



The Neutral

Volume 6, Issue 1 – March 2021

Florida Dispute Resolution Center Newsletter

Celebrating the 30th Anniversary of Statewide Mediator Certification

Statewide certification of mediators began in December 1990, and, in recognition of that milestone, the Dispute Resolution Center (DRC) reached out to mediators who have been certified since the beginning for some of their thoughts and reflections on the past 30 years of mediation in Florida.

We begin with the mediator with the front-running alphabetical name who was issued mediator number 1R and is still certified to this day.

Mediator Reflections

When one reflects on how the mediation practice has progressed in the last 30 years, you cannot fail to be in awe of how a relatively simple idea has become commonplace. Before mediation, settlements frequently occurred when the presiding judge called the attorneys into chambers, in some cases while the jury was waiting, and advised each of the parties that it would be in the best interest of the client to settle. Of course, the judge would make it clear that he or she was not prejudging the case but would raise a cause for concern.

My first taste of mediation came in construction cases before the creation of the rules and certifications of mediators. At that point, mediations happened by universal consent and an agreement by the parties. In some ways, it was like making your way blindfolded in a dark room. The practice, procedures and strategies were new. Eventually, you learned what worked best and what did not.

My overall experience is that mediations are successful when the client and attorney buy into the process and are prepared. There can be little doubt that it has changed the DNA of our litigation process.

Anthony J. Abate
Certified Mediator 1R
certified 02-15-1991

In 1989, I was trained in mediation at the American Arbitration Association. At that time, I had my own law practice as a family law litigator. Mediation was in its infancy and resolution of a pending case was through a settlement agreement negotiated by the attorneys or a trial before the court. Mediation provided the parties with another alternative, a process that afforded them the opportunity to personally participate in crafting their own settlement.

Understanding mediation's potential, I became certified by the 17th Judicial Circuit in 1990 and by the State on March 22, 1991. In 1992, to help promote mediation professionalism and education, I collaborated with a group of mediators that formed a local mediation association that is now known as the Association of South Florida Mediators & Arbitrators. I was elected its first president. We were honored that for many years Sharon Press (the first DRC director) would come to South Florida annually to speak to the Association.

What surprised me the most in those early years was the resistance to mediation by many of the attorneys. Their concern: Will I lose business and money? We now know that did not happen, and 30 years later both the courts and attorneys have come to rely upon mediation as the best method to reach an amicable resolution of the contested issues. I am proud to have been a part of this process for over 30 years.

*Barbara M. Beilly
Certified Mediator 85CFR
certified 03-22-1991*



Taking the circuit civil mediation course was an act of self-defense for many of the early course enrollees. The reason is that most of us were very experienced trial lawyers but had never seen nor attended a mediation. The Legislature and the Supreme Court were going to make us mediate all our cases before trial. We took the mediation course so we would know what we were doing when ordered to mediation. During the course I was fascinated by the difference between being a lawyer in the trenches and being a mediator. The mediator was above the fray, and the scenes unfolding looked amazingly different from the view from the trenches. Now 33 years since I took the course I am still mediating and enjoy helping people avoid the pain and disappointment of losing a trial.

*Samuel G. Crosby
Certified Mediator 312CR
certified 01-25-1991*

The judge said, “Mediation – What does that have to do with Dispute Resolution?” The lawyer said, “Mediation – What is that, and why do I need it to settle cases?” This was the reality of mediation in 1990, only two years after the Florida Legislature implemented one of the most comprehensive court-connected mediation programs in the country.

Thirty years later mediation is now part of Florida’s judicial culture – parties no longer need the courts to order mediation. Lawyers and parties mediate cases before suit is filed, during litigation and on appeal. Mediators report that 80 percent of cases mediated while in litigation settle at mediation. Parties actively participate in resolving their own disputes, while minimizing the expense, time and angst associated with litigation. Florida continues to lead the country with its statutes, rules of procedure, ethical standards, and mediator certification process.

