LOCAL GOVERNMENT LAW

Number 94 April 2000 **David M. Lawrence, Editor**

BEHIND OPEN DOORS: NORTH CAROLINA'S OPEN MEETINGS ACT AND MEDIATOR STANDARDS OF CONFIDENTIALITY

■ Chad Ford

The city of Capeside borders the city of Langston.[1] Capeside residents are primarily white and retired. The city has a beautiful, spacious park with many things for young children to do. Langston, on the other hand, is a working-class town with few of Capeside's amenities. Langston residents are primarily African-American. The residents of Langston, many of whom have large families, are the park's most frequent visitors on afternoons and weekends.

One spring, Capeside city police become concerned about a rash of muggings, vandalism, and harassment of visitors in the park. Capeside officials suspect that the perpetrators are teenagers from Langston, as these teenagers have a history of "cruising" the park on Saturday nights, blaring rap music, and yelling and honking their horns at passersby. The Capeside city council responds by closing Langston's only entrance to the park. Langston's residents and city council are outraged. Closing the park entrance means it will take a Langston resident at least fifteen extra minutes to reach the park via another route.

Capeside officials maintain that they closed the entrance to cut down on traffic problems in the park. City officials from Langston believe the entrance was closed for a more nefarious reason—to discourage Langston residents from using Capeside's park—and they threaten to sue. They claim that improper and unconstitutional racial motivations are behind the entrance closing. To avoid litigation and its accompanying bad publicity, the Capeside city council arranges to meet with the city council of Langston, seeking a compromise beneficial to both parties.

The two councils meet in open session to a packed house. Angry residents of both cities are present. Council members and residents trade vicious insults across the room, and the meeting goes nowhere.

1. Langston and Capeside are fictional cities. This is a hypothetical situation not based on any one particular incident but on common problems towns experience.

The mayor of Langston suggests to the mayor of Capeside that the two councils try to end the deadlock through mediation. He proposes that they each appoint members to a committee that will meet in closed session to try to resolve the towns' differences. The new committee will comprise citizens, business leaders, and city councilmen.

A journalist challenges the legality of these committee meetings, believing that such "mediation" will violate North Carolina's open meetings laws. Public bodies, she says, must meet in public when doing the public's business. The two mayors and city councils maintain that mediation differs from other types of public meetings and therefore is not subject to North Carolina's open meetings laws. Who is right?

This bulletin explores the tension between North Carolina's Open Meetings Act (OMA) and the desire for confidentiality in mediation hearings addressing public disputes. It analyzes the rules and policies of the OMA and compares it to North Carolina's current laws concerning confidentiality in mediation. Using the hypothetical case of Langston and Capeside, this bulletin attempts to answer some questions about private mediation between public bodies.

Requirements of the OMA

North Carolina has a long tradition of mandating that its public officials conduct hearings, deliberations, and actions in public. The OMA explicitly states that public bodies[2] exist "solely to conduct the people's business" and that they should do so openly.[3] Any county, municipal, school system, or other type of appointed or elected body composed of two or more members must hold its official meetings[4] in public.[5] These bodies exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions, and they include all types of boards, councils, and committees. The breadth of the law is such as to encompass almost every function undertaken by a public body.[6]

There are exceptions to this law. The OMA allows a public body to meet in closed session 1) to consult with its attorney or 2) to consider and give instructions to an attorney concerning the handling or settlement of a claim or mediation.[7] To call a closed session, the body must adopt in an open session a motion to close the meeting, citing at least one of the permissible purposes stated above.[8]

It is difficult to claim exemption from the OMA using these exceptions. Public officials often desire to meet in closed session, out of the light of the public eye. Closed meetings are often less combative, and elected officials are less likely to posture and more likely to divulge substantive views on sensitive issues. The advantages of closed sessions are even more important when a body desires to settle a public dispute outside of court. The benefits of meeting in closed session, however, cannot usually be justified under the OMA. In *H.B.S. Contractors, Inc. v. Cumberland County Board of Education*, the chairman of the Cumberland County Board of Education testified that the board had a policy of entering closed session "to avoid embarrassment of the individual or entity under discussion[,] . . . [to] talk about specifics, and [to] enable Board members to better express themselves."[9] The court held that the OMA did not recognize an exception based on any of these considerations. Instead the court noted that "[I]t is apparent the General Assembly intended the Open Meetings Law to curtail exactly this type of unwarranted secrecy by public bodies."[10]

---

2. The term *public bodies* is defined as "any elected or appointed authority, board, commission, committee, council, or other body of the State." N.C. GEN. STAT. § 143-318.10. (Hereinafter the General Statutes will be abbreviated as G.S.)

