

THE COMMON GROUND

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ANA CRISTINA MALDONADO & NATALIE PASKIEWICZ, CO-EDITORS



MESSAGE FROM THE CHAIR

Patrick Russell, Esq.



I hope you all enjoy this fantastic edition of The Common Ground. The Alternative Dispute Resolution Section of The Florida Bar is comprised of a superb group of dedicated and talented individuals.

The wonderful thing about our Section is that all of these fine people are dedicated to bringing peace to our world in their own way through collaboration, enhanced communication, and creative problem-solving. Since dispute resolution touches nearly every facet of the law, I firmly believe that The Florida Bar as a whole is elevated through the combined experience, skill, and contributions of the members of the Alternative Dispute Resolution Section.

My goal this year, COVID notwithstanding, is to build a greater connection with all sections of The Florida Bar, the Florida Dispute Resolution Center, and you, the members of this great Section.

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Message from The Chair

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Through these combined efforts, we may have the best chance to realize real impact and change as to how we resolve disputes and ultimately interact with each other. This first starts with you, the member.

There are different reasons why you have joined our Section. We want to hear from each of you as to why you have joined the Section and what you would like to see this Section do. There are enormous opportunities to make a difference and impact the future policies and procedures for dispute resolution in Florida. For that, we encourage everyone to become active and intimately involved in the Section's work. There are exciting changes on the horizon and wonderful opportunities to truly lead through our committees and project work.

Don't be shy. Be heard. Lead. Make a difference. Bring peace.

Patrick Russell
2021-2022 ADR Section Chair
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**MENTORING ACADEMY
FOR CERTIFIED MEDIATORS
Spring 2022**



Florida Enacts Landmark Eldercaring Coordination Statute

‘This legislation will improve the safety and autonomy of this vulnerable population’

Published in The Florida Bar News

Florida is the first state to statutorily recognize [eldercaring coordination](#), a court-ordered dispute resolution process for aging persons and their families that promotes respect for the voices, autonomy, and safety of older adults.

Sen. Dennis Baxley, R-Ocala, and Rep. Brett Hage, R-The Villages, sponsored the legislation, which won unanimous approval of all committees and subcommittees of reference and on the floors of both houses during the 2021 Legislative Session. Gov. Ron DeSantis signed [CS/CS/HB 441](#) on June 4 and §44.407, Florida Statutes, became law on July 1.

Eldercaring coordination is designed to protect older adults and help families avoid the costs, time, and heartache involved in court battles over the care and safety of older adults.

A trained eldercaring coordinator may be appointed by the court for up to two years to assist with transitions that families experience in caring for their aging loved ones. Eldercaring coordination may also help to resolve non-legal issues more quickly, with less conflict and in a private forum rather than in court.



Sen. Dennis Baxley

According to Baxley, the need for eldercaring coordination is great because family conflict jeopardizes the health and well-being of elders.

“I am grateful to have had the opportunity to work on this issue of providing alternative methods for dispute resolution in eldercaring,” Baxley said. “This legislation will improve the safety and autonomy of this vulnerable population.”

Hage said, “The eldercaring coordinator bill is a beautiful piece of legislation that provides families options and allows the aging elder’s voice to always be heard.”



Rep. Brett Hage

Florida’s new eldercaring coordination statute resulted from a collaboration between the Association for Conflict Resolution and the Florida Chapter of the Association of Family and Conciliation Courts. In 2014, Linda Fieldstone and Fifth Circuit Judge Michelle Morley created and co-chaired the FLAFCC Task Force on Eldercaring Coordination, which included 20 statewide entities and a well-credentialed advisory committee. The task force partnered with the Association for Conflict Resolution Task Force on Eldercaring Coordination—20 U.S. and Canadian organizations—and developed guidelines for eldercaring coordination. The guidelines are based on parenting coordination, a dispute resolution process for parents in high conflict regarding child-related issues.



In 2015, the two task forces merged into the Elder Justice Initiative on Eldercaring Coordination. Eight Florida circuits are pilot sites, paving the way for easily replicable pilot sites throughout the U.S., Canada, and abroad.