Mediation is not the panacea to solve all social ills, but it is a valuable process that can restore relationships, resolve disputes, empower parties to take control and make their own decisions, and bring about necessary closure for weary litigants. As one of my business partners, Larry Watson, wrote, “Mediation is a cost effective, efficient and elegant dispute resolution process which has gained significant market acceptance.” It is a process that has its historical roots in ancient civilizations but has resurrected itself in modern times and has forever changed how lawyers in Florida will resolve disputes.

*A. Michelle Jernigan
Certified Mediator 647FRA
certified 01-11-1991*



Thirty years ago, I became a certified family mediator in Florida. As a CPA who counseled individuals, married couples, families and businesses on taxes and financial planning, I believed I had the knowledge and objectivity to take this on. Since then, I think you could say that I can add “wisdom” to those credentials. The skillsets from being a mediator are also useful in working with CPA firm clients and in the forensic expert witness services that I provide.

Looking back, I cannot help but think about one of my first mediations in 1991. In certification training, I learned that not only should I try to promote a safe environment for all parties during mediation, but also, as mediator, I should sit close to the entrance door to the room, in the unlikely event any violence should occur. Well sure enough, here I was in a scenario where tempers were starting to flare, the wife stands up and starts throwing her drink and ice cubes at her husband. She yells out, “You S.O.B, you have been sleeping with your attorney!!” I then stood up and said, “This mediation is concluded” and escorted each of the

parties out of the office. For many days, I kept thinking that it could have been worse. I came up with a new rule for future mediations: "Paper cups only, no ice."

For CPAs, mediation services are radically different from other services we provide. Generally, for family mediators, (1) there is relatively little or no preparation, and (2) the mediation services have a predetermined beginning, and generally a short duration.

Finally, I would be remiss if I did not mention that I particularly look forward to attending the required certified mediator educational programs where we are able to share experiences.

Monte E. Kane
Certified Mediator 836F
certified 01-25-1991



On reflection, I am encouraged by the professionalism that I see practiced by certified mediators in our profession. I strongly believe that certification sets the high standards that have enabled us to provide the type of service that parties need and anticipate, which sets the standard in this profession. As past chair of the ADR Section of The Florida Bar, I am encouraged by the new certified mediators entering our profession and their adherence to these standards. Thank you for all the work the DRC has done.

Michael H. Lax
Certified Mediator 938R
certified 02-01-1991

In 1990, I made a career shift and left a big law firm to dedicate myself full time to the profession of mediation. Although I was an early believer in its benefits, neither lawyers nor judges were big fans of mediation at the time. In fact, many of them tried to dissuade me from the profession. Lawyers would routinely say, "Mediation is unnecessary. We have always settled cases on our own. We see no need for it." Many judges also voiced concerns that mediators would overstep their roles into the court's domain. Slowly but surely, however, both lawyers and judges began to appreciate the benefits of mediation on the entire legal system. Lawyers found that they could use mediation effectively to resolve cases more efficiently and economically. Judges learned to use mediation as a very effective docket management tool. Now, mediation is widely accepted and used.

We have come a long way since 1990, and mediation is still growing in leaps and bounds. The pandemic has caused mediation to evolve even further. Mediators have not missed a beat. We are mediating virtually with Zoom, Webex, Microsoft Teams, etc. This has allowed participants to save travel time and expense. Participants feel much more empowered when they have a part in determining and deciding how their case is resolved. I continue to receive tremendous satisfaction as a mediator from helping people resolve their cases amicably and avoiding much of the aggravation, cost and uncertainty of going to trial, appeal or arbitration. Mediation will continue to have a positive impact on our legal system.

Laurie L. Riemer
Certified Mediator 1931CFRA
certified 01-25-1991



Yes, I do have some reflections. The most vivid is the memory of trial lawyers who thought that the idea of being forced to mediate was a waste of time and money. Most trial lawyers were of the opinion, back 30 years ago, that mediation was just another obstacle in an attempt not to have you go to trial. After a few years of mediation most trial lawyers thought mediation was the next best thing to sliced bread. Change is always hard to accept, but once made it generally turns out for the best.