3. *Id.* § 143-318.9.

4. The term *official meeting* is defined by G.S. 143-318.10(d) as "a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of the majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body." Public body does not include professional staff of a public body and medical staff of a public hospital. *See id.* § 143.318.19(c).

5. G.S. 143-318.10(b).

6. David Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*, 5th ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1998), 1. The definition does not include social meetings or informal gatherings where the public business is not discussed or transacted. See G.S. 143-318.10(d). This exception, however, cannot be used to camouflage actual deliberations.

7. G.S. 143-318.11(a). These are not the only permissible purposes, but they are the ones relevant for this discussion.

8. *Id.* § 143-318.11(c). If a public body goes into closed session to discuss privileged or confidential information, it must also cite the law that renders the information discussed confidential.

9. 122 N.C. App. 49, 54, 468 S.E.2d at 517, 521 (1996).

10. *Id.* at 54, 468 S.E.2d at 521.

Confidentiality in Mediation: Drawing the Line

Mediation can be a valuable tool in disputes, helping individuals relinquish intractable positions and generate solutions to various dilemmas. By holding meetings in private and assuring participants that discussions will be confidential, mediators can create an atmosphere of trust and candor where parties feel comfortable revealing underlying interests, deep-rooted feelings, and personal concerns. For this reason private mediation sessions are an attractive option to some public officials. Such sessions can create a greater opportunity to explore new ideas in a low-risk environment and can encourage both sides to revise their positions and reach a settlement without the hassle and expense of litigation. Private mediation sessions can also free public officials to speak their minds without fear of political fallout. The privacy of the mediation is a means toward the larger goals of exploring new ideas and revising positions.

These assurances, however, can never guarantee that sensitive information will remain in the meeting room. The OMA notwithstanding, there is no guarantee of confidentiality in public disputes. Public officials can and often will talk to the press or a constituent about the proceedings of a closed meeting. Neither their public offices nor a mediation privilege affects the free speech rights guaranteed by the United States Constitution.

North Carolina law has not provided a blanket privilege of confidentiality to mediators or mediation participants. There is no general or Alternative Dispute Resolution statute that clarifies or addresses mediation in a public context. Instead, North Carolina has approached the confidentiality issue on a program-by-program basis, the statutes addressing issues involved in different categories of mediation. These include *private mediation*, such as mediated settlement conferences[11] and workers' compensation mediation;[12] *semiprivate settings*, such as mediation in connection with administrative hearings[13] or farm nuisance disputes;[14] and more *public mediations*, such as those addressing school board budget disputes.[15] In North Carolina most mediation provisions are premised on the statute for Mediated Settlement Conferences (MSC) in superior court civil actions.[16] Generally the MSC statute addresses confidentiality and privilege in the private context by granting judicial immunity to mediators acting pursuant to it. It covers all parties involved, excluding from discovery evidence of statements made and conduct occurring during mediated settlement conferences.[17] In short, through the act of evidentiary exclusion North Carolina law provides for some privacy in mediation hearings but does not guarantee full confidentiality. Since there is no countervailing statutory direction that mediation in private lawsuits take place in public, the MSC statute operates in a context in which the basic privacy of the mediation itself is taken for granted.

The MSC statute does not apply to all types of mediations that occur in North Carolina. However, most mediation statutes in the state refer to MSC procedures or restate them verbatim, without regard to the type of mediation being addressed.[18] This ambiguity can create a host of problems when mediation moves from a private context into the public realm or from a court-supervised environment to other settings. The MSC statute was created primarily to deal with private disputes in the context of existing litigation; when it is applied to public mediations, its provisions have a greater chance of running afoul of the OMA.