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Eldercaring Legislation Becomes Law

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On World Elder Abuse Awareness Day 2018, the United Nations recognized eldercaring coordination as an Awareness to Action Model for the protection of aging persons.



Hon. Michelle Morley

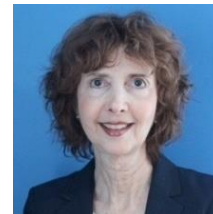
Judge Morley said eldercaring coordination is a process that has been needed for a long time.

“Every time I talk about it with to someone, I see people nodding their heads, acknowledging that they know someone whose family has been hurt by conflict over the care of an aging loved one,” she said. “It breaks my heart to think of the wonderful and amazing people who are at the center of that family conflict in their waning years. They know they are not the strong, independent people they used to be, and they are dependent on people who fight about them. In court, this aging person is put in the spotlight—alone, afraid, confused, and often unheard—as family members argue about their personal abilities and future. Eldercaring coordination is a person-focused and strength-based process totally unlike the adversarial court process.

Visit eldercaringcoordination.com to learn more and sign up for training.

It is a more sensible way to address the emotional and private family issues surrounding the care and autonomy of elder loved ones.”

Fieldstone said, “Thanks to the FLAFCC, Florida is serving as a model for a more compassionate and more effective resolution alternative for elders and their families in conflict. Even more importantly, we are helping to redefine the operational definition of family to include multi-generations that can better support and improve the lives of even the youngest members of the family.”



Linda Fieldstone

Current FLAFCC President Maria C. Gonzalez said that the legislation is a great achievement for the benefit of Florida elders, their families, and the generations to come.

“When you consider that the bills moved so quickly through the House and Senate, it is clear that our legislators fully understood the critical need for this type of elder law,” said Gonzalez. “We salute Sen. Baxley and Rep. Hage for their hard work and leadership to make our vision a reality.”



Chairs of the ADR Section (2010–2021)

Interviews conducted by Ana Cristina Maldonado and Shari Elessar

The ADR Section of The Florida Bar turned 10 years old in 2020. Success has many parents, and many people have contributed to its creation and development. In honor of ten years, we had the opportunity to speak with the first eleven ADR Section Chairs. This group of people illustrates the many paths to a career in ADR, and a passion for serving and improving our multidisciplinary field. Many of them are servant leaders, and the ADR Section is not the only place to benefit from their talents. Their leadership has shepherded the Section from its creation to a cross-cutting group of nearly 1,000 members within a decade.



Patrick Russell, 2021–2022.

Patrick joined Salmon and Dulberg as a mediator after years as a partner at Lydecker Diaz in Miami, and a solo attorney before that.

An experienced ethics and professionalism attorney who tried countless malpractice complaints on behalf the Florida Bar, Patrick also specializes in business law. Patrick is a proud graduate of University of Miami Law School,

With a bachelor’s in Political Science from Marquette University. He’s a passionate amateur historian and has been collecting oral histories U.S military veterans for his [Making History Project](#).

Patrick is passionate about mindful mediation, having seen first-hand the need for improved mental health in the legal profession during his years as an ethics attorney. In 2020, he organized a multi-part series on mental health for the ADR Section.

Continued, next page

Patrick Russell, continued. His mediation philosophy of “getting to ‘we’” is based on the four key fundamental practices of listening, speaking, actions and empathy. Patrick’s goal for his year as Chair is outreach to ensure that the membership of

the Section deepens its connections with each other and remains active, even as COVID continues to dog the nation. He is also working to implement the Long-Term Planning Committee, with a review of the Section’s committee structure.

Oscar A. Sanchez, 2020–2021.

Oscar came to mediation after a long career as a commercial litigator and trial lawyer at an AmLaw 100 law firm.