Michael A. Tonelli
Certified Mediator 1681R
certified 02-08-1991

Message from the Director

A Sampling of MEAC Opinions in Our Electronic Mediation Age

Florida mediators quickly and expertly began using Zoom, Teams, telephones, and other electronic programs in 2020 to continue to assist the citizens of Florida and the court system in resolving disputes when the COVID-19 pandemic made in-person mediations unsafe. Given that problem-solving and brainstorming are mediators' tools, their openness to new methods of providing mediation services is not surprising.

The foundational principles of mediation are party self-determination, mediator impartiality, and providing a confidential, collaborative, non-coercive, non-adversarial process. This article highlights some Mediator Ethics Advisory Committee (MEAC) Opinions that may be particularly relevant to mediating remotely. Mediators are encouraged to read the entire Opinion to gain a complete understanding of the ethical rules as they apply to the questions asked. The entire Opinion can be accessed by clicking on the Opinion Number.

◆ Confidentiality

The following two MEAC opinions involve the confidentiality of written mediation agreements that are not completely signed. Similar questions may now be arising regarding video conference mediations and the agreements that result from them.

[MEAC 2012-010](#)

In a family law case, the attorneys, parties, and mediator signed the mediator report stating a partial agreement was reached and naming the remaining issues to be decided by the judge. Subsequent to the mediation, the mediator realized one party and their attorney had initialed all of the pages of the agreement but had not signed it, while the other party and attorney had initialed the pages and signed the agreement. The mediator asked several questions about the confidentiality of the report and agreement, what the mediator should do with the documents, and what outcome to report.



[MEAC 2013-001](#)

This opinion involves four questions regarding mediator reports to the court and the signing or failure to sign mediation agreements by parties who appear in small claims court telephonically. Similar scenarios may now be arising regarding video conference mediations.

◆ Procedures

[MEAC 2011-001](#)

It is neither a requirement nor a violation of the Florida Rules of Civil Procedure or the Rules for Certified and Court-Appointed Mediators for a certified mediator to sign a written settlement agreement in the capacity of mediator.

[MEAC 2011-012](#)

The use of technology in mediation was the subject of an inquiry prior to COVID-19 when a mediator asked if they could ban the use of cell phones during mediation to ensure confidentiality. The MEAC noted that mediation confidentiality applies to all mediation participants, whether present in person or by electronic means.

[MEAC 2013-009](#)

The MEAC affirmed that engaging in the dual role of mediator and notary is ethically inappropriate.

*2021: Note that chapter 117, Florida Statutes, Part II pertains to the option of online notarizations.

[MEAC 2015-001](#)

The use of technology in mediation was again the subject of an inquiry prior to COVID-19. The MEAC opined that certified mediators do not have the authority to ban use of laptop devices or tablets during mediation. Decisions regarding the reason for and the use of these devices are for the parties to make unless there is a court order to the contrary.

[MEAC 2015-005](#)

In a mediation in which the parties reached full agreement, all parties verbally agreed the plaintiff's attorney would draft the agreement and send it to all parties for review and execution. The MEAC opined that the verbal discussion in the scenario presented satisfied the requirements of rule 10.420(c), Florida Rules for Certified and Court-Appointed Mediators.

[MEAC 2017-006](#)

A mediator may report “agreement,” “no agreement,” or “partial agreement” to the court without comment or recommendation. No other descriptors or modifiers may be used in the mediator report unless the parties have consented to them in writing.

[MEAC 2019-004](#)

The MEAC stood by its previous opinions expressed in MEAC 2006-007 and 2008-006, that it is the parties who decide who will attend and participate in the mediation session and not the mediator. This inquiry concerned whether it is ethical for a mediator to require the presence of children in family mediation so that the parents have to face the children and tell the children whether or not the parents are willing to pay child support for their care.