North Carolina has created one statutory exception to the OMA for use in public dispute mediation. The School Budget and Fiscal Control Act (SBFCA) provides for mediation between local boards of education and boards of county commissioners in school funding

11. G.S. 7A-38.1.
12. *Id.* § 97-80.
13. *Id.* § 150B-23.1.
14. *Id.* § 7A-38.3.
15. *Id.* § 115C-431.
16. G.S. 7A-38.1.

17. *Id.* § 7A-38.1(l). This statute adopts the language, word for word, of North Carolina Rule of Evidence (NCRE) 408, "Compromise and Offers to Compromise," for the provisions on judicial immunity and discovery. By itself, Rule 408 does not guarantee that all statements made in mediated settlement conferences will remain confidential. In situations where the conduct or statement is offered in court for reasons other than to prove someone's liability or the amount of damages, it may be admissible. Also, where evidence can be discovered outside the mediation conference, the mere fact that it was learned in mediation will not make it inadmissible. *See* G.S. 8C-1, Rule 408.

18. Examples include G.S. 115C-431, Procedure for Resolution of Disputes between Board of Education and Board of County Commissioners; G.S. 115C-431(b) ("The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement"). This section also includes a restatement of NCRE 408 and G.S. 7A-38.3(e), Mediation of Farm Nuisance Disputes. Part (e) calls for mediations to be conducted in accordance with G.S. 7A-38.1.

disputes.[19] The legislature hoped that by allowing the mediator to conduct some of these proceedings in private,[20] boards of education and county commissioners could resolve these disputes more quickly, diplomatically, and inexpensively.

The SBFCA mediation provision includes four important features. First, the statute mandates that before a private mediation can occur, a *public* joint meeting facilitated by a mediator must be held between the two boards.[21] This provision is consistent with the OMA's underlying goal that every attempt be made to conduct the public's business in public. A private mediation occurs only when the two boards are unable to reach a resolution in public. Second, it must appear that the dispute is otherwise headed toward litigation. If the mediation fails to resolve the dispute, both parties may end up in court. In fact, the explicit purpose of the SBFCA mediation provision is to prevent such litigation. Third, the provision mandates that only small working groups generally including just one elected member from each side can participate in the mediation.[22] Finally, once the working groups meet in closed session, they are limited to discussing the budgetary dispute. The mediation cannot be used as a forum to discuss other pressing issues.

Despite limitations on who can take part in the sessions and what can be discussed therein, the SBFCA mediation provision appears to be working well. Andy Little (a mediator who has worked in six school budget disputes), Ed Regan (associate executive director of the North Carolina Association of County Commissioners), and Allison Schafer (legal counsel for the North Carolina School Boards Association) have all noted that the SBFCA privacy clause has made mediation a much more effective process than other more public methods in solving school budget disputes.[23] The new mediation procedures, they report, improve communication between disputants and promote faster, more substantive resolutions to conflicts.[24]

What happens if the two mayors in our example create a committee composed of elected or appointed public officials to settle a dispute with the help of a mediator? Are the committee's meetings confidential? Or does the public have the right to hear the substance of the mediation? To answer this question, one must determine whether this type of committee and meeting are covered by the OMA. If a public body, such as a city council, sends a subcommittee or a working group (instead of the full council) to negotiate a compromise, should this group be considered an official committee "of the city" as defined by the OMA? Is such a mediation an "official meeting"? Is there some sort of "closed meeting" exception for mediation? The next part of this bulletin examines these questions using the Langston and Capeside dispute as an illustration.

Mediations Covered by the OMA

In the Langston and Capeside example cited earlier, a committee appointed by mayors of the two cities decides to meet in closed session. A local journalist questions this decision, claiming that the mediation committee is a public body and therefore must meet in open session as mandated by the OMA. The committee responds that it is not a committee of either city and therefore can meet in closed session.

Before it was amended in 1994, the OMA defined "public bodies" in terms of how they were established and who their members could be. The revised definition no longer includes these stipulations and as a result is more vague and expansive than previous statutory language. A *public body* is now defined in part as an "appointed . . . committee . . . of the State, or of one or more counties, cities, school administrative units" and so forth.

There are no statutory definitions of "appointed" and "committee" in the OMA. Black's Law Dictionary defines *appointed* as "the selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function and discharge the duties of the same."[25] *Committee* is defined as "an individual or body to whom others have delegated or committed a particular duty, or who have taken on themselves to perform it in the expectation of

19. G.S. 115C-431.

20. *See id.* § 115C-431(b). "Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private."