He is the founder and principal of OAS Mediation. Oscar received his law degree from the University of Florida Levin College of Law, earning membership in the Order of the Coif. He feels an obligation to give back to his alma mater, and he has served as Chair of the UF Law Center Association Board of Trustees, among other roles. Oscar bleeds orange and blue. His devotion to UF is because “UF made everything I am today possible.”

committee devoted to reaching out to the law school community in Florida. His goal in his Section service—and in his mediation practice—is to encourage litigators to better understand the different sets of skills that mediation and arbitration demands of them.

“When people say they want a bulldog mediator, what they are really saying is that they want an advocate for them, not a true neutral. This misunderstands the mediation process.”

Oscar’s tenure as head of the ADR Section saw the implementation of the first bi-annual Arbitration Advocacy Institute, as well as a new Section

Oscar hopes the Section will continue helping lawyers strengthen their advocacy skills in mediations and arbitrations. Having watched the explosion of e-mediation during COVID-19, he believes this will also be an important practice area for the Section in the future.



Kim W. Torres, 2019–2020.

Kim Torres’ legal practice is about people. Specializing in family, civil, and eldercare mediation, she works as a solo mediator practitioner with her firm, Torres Mediation. She is also actively

involved as a contractor with the 19th Judicial Circuit’s ADR Program. Kim was recognized in 2018 as a Leader in the Law by the Florida Association of Women Lawyers.

Kim’s time as head of section coincided with the arrival of COVID-19. She quickly realized that mediators have a lot to teach other practitioners about working virtually. Kim put together an excellent menu of CLEs that targeted skill building for virtual practice. The Section’s courses on Zoom, Microsoft Teams, and paperless practice proved incredibly popular and useful to the Bar’s community at large and provided a strong financial base for the Section. Kim’s outstanding work resulted in her recruitment to The Florida Bar’s CLE Committee, and she continues to co-chair the ADR Section’s CLE Committee. Her vision for the future of the Section is to keep building on the strong foundation that has been established.

A precocious student, Kim started law school at Florida State University at the age of nineteen. She met her husband there, and the two of them settled in Melbourne, Florida. Outside the law, Kim is a sustaining member of the Junior League, with 26 years of service. Her practical and hands on leadership of the ADR Section reflects the skills honed as an active voluntary member organization leader at the League. Kim invites participation and finds ways to support the volunteer interests of a diverse membership.

“The thing with leading a bunch of mediators, they are reasonable and want to work on solutions!”

Kim is also exploring opportunities in the interdisciplinary aspects of the ADR Section, such as connecting with expanding restorative justice efforts and standardizing eldercare coordination.

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Practice Resources





Christina A. Magee, 2018–2019.

In the legal world, “Chris” Magee has done it all—big law, boutique law, small firm law, and now, a solo civil mediation and arbitration practice, Brevard Mediation Services, based in Satellite Beach.

With a Bachelors in Linguistics from Wesleyan University and her law degree from New York University, Chris has worked in all areas of civil law: insurance, employment, disability, small claims, business and appeals. She also the former Chair of the Small Claims Rules Committee of The Florida Bar. She is married to a radiologist and has two daughters. She has lived in Baltimore, Maryland, Providence, Rhode Island, New York City, Washington, D.C.,

and Kansas City, Kansas, before settling in Melbourne, Florida. A little-known fact about Chris: She is fluent in American Sign Language and spent a semester studying at Gallaudet University while an undergraduate.

Chris came into the ADR Section looking to create a signature event for the section that would bring the Section’s members—normally solitary practitioners in the ADR field—together for networking, camaraderie, and learning. As a result, she helped organize the first bi-annual Mentoring Academy for Certified Mediators in October 2019. Her vision for the section is to continue to expand and serve mediators, arbitrators, and the attorneys who engage in ADR practice, and for the Section to become a reference point as a strong and unified voice in the state’s ADR community.

Robert A. “Bob” Cole, 2017-2018.

During his 35-year career as a trial lawyer, Bob was recognized as one of the best. His accolades include Trial Lawyer of the Year by the Florida Chapters American Board of Trial Advocates and serving as president of FLABOTA and the Jacksonville chapter of ABOTA.



