Finances in a Troubled Population - Emily Koochel, M.S.,

4:00pm - 4:50pm - Ethical Dilemmas Amid Changing Societal Norms - Facilitated by Aline Cole Barrett, J.D., M.A.

Panelists Include:

Emily A. Hartz, J.D.

Tonya Ricklefs, Ph.D., MSW

Ann Zimmerman, J.D.



Your Organization

This would be a good place to insert a short paragraph about your organization. It might include the purpose of the organization, its mission, founding date, and a brief history. You could also include a brief list of the types of products, services, or programs your organization offers, the geographic area covered (for example, western U.S. or European markets), and a profile of the types of customers or members served.

It would also be useful to include a contact name for readers who want more information about the organization.

Back Page Story Headline

This story can fit 175-225 words.

If your newsletter is folded and mailed, this story will appear on the back. So, it's a good idea to make it easy to read at a glance.

A question and answer session is a good way to quickly capture the attention of readers. You can either compile questions that you've received since the last edition or you can summarize some generic questions that are frequently asked about your organization.

A listing of names and titles of managers in your organization is a good way to give your newsletter a personal touch. If your organization is small, you may want to list the names of all employees.

If you have any prices of standard products or services, you can include a listing of those here. You may want to refer your readers to any other forms of communication that you've created for your organization.

You can also use this space to remind readers to mark their calendars for a regular event, such as a breakfast meeting for vendors every third Tuesday of the month, or a biannual charity auction.

If space is available, this is a good place to insert a clip art image or some other graphic.

Your Organization

Primary Business Address
Your Address Line 2
Your Address Line 3
Your Address Line 4

Phone: 555-555-5555
Fax: 555-555-5555
E-mail: someone@example.com

PLEASE
PLACE
STAMP
HERE

Mailing Address Line 1
Mailing Address Line 2
Mailing Address Line 3
Mailing Address Line 4
Mailing Address Line 5