◆ **Business Practices**

[MEAC 2019-006](#)

If a duly scheduled mediation is not conducted, the mediator may report to the court that the mediation was not held. The mediator may but is not required to report the parties who attended or did not attend the mediation. However, a mediator shall not include mediation communications in the mediator’s report. The MEAC declined to offer best practices for cancellation windows but did provide rule guidance on the assessments of fees.

◆ **Advice, Opinions or Information**

[MEAC 2019-003](#)

This opinion involved six questions regarding mediation of a landlord/tenant case. Mediation provides a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. The mediator’s responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence and conflicts of interest. Mediators should mediate cases that they are competent to mediate.

In conclusion, Florida Supreme Court certified mediators and court-appointed mediators continue to be bound by the ethical rules in Part II Standards of Professional Conduct, Rules for Certified and Court-Appointed Mediators, whether they conduct mediations in person or electronically.

DRC Training News

Since the last publication, the DRC conducted a four-part mediator ethics series for court programs throughout the state via Zoom. These trainings have now been made available for the benefit of all certified mediators and can be located on our website by viewing the [DRC CME Programs](#) link.

The DRC's commitment to offering free local mediator professionalism training for court mediators across Florida supports a professional, ethical, and skilled judiciary and workforce, one of the issues highlighted in the Supreme Court's 2016-2021 Long-Range Strategic Plan. The DRC is continuing that commitment and has begun conducting virtual continuing education programs.

ADR News and Updates

DRC by the Numbers: 2020 Edition

A total of 90 certified mediation training programs were conducted in 2020. In those programs, a total of 1,073 persons completed training. Starting with the lowest: 8 people completed training in one appellate mediation program; 23 people completed training in one dependency mediation program; 239 people completed training in 20 family mediation programs; 395 people completed training in 35 county mediation programs; and 408 people completed training in 33 circuit mediation programs.

In 2020, the number of trainings held was up slightly with the number of trainees increasing by almost 200 persons. The increase in the number of trainings conducted during the pandemic can be attributed to two Florida Supreme Court administrative orders that suspended the requirement that participants in mediator certification training attend physically, thereby allowing online training. Without the suspension of the physical attendance requirement, there would most likely have been a dramatic decrease in training.

The DRC certified a total of 377 new mediators in 2020 and renewed a total of 2,196 mediator certifications. A decrease in certifications due to the pandemic was most notable in June when only 4 new mediators were certified. With 35 new mediators certified in October, the monthly certification totals were closer to the pre-COVID-19 monthly average.

Mediator Qualifications and Discipline Review Board (MQDRB) 2020 Update

The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. To date, 316 grievances have been filed with the Board.

In 2020, the MQDRB received 20 filed grievances for review. The chart below shows the “... the division in which the cases arose, who filed the grievance, and the case type.” Of the 20 grievances, nine cases were dismissed for lack of probable cause and three cases were dismissed as facially insufficient. One case resulted in a sanction agreement. There was one case in which no jurisdiction was found. Six cases remain pending at the time of publication.

Year 2020 – Total of 20 Cases Filed		
Division	Filed By	Case Type
Northern – 4	Party – 17	County Mediator / Family Case – 1
Central – 7	Attorney – 2	Family Mediator / Family Case – 10
Southeastern – 9	Other – 1	Circuit Mediator / Circuit Case – 7
Southwestern – 0		Non-certified Mediator / Circuit Case – 1
		Certified Mediator / No Case – 1

Judgments and Decrees Interest Rate Set

Small claims mediators take note. The quarterly rate of interest payable on judgments and decrees has been set at 4.31 percent beginning April 1, 2021. For more information contact the Bureau of Accounting at 850-413-5511 or visit the website of [Florida’s Chief Financial Officer](#).

Amendments to the Florida Family Rules of Procedure

In November 2020, the Supreme Court released opinion SC20-162, *In Re: Amendments to the Florida Family Rules of Procedure – 2020 Regular-Cycle Report*. The opinion may be of particular interest to certified family law mediators and qualified parenting coordinators as it revises a number of family law rules and forms, as well as creates new forms that became effective on January 1, 2021.