21. *See id.* § 115C-431(a). The statute calls first for a joint public meeting of the two boards, presided over by a mediator. The boards are encouraged to make a "good-faith effort to resolve the differences that have arisen between them."

22. The "working groups" consist of the board chairs or either's designee, the county manager and the school superintendent or either's designee, and the attorneys and finance officers for each board. Other participants may be added by agreement of the school board and the board of county commissioners. *See id.* § 115C-431.

23. Telephone interviews with Andy Little, Ed Regan, & Allison Schafer (June 6 and 7, 1999).

24. *Id.*

25. BLACK'S LAW DICTIONARY 99 (6th ed. 1990).

their act being confirmed by the body they profess to act for."[26] When the two definitions are combined, an *appointed committee* is created when someone with the proper authority designates one or more persons to fill an office or a public function and delegates a particular duty to them.

The 1994 amendments have broadened the scope of the OMA to include more types of committees, just as it has redefined public body to cover more types of public groups. Hence, a committee of the city would include all elected or appointed committees affiliated with or connected to the city, without concern for the method of the committee's establishment or the makeup of its membership. The mediation committees appointed by the mayors of Capeside and Langston would therefore be committees "of" one or more cities in that they have city affiliations and have been delegated particular duties of a public body (such as giving advice or conducting deliberations). As noted above, whether there are public officials sitting on the committees is not important.

Committee Size

In response to concerns about the legality of meeting in closed session, Langston and Capeside officials scrap the idea of forming a committee to negotiate a compromise. Instead, each city council appoints one of its members to meet with the other. The councils delegate their decision-making powers to these representatives, providing them with general parameters for a settlement that will prevent litigation and reestablish the Langston park access. Once again, the press protests that the councils are attempting to evade the OMA.

Technically, each separate appointment, taken by itself, would not violate the OMA. The statute's definition of a public body states that such bodies must be "composed of two or more members."[27] One member sent by a public body to handle a mediation would not, under the plain language of the statute, come under the auspices of the OMA. The argument could be made that had the legislature wanted to cover just one individual in the statute, it would have done so.

Have the city councils, however, by each designating a member to attend mediation, appointed a new two-person committee? The OMA defines a public body as "any . . . committee . . .of one or more cities . . . that is composed of two or more members and exercises or is authorized to exercise a . . . policy-making or advisory function."[28] In this case, the committee would be similar to the one in the first example, only smaller, and therefore would still be covered by the OMA. It is not completely clear whether Capeside and Langston's new strategy—each asking one member to meet with the other to reach an agreement—is an "appointment" of a new committee. Creating a committee in this manner does seem to conform with Black's definition of an appointment cited earlier.[29]

One could also make a separate argument that such private discussions or negotiations are exactly the sort of activity the OMA seeks to prohibit. An analogy from corporate law may help determine whether Capeside and Langston's new plan would run afoul of the OMA. When a group of stockholders delegates its voting rights to a single individual, that person acts as a proxy for the stockholders. In the same manner, the Capeside and Langston councils each grant one council member final decision-making or representational authority. The members are then physically present at the mediation in place of the councils, each acting more like a group than an individual.

Because the council has delegated voting power to it, such a "one-person" committee might be considered a public body for OMA purposes even though it does not physically consist of the majority of the council. However, no legislative history or court decisions directly address this issue. It is also unlikely a public body could make this kind of delegation, in effect giving its decision-making power to a single member.

Alternatively, the Capeside council could ask one of its members to sit down with someone from the Langston city council, talk things over, and bring back a solution both councils could agree on. This last type of arrangement, where no committee is appointed and no power is delegated, may raise the least difficulties under the OMA.

Professional Staff in the Mediation

Can professional staff mediate disputes without violating the OMA? It appears so; from its definition of a public body the OMA specifically excludes meetings solely among the body's professional staff.[30]

26. *Id*. at 273.
27. G.S. 143-318(b)(I).
28. *Id*. § 143-318-10(b).
29. BLACK'S LAW DICTIONARY, *supra* note 25.
30. G.S. 143-318.10(c).

Is a Mediation an "Official Meeting"?

