

**NEW JERSEY JUDICIARY  
ADMINISTRATIVE DIRECTOR OF THE COURTS JUDGE GLENN A. GRANT  
REMARKS BEFORE THE NJAPM  
JANUARY 13, 2010**

Good evening and thank you for inviting me to address this dedicated group of professionals. I would like to begin with a very tangible sign of the importance to the administration of justice that this body of professional mediators represents.

On behalf of the Chief Justice and the justices Supreme Court, it is my great pleasure to announce that the Court intends to appoint retired Judge John Harper as your representative to the Committee on Complementary Dispute resolution. Congratulations John. I know that you will be an invaluable addition to the Committee and that the Court has great confidence in you.

The recognized value of mediation has a rich history in the American justice system. Abraham Lincoln, who was a trial attorney and a formidable opponent in court, also was known for his ability to compromise. He often advised clients to settle their disputes outside of court. “Discourage litigations,” he once said. “Persuade your neighbors to compromise whenever you can.”

He knew, as you do, that the expense in time and money of a trial can be avoided with mediation.

In New Jersey we have had mediation in municipal courts since the early 1980s, in the civil division since 1993, in family economic issues statewide since early in the last decade. These programs have allowed countless individuals to come to a resolution of their differences –whether between neighbors, between businesses, between couples in a break-up or in myriad other situations without having to go to trial.

The benefits to the litigants flow directly from your dedication. Many of you are volunteers. Many donate hours of your professional time. This dedication prompts me to tell you a story that I think inspires all of us. This happened just a few months ago.

There is a very successful radio program airing both nationally and locally on public radio stations across the country. The idea is relatively simple, have citizens speak about the things that are important to them. The original program started with the famous CBS news broadcaster, Ed R. Morrow, in the early fifties. Fifty years later the program has been revived by National Public Radio.

Recently one of the judiciary senior managers, Frank Hoeber, was selected as an essayist for the program out of the Philadelphia public radio station. In his essay, Frank talked about the fact that his family has been involved in public service for three generations.

Most importantly for this presentation were Frank's words on the importance of government.

"I believe in the good that government can do. My whole life has taught me to believe in government. No one knows the flaws of government better than those of us who labor under its maddening limitations. But government is still the best institution that we have devised to address the panoply of problems that beset the human condition."

Frank's observations are not only important from an individual perspective but also from an organizational perspective. I believe governments and systems have personalities as well. And I believe that by your participation in the legal system as mediators, you add a generosity of spirit and an understanding of the very human quest for fairness to our institutional personality.

I know that for most of the day today, you have focused your attention on foreclosure mediation—from practical issues to emotional issues to ways to improve the process. I know mediation is a tool utilized by government to beset a significant human condition in this country.

Let us stop here for one minute and reflect on how extraordinary these times are. The entire nation is suffering under the weight of a near-total economic collapse. When we began to see a key economic indicator—foreclosure filings—escalate at historic rates, we knew we had to act. In just three years between 2005 and 2008, we saw foreclosure filings increase 300 percent.

So in October 2008, Chief Justice Stuart Rabner announced the roll-out of a statewide Judiciary program to assist homeowners in foreclosure actions. The program was to provide mediators to help homeowners and lenders negotiate with one another and try to work out agreements to avoid foreclosures. It was government attempting to respond to a human condition.

At the time, Chief Justice Rabner said, "While the courts must remain neutral in all foreclosure matters, it is in everyone's best interest to have a forum where homeowners facing foreclosure have the opportunity to negotiate to save their homes.

"Our goal is to get lenders and borrowers to meet at the table and work out a mutually beneficial arrangement. I encourage continued cooperation among the courts, lenders, borrowers, and the bar as we address the increasing number of foreclosure actions in New Jersey in today's difficult economic times."

The Chief Justice went on to explain that under the program, the courts would require mediation in all cases in which homeowners contest owner-occupied foreclosure actions. Volunteer mediators would be recruited and would be asked meet with eligible homeowners and their lenders in an effort to resolve the foreclosure action and renegotiate the terms of mortgage agreements.

That announcement was the catalyst for a program that was embraced by the governor and the Legislature. The program has been carried out by the courts, the attorney general's office, the public advocate's office, and the HMFA. Legal services pitched in and housing agencies around the state joined the effort. Massive efforts to educate homeowners about their rights and responsibilities were launched through television ads, billboards, newspaper ads, brochures, Web sites and every other advertising tool available.

But nothing—not one of these efforts by some of the greatest forces in government and community service --would have been possible without the more-than 700 men and women who stepped forward to volunteer. You went through rigorous training not knowing if you would ever be paid or how much of a commitment you actually were making. You just knew that something had to be done and without you, it would not have been.

We all remember what happened between 2007 and 2008 that caused the Chief Justice to call for the mortgage foreclosure mediation program.

At the end of 2006, foreclosure filings were at almost 25 thousand. By the end of 2007 at more than 36 thousand and then climbed to more than 51 thousand by the end of 2008. Those are catastrophic numbers. We have not seen a turnaround yet. At the end of 2009, foreclosure filings were at about 65 thousand.

Sadly, most homeowners in a foreclosure situation either don't know what to do, or are afraid to act, so they do nothing. But the experience for many who have elected to participate fully in the mediation program has been positive, even if they did eventually have to give up their homes.

Judge Maria Sypek, who sits in Mercer County, asked that I share this story with you. She tells of a homeowner who had gone to mediation, but was unable to keep her home. The homeowner reported to Judge Sypek that she, her staff and the mediator had been wonderful. She said that the process gave her the chance to explore every possible option for keeping her house and that she was satisfied that she did all that she could. The mediator, staff and the judge made her feel that they all really cared and all were so very helpful. She also said that she cannot stop telling people about mediation and what a great experience it was. She then asked the judge for permission, which was granted, to hug her.