The Court’s online docketing for this case can be found at [Florida Supreme Court Docket Case Number SC20-162](#).

Featured Guest Article

Mediation Confidentiality: Silence is Golden – and Required

by D. Robert Hoyle, Esquire

Confidentiality in the conduct of a mediation is the bedrock of the process. If a mediation is to succeed, there must be an understanding that all communications made within the mediation time frame are not to be disclosed, except where disclosure is required or permitted by law or agreed to by the parties. The importance of this concept is apparent in the fact that the Florida Legislature included in statute the Mediation Confidentiality and Privilege Act (MCPA) (Sections 44.401 – 44.406, F.S., adopted in 2004). The statute establishes restrictions on disclosures that apply to mediation parties, participants, attorneys, and mediators. The MCPA also has relevant definitions, exceptions to confidentiality, privilege, and sanctions for breach of confidentiality.

Not to be outdone, the Florida Supreme Court created five specific rules in the Florida Rules for Certified and Court-Appointed Mediators that deal with confidentiality (10.230, 10.300, 10.360, 10.420, 10.870). For example, Rule 10.360 prohibits a mediator from disclosing a communication made in caucus without the consent of the party making the communication. And, Rule 10.420 requires that mediators inform parties and participants at the commencement of mediation that all communications are confidential, except where disclosure is required or permitted by law.

Section 44.405(1), F.S., states that except as otherwise provided, all mediation communications shall be confidential. Section 44.403(1), F.S., defines a mediation communication as an oral or written statement, or nonverbal conduct, intended to make an assertion by or to a mediation participant, made during the course of a mediation, or prior to mediation, if made in furtherance of a mediation.

A mediation participant is a mediation party or a person who attends a mediation in person or by telephone, video conference or other electronic means. A mediation party is a participant; a participant is not always a party. No matter the name, restrictions against disclosures apply to every person participating in the mediation.

Of particular importance is the time frame of a mediation, i.e., when does it begin and when does it end. The applicable time during which the rules of confidentiality apply are specifically defined, and the time period is not limited to the time spent at the mediation session with the mediator.

A mediation can be either court-ordered or by agreement of the parties. If court-ordered, the mediation begins when an order is issued by the court. If by agreement of the parties, the mediation begins when the parties agree to mediate (hopefully in writing) or as required by

agency rule, agency order, or statute, whichever occurs earlier. In either case, the mediation ends when (1) an agreement is signed by the parties, (2) an impasse is declared, (3) the mediation is terminated by court order, court rule, or applicable law, or (4) the mediation is terminated after party compliance with a court-order to appear (see Section 44.404, F.S.).

The significance of the time period is important. There might be time between the mediation conference and either the (1) date of the court order, or (2) date of the written agreement to mediate. Mediation communications during this period of time are confidential and cannot be disclosed.

Sanctions can be imposed by the court for a breach of confidentiality. Section 44.406, F.S., provides significant remedies against a mediation participant, including equitable relief, compensatory damages, attorney fees and costs incurred in the application to the court for relief.

The court can also strike the pleadings of a party who breaches confidentiality. Although the MCPA was adopted in 2004, similar provisions existed in section 44.102(3), F.S. (1993), prior to 2004 as exhibited in *Paranzino v. Barnett Bank of South Florida*, 690 So. 2d 725 (Fla. 4th DCA 1997). In that case, Ms. Paranzino and her attorney disclosed an offer that was made by Barnett Bank after the mediation conference, but within the subsequent time period agreed by the parties for the mediation discussions to continue. (For the record, they told a reporter from the *Miami Herald* who printed the offer in an article.) Barnett Bank filed a motion to strike pleadings and for sanctions the complaint based upon the disclosure of a confidential mediation communication. The trial court dismissed Ms. Paranzino's complaint with prejudice. The dismissal was confirmed by the Appellate Court, which stated, "By violating the court-ordered mediation and the confidentiality provision of the Mediation Report and Agreement, the appellant ignored and disregarded the court's authority. The mediation order was entered by the court at appellant's request and the mediation report and agreement signed by all of the parties specifically stated that the mediation proceedings were to be confidential. In addition, the agreement further provided that the mediation was governed by the provisions of chapter 44, Florida Statutes, and rule 1.700, Florida Rules of Civil Procedure."