Mediations probably fall under the OMA's definition of an "official meeting." Since the definition includes most types of meeting activities, the only real question generally will be whether a majority of the group is present.[31]

An official meeting occurs whenever a *majority* of the members of a public body (including committees "of" a city, according to the OMA) [32] meet to conduct hearings, participate in deliberations, vote, or otherwise transact the jurisdiction's public business.[33] For OMA purposes the inclusion of the word "deliberation" apparently makes the definition all-encompassing. In one court's words, "[T]o 'deliberate' is to examine, weigh and reflect upon the reasons for or against" a possible decision. "Deliberations thus connote not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision."[34] Using this broad definition, it is difficult to think of a mediation that would not include at least some form of deliberation.

An official meeting also occurs whenever a majority meets to "transact the official business" of the public body. Clearly, participating in the mediation is the official business of the Langston and Capeside committees. As the statute also indicates, a meeting is not official until a majority of the members of the group are present. This stipulation, however, should not be taken as license to appoint one-member committees to represent the majority of a group.

OMA Exceptions and Public Mediation

Suppose the Langston and Capeside mediator suggests another option for keeping the mediation hearings private. The mediator-party relationship, he says, is very similar to the attorney-client relationship. To preserve attorney-client privilege, the OMA allows a public body to meet with its attorney in closed session. Why could not mediators meet with their parties in closed session as well? One of the city attorneys has another idea. A close reading of the attorney-client exception indicates that a public body can meet in closed session to consider and give instructions to an attorney concerning the handling or settlement of a mediation or arbitration. Perhaps a mediator could shuttle back and forth between the two mediation committees, conducting the "mediation" while the committees were considering it.

Although tempting, it is too difficult to use the attorney-client privilege exception as a means to a closed mediation session under the OMA; the relationship between a mediator and the parties in a mediation is not the same as an attorney-client privilege under North Carolina law. Could the public bodies, however, hold a mediation together in closed session if their attorneys were present and participating? Here also the answer is no. Once discussions go beyond case strategy and the like, they are no longer covered under the attorney-client privilege exception. Furthermore, once information is shared outside of the attorney-client relationship, it is no longer considered confidential or privileged.[35] This type of sharing is bound to occur in the mediation situation because either the other party or the mediator is present in the same room as the client and the attorney.

The second part of the OMA's attorney-client exception allows public bodies to "consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, or administrative procedure." While the statute does not elaborate on the policy behind this exception, the exception itself follows a long North Carolina legislative trend favoring settlement over the litigation of claims. The statute allows public bodies to discuss settlement or litigation strategy without revealing the details of that strategy to their adversaries and the public. Without this exception, there would be very little incentive for public bodies to enter into settlement negotiations; they constantly would be revealing their positions and weakening bargaining strength.

Though based on this exception, the city attorney's idea, in which the mediator shuttles back and forth between the two committees meeting in closed session, probably would not be legal under the OMA. In *Multimedia Publishing of North Carolina, Inc. v.*

31. Lawrence, *supra* note 6, at 6-10.

32. A public body under the OMA is "any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units . . . ." G.S. 143-318.10(b).

33. *Id.* § 143-318.11(4).

34. Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors, 69 Cal. Rptr. 40 (1968).

35. *See* Pamlico News, Inc. v. Hyde County Bd. of Comm'rs, No. 99-CVS-76 (Hyde County Super. Ct. Jan. 14, 2000) (holding that if a matter under discussion is to be covered by the attorney-client privilege, the discussion must be limited to the attorney and to representatives of the governmental client).

Henderson County,[36] the North Carolina Court of Appeals recently held that the "consider and give instructions" exception is also rooted in the attorney-client privilege. A public body may not hold a closed session to discuss or consider claims, judicial proceedings, and the like, unless its attorney is present.[37] But if a mediator as well as the board's attorney is present at the closed session, the attorney-client privilege would be destroyed, and the exception would no longer apply. For the city attorney's scenario to be clearly permissible, the OMA would have to be modified to read "consider and give instructions to an attorney *or mediator* concerning the handling or settlement of . . . a mediation" (italicized words would be added). Then the statute would provide much clearer guidance to mediators and public bodies concerning when it is appropriate to discuss a mediation in closed session.