Bob was also the recipient of the Joseph P. Milton Award for Professionalism and Civility in 2019, presented by FLABOTA. As a defense attorney, he participated as a “problem solver” in countless mediations, including some of the earliest ADR pilot programs in the Middle District of Florida.

Early in his career, Bob served as part of the Supreme Court committee that drafted Rule 10, the Florida Supreme Court Rules for Certified and Court Appointed Mediators. When the time came to retire from trial work, Bob knew he wanted to mediate, and joined Upchurch Watson White & Max.

A native son of Jacksonville who grew up working with his father, a tugboat and yacht captain on the St. Johns River, Bob has worked hard at everything he does. As the first in his family to go to college, he is proud that he has built a professional career that has inspired his children to go into the law. Bob is honored to have served as Chair of the ADR Section, which in just ten years has grown into an active section with quality programs and nearly 1,000 members.

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The ADR Section’s Six-Part Health & Wellness CLE Series is available online 24/7 in downloadable seminar and podcast formats.

flabaradr.com/wellness-cle-series



24/7 CLE & CME

Online Seminars (On-Demand) and Downloadable Audio CLE in The Florida Bar InReach Catalog

Using Arbitration/Mediation to Accelerate Your Case: Keys to Progress. Is your case bogged down as Court dockets are too big to advance? Are your motions and litigation strategies delayed or ineffective due to competition for the Court's time with unprecedented and unresolved civil matters and hearings in only virtual formats? The Alternative Dispute Resolution and Solo & Small Firm Sections invite you to spend an hour to learn from an expert moderated panel including a mediator and arbitrator about inventive ways arbitration and mediation are being used to move cases forward even in post-pandemic times. Jake Schickel, Christina Magee and Glenn Waldman. 1.0 CLE/CME; .5 of which may be applied toward Ethics.

Diversity: "I'm Not Yelling...I'm Just Passionate!" Attorney Trizia G. Eavenson, a Latina trial lawyer, Mediator and Life Coach, unravels some of the mysteries of "cultural competence," explore the strata of diversity, and delve into broad "ethnic-rich" body languages in a light-hearted tone with respect for all folks and trains of thought. Unlike more confrontational and/or high-conflict, stressful presentations, Attorney Eavenson seeks to educate through humor, grace, and humility. 1 CLE; 1 Bias Elimination CLE.

The Effective Use of Non-Binding Arbitration: Nothing to Fear Here! This program the purposes of non-binding arbitration and why judges are ordering them; applicable statutes, court orders, rules and procedures; the non-binding arbitration process and its practical advantages; types of awards; ethical constraints; and a litigator's perspective. Michelle Jernigan, John Salmon, Meah Tell, Christina Magee and Kelly Overstreet Johnson. 1 CLE.



ONLINE 24/7
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Meah Rothman Tell, 2016-2017.

Unlike most ADR professionals, Meah began her career in ADR in the mid-1980's as an arbitrator on the commercial and employment panels of the American Arbitration Association and on other arbitration panels.

In the end of 1989, Meah began her work as a mediator for the Miami-Dade County Mediation Arbitration Division before there was mediator certification and became a Florida Supreme Court Qualified Arbitrator. She has been a Florida Supreme Court Certified Family, Civil, County and Appellate Mediator for about thirty years and is a primary family and civil mediation trainer, and a qualified trainer for Florida Supreme Court approved qualified arbitration training programs. Meah has taught mediation, arbitration and negotiation at Nova Southeastern University's Dispute Resolution Master's and Ph.D. programs and mediation to second- and third-year law students at the Shepard Broad College of Law.

Meah has served the ADR community as President of the Association of Broward County Mediators and Arbitrators and as their charter newsletter editor. She served as Chair and Co-Chair of the ADR Section of the Broward Bar and served as President of the Florida Academy of Professional Mediators.

Meah served on three of the four standing committees of the Florida Supreme Court: The ADR Rules and Policy Committee, the Mediator Ethics Advisory Committee, and the Mediation Training Review Board.