In *Gulliver Schools, Inc. v. Snay*, 137 So. 3d 1045 (Fla. 3rd DCA 2014), the parties signed a settlement agreement that specifically stated no disclosure would be made of any information, including the mere fact that there was a settlement agreement. Mr. Snay then told his teenage daughter that the case had settled. She posted a statement on Facebook that the school district was financing her trip to Europe that summer by making a payment to her father. The appellate court refused to enforce the settlement agreement in favor of Mr. Snay, stating, "In this case, the plain, unambiguous meaning of paragraph 13 of the agreement between Snay and the school is that neither Snay nor his wife would 'either directly **or indirectly**' disclose to anyone ... 'any information' regarding the existence or the terms of the parties' agreement."

Additional information and resources on confidentiality in mediation may be found on the Florida Court's webpage including the [ADR Resource Handbook](#) and the [Mediator Ethics Advisory Committee Opinions](#). The Dispute Resolution Center also has a one-hour recorded webinar "[Mediation Confidentiality 101](#)" from October 2020 available for viewing.

Bob Hoyle is a Florida Supreme Court certified county and circuit mediator and has practiced law in Manatee County, Florida, since 1986. The emphasis of his practice is in the areas of mediation, real property, probate, and business law. He is a past chair of the Alternative Dispute Resolution Section of The Florida Bar, and a past chair of The Florida Bar Council of Sections. Mr. Hoyle has published numerous articles on mediation.

News From the Field

In Memoriam



It is with a heavy heart that the Dispute Resolution Center announces the passing of Lisa A. Dasher last December. Lisa was a certified county, family, circuit, and dependency mediator, a Florida Bar member, a Guardian ad Litem/CASA, and a Qualified Parenting Coordinator. As a certified family mediator, Lisa worked with the ADR programs in both the Fourth and Eighth judicial circuits. Throughout her career, she worked within the military, non-profits, and criminal justice systems. Lisa's accolades include serving on the Family Nurturing Center's Board of Directors, as co-chair for the Jacksonville Bar Association Family Law and Alternative Dispute Resolution committees, and coordinating the Clay County Jacksonville Area Legal Aid - Clay County Family Law Pro Bono Clinic. She was recognized with the 2012 and 2016 Lamar Winegeart, Jr., Pro Bono Services Award and the 2016 Jacksonville Bar Equal Justice Pro Bono Service Award. We offer our sincerest condolences to Lisa's family, friends, and colleagues.

Retirement Spotlight

Donna J. O'Connor was originally certified as a county mediator in January of 1997 and served nearly 24 years in the Eighth Circuit's Volunteer Mediation Program. Donna has been recognized not only as a volunteer mediator, but as being instrumental in helping to make the Eighth Circuit's Volunteer Mediation Program what it is today. She has gone above and beyond the duties of a volunteer mediator by assisting with party planning, recruiting new volunteers, and mentoring mediation clinic law students on a regular basis. Donna did it all with a touch of class, a generous heart, and a great sense of humor. The DRC adds its appreciation to Donna for being a wonderful cheerleader for mediation for almost a quarter of a century.



Mediator Retirements

The DRC would like to acknowledge and send best wishes to the following mediators who have announced their retirement since our last issue.

C. Marvin Burris, Lake City
Charles L. Cetti, Pensacola
Susan C. Fischer, Bradenton
Arno Kutner, Bookelia
David B. Lee, Ponte Vedra
Valerie A. Marshall, Winter Springs
Rosemarie S. Roth, Miami
William B. Smith, New Smyrna Beach
Jane Frances Sullivan, West Palm Beach