Even under the current statute, however, a certain form of "shuttle diplomacy" may be possible. Because public bodies can meet with their attorneys to give "instructions concerning the handling or settlement" of a mediation, the board could appropriately go into closed session with the attorney to do so. The attorney could then represent the board in the mediation with representatives from the other side as the board members waited in another room to get reports and give additional instructions. The attorney could relay the other side's interests and proposals back to the board, his or her client. This process could continue until the parties either reached an agreement or terminated the mediation.

Pending Litigation

The law states specifically that a closed session may be held concerning a claim, judicial action, mediation, or administrative procedure against or on behalf of a public body. In addition, in *Multimedia Publishing*[38] the North Carolina Court of Appeals held that a public body may meet in closed session with its attorney to discuss any matter legitimately within the attorney-client privilege. This holding, however, should not be taken as a blank check, giving members of public bodies the right to meet in closed session at will. The OMA attorney-client privilege exception still may not include mediation over noncontroversial matters.

Conclusion

Although a public body can discuss its strategy for an arbitration or mediation in closed session, it probably cannot hold the actual mediation with another public body behind closed doors.[39] If another exception were created to the OMA, one patterned after that for the attorney-client privilege, mediation in closed session might be permissible. Such an exception, like the one created for school budget disagreements, might well call for some sort of preliminary public dispute resolution process requiring public bodies to attempt to reach a compromise before a closed session is allowed. Under the current OMA, the most workable option may be the alternative scenario in which mediation committees meet separately in closed session, give instructions to their attorneys, and the attorneys in turn work with the mediator to resolve the dispute and shuttle back and forth between the committees and the mediator.

Since the exceptions to the OMA remain quite narrow, mediators and participants may not feel entirely comfortable conducting closed session mediations. Although most mediation models are based on private, one-on-one types of conflicts, perhaps the immediate answer is for mediators to develop techniques that are more suited to the public arena. As mediators branch out of the court room to handle domestic, business, and government cases in the spotlight of public scrutiny, perhaps they can make use of techniques that will foster the sense of trust and candor usually associated with closed-session mediations.

In North Carolina an increasing number of elected boards use facilitators to manage discussions during public hearings, help board members set goals, or clarify roles between boards and chief administrators. Similarly, facilitators and mediators work with citizen groups, nonprofit organizations, and business leaders on strategic planning or "community visioning" exercises that in turn can prevent conflict and manage

36. No. COA99-250 (N.C. Ct. App. Feb. 15, 2000). Information in this bulletin is based on the opinion as provided on the Web site for the North Carolina Court of Appeals. See http://www.aoc.state.nc.us/www/public/coa/opinions/2000/990520-1.htm.

37. *See* David M. Lawrence, *The Court of Appeals Addresses Closed Sessions for Attorney-Client Discussions*, 93 LOCAL GOV'T LAW BULLETIN (Mar. 2000). Lawrence notes that technically the court's opinion on this matter is dicta, but presumably later courts will follow this precedent.

38. Multimedia Publ'g of N.C., Inc. v. Henderson County, *supra* note 36, at page 4 (holding that G.S. 143-318.11(a)(3) does not require a claim to be pending or threatened before it may be invoked by the governmental body).

39. Lawrence, *supra* note 6, at 21.

different opinions creatively. These fully public settings have promoted productive discussion, and parties involved in disputes have identified common interests and found ways to address divergent ideas. One benefit of addressing conflict in public is to demonstrate to citizens that differences and conflicts are natural and that disputes can be addressed respectfully. A more public approach to mediation may be a valuable compromise in the ongoing battle between the advocates of open government and others desiring privacy in mediation. If the peacemakers cannot find creative solutions to this persistent and divisive problem, who can?

This Bulletin is published by the Institute of Government to address issues of interest to local and state government employees and officials. Public officials may photocopy the Bulletin under the following conditions: (1) it is copied in its entirety; (2) it is copied solely for distribution to other public officials, employees, or staff members; and (3) copies are not sold or used for commercial purposes.

Additional copies of this Bulletin may be purchased from the Institute of Government. To place an order or to request a catalog of Institute of Government publications, please contact the Publications Sales Office, Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330; telephone (919) 966-4119; fax (919) 962-2707; e-mail khunt@iogmail.iog.unc.edu; or visit the Institute's web site at http://ncinfo.iog.unc.edu.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 3,777 copies of this public document at a cost of $1,286.82 or $0.34 each. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.