This story defines, for me, the very essence of the fair administration of justice. It defines for me how government can have a positive affect on a human condition. Because, in large part, of the work you are doing, this homeowner and many others like her were able to face a traumatic situation and then close that chapter and move on. That is an extraordinary gift to give someone—the knowledge and courage to move on.

From January 2009 through December 2009, 4,600 mediations have been scheduled. Of those 906 have settled and 400 continue discussions. The remainder were adjourned,

rescheduled for additional sessions, cancelled or not held because one of the parties was not present.

Many homeowners had negotiations that allowed them to remain in their homes through various loan or interest modifications, but certainly not all. Some have negotiated what we call a “graceful exit.”

At the Judiciary and with you and others involved in the foreclosure mediation program, we have continued to work to make the program more effective and efficient. It is important to note again, however, what Chief Justice Rabner said when he announced the program: The courts must remain neutral. So while there is much discussion about “success rates,” we must recognize the different definitions of success, based on the goals of the different participants. The homeowners would no doubt call success the opportunity to stay in their homes. The lenders probably count success as either receiving their money or, a lesser success, taking the property.

The courts must define success not in the context of favoring one side or the other, but rather in the context of the administration of justice as we provide a neutral forum where litigants can work out their disputes. Although trial is the traditional forum in this regard, we already have acknowledged that the importance of mediation has grown significantly over the past couple of decades. A successful mediation from the point of view of the courts must be about the success of the process, regardless of the outcome.

One key component of a successful mediation is a relative balance of the strengths of the parties involved. Thus, in the area of foreclosure, what we are providing is access to information through a housing counselor or through free legal counsel or both offered by HMFA. This program also provides a forum, presided over by a trained, neutral third party, where homeowners and lenders have what may be a final opportunity to come to a resolution benefitting both.

Again, we know that this does NOT mean that the homeowner will always remain in the property - such result may be difficult to achieve if the homeowner has no job or other income. But a negotiated exit, in which the homeowner and lender agree, say, to allow the family to stay in the home until the end of the school year so that the kids don't have to be uprooted, is certainly better than a mid-year sheriff's sale and a forced exit.

So when we talk about success, let us all recognize that the definition of success in these difficult times and perhaps in many other places in our lives, is to do the very best thing possible with the resources available to us.

I would like to focus on some of the efforts to improve the foreclosure mediation program. Implicit in Frank's observation about this, I believe is the idea that government work is never done. We must continue to seek innovative ways to improve on our success. The workload, as you are well aware, is staggering in size. Because of the extreme nature of the housing crisis that was unleashed so suddenly, we had to put the

foreclosure mediation program together very quickly. In a little more than one year, we launched a program and have made many improvements already.

We must continue to improve because this crisis is far from over. I think of this as three waves of foreclosure in the economic tsunami. In the first wave, subprime mortgages went into default. For many of those homeowners, they could not afford their mortgages from the very beginning,

In the second wave, the one you have worked so hard in, we have seen the devastation that unemployment, underemployment, and other family financial strains have caused.

The third wave may well be the worst. These are those interest-only mortgages issued three to five years ago that are about to come due for a reset. Payments will go up, for many by quite a significant percentage. This confluence of payments due and tough times will be the worst possible scenario for the many who are currently unemployed. As you know, it is difficult to negotiate with a lender when unemployed.

In that context, we have steps underway to help address the caseload issues. The Judiciary has contracted with the Office of Dispute Settlement in the Public Advocate's Office to hire three full-time mediators, plus a coordinator to assist with schedules and other tasks. They will handle the bulk of the late-stage mediations involving stays of sheriff's sales. These are the most urgent cases and the most resistant to settlement.

During the past six months or so, most homeowners who accessed housing counselor services have been eligible for free legal counsel for the mediation event. This free service has been provided through HMFA funding; four law firms in different regions of the state have been involved.

The Judiciary is in the process of simplifying the forms for entrance into the mediation program. And the Judiciary's ombudsmen in our courthouses have been and will continue to organize "foreclosure information fairs" to attract more people into the program.

We will continue to seek improvements and efficiencies not only in the mortgage foreclosure mediation program, but in all mediation programs.

I know you have questions about foreclosure mediation and rumors that we are eliminating presumptive mediation and other issues, so I would like to get to your questions.

Before I close, I would like to tell another story from a Judiciary-famous person—our own Judge Margaret McVeigh. She sent this story to me in the hopes that I would recount it to you as a testament to your efforts:

“My experience with homeowners in the mediation program has overall been very positive. My staff and I hear repeatedly, that it is a wonderful thing to have people actually listen to the concerns and problems homeowners are facing with mortgage

defaults. The Mediations provide homeowners with the opportunity to actually communicate in an effective fashion with the lenders in their attempts to work out a plan to either save their homes or leave those homes with a modicum of dignity. Mediation provides a real person for homeowners to talk to--a counselor, the lawyer for the lender, a lender's representative and, of course, the mediator.

Homeowners appreciate the advice and advocacy of the housing counselors. They have expressed to me their thanks for my time and the time and courtesy of the mediators and the court staff. I have been told that the mediation experience has taken away people's fear and allowed them to actively participate in fixing their own problems.”

Let me repeat her thoughts: Because people actually listen, the homeowners can actively participate in fixing their own problems. Our government can and must respond to the challenges and crises of our society. I believe that through collaborative partnerships with institutions and individuals, like you in this room, we can create a better society, improve our neighbors and respond to the needs of our community. I believe mediation is in keeping with our highest traditions and standards of public service.

Thank you for your services and your dedication.

Let the questions begin!