Meah served as the Treasurer, Chair-elect and Chair of the ADR Section. Her main goal in serving on the Executive Council has been to ensure that the Section makes its presence known and comments on any matters that affect mediation and arbitration in the State of Florida. The Section adopted its logo under her tenure and reached out to other Sections and to eminent ADR professionals to present joint CLE programs and to present seminars on mediation and arbitration at the annual meetings of the Florida Bar.

Every year Meah endeavors to assist the Section in providing at least one CLE program, and with Executive Council Member Deb Mastin co-chaired the Inaugural Arbitration Institute, which featured over 35 arbitration practitioners. Meah and former executive council member Larry Saichek recorded videos for the Young Lawyers Section on Mediation and Arbitration, and she joined forces with former executive council member Ricardo Cata to have the Section sponsor the first joint ADR program with the International Law Section. This year Meah participated in a CLE program on mandatory non-binding arbitration.

D. Robert "Bob" Hoyle, 2015-

2016. Bob is originally from Columbus, Ohio. He attended Harvard College, where he was on the wrestling team and taught weightlifting for the Harvard Department of Athletics Intramural Program.



In 1978 he moved to Florida, taught high school biology and coached weightlifting, wrestling and football. In 1982, Bob returned to Ohio and attended the evening division of Capital University Law School. He worked for the Franklin County Probate Court and a law firm while attending night classes. He returned to Florida in 1986 and became an attorney and father on the same day when, a few hours after receiving his admission letter, his wife delivered their first child.

Bob has practiced in Manatee County as a sole and small firm practitioner in the areas of probate and real estate. He was certified as a Circuit Civil Mediator in 1999 and attended Mediation Training at the Harvard Law School Program on Negotiation (PON).

After Bob made a presentation on mediator conflicts of interest at the Florida Dispute Resolution Center Annual Conference, Michael Lax invited him to join the Executive Council of the ADR Section. He was elected Chair for the 2015-2016 term. During his time as Chair and Chair-elect, Bob appeared before the Florida Supreme Court twice to argue the position of the Section on proposed changes to the rules governing mediator discipline and also proposed rules for alternative ADR processes.

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Bob Hoyle, continued. After serving as Chair of the ADR Executive Council, Bob was elected to a term as Chair of the Florida Bar Council of Sections.

Bob has a sincere appreciation for the relationships he has made with members of the Executive Council. He has had the opportunity to speak with his ADR colleagues at several Bar conferences. He envisions the ADR Section working more closely with attorneys who are representing clients in ADR

proceedings to assist them in improving their pre-mediation preparations for themselves and their clients to enhance the prospect of settlement. Bob continues to teach courses on various matters associated with mediator ethics. He has maintained his lifelong passion for weight training, and is the author of *How Much Can You Control? A Guide To A Lifetime Of Consistent Improvement Through Safe Weight Training*.

Michael H. Lax, 2014-2015.

Miami claims Michael Lax from his childhood through his law career, with brief forays to Washington, DC for undergraduate studies at George Washington University, and St. Louis, MO for law school at Washington University.



He practiced both in solo and firm environments, representing the Miami Dade School Board, individuals and corporations and class action clients on the plaintiff and defense sides. Michael's dispute resolution practice dates back to his participation as an original member of the Miami Dade Citizen's Dispute Settlement Program. He has been a dispute resolution professional since 1998, and since 2012, he has worked as a full-time dispute resolution professional with Salmon and Dulberg. While Michael was actively mediating and arbitrating,

Karen Evans-Putney recruited him to the ADR Section. What drew Michael to service with the ADR Section was his desire to work with other dispute resolution professionals to help elevate the profession. Michael's goals as Chair were for the Section to better serve its members and to grow its membership. Many mediators and arbitrators in Florida weren't members of the Section. During his time as Chair, Michael and his team created the outreach committee, improved the Section's website, and established the Common Ground newsletter, which is one of the most read Bar publications. In the future, he hopes that professionalism in the ADR field can be broadly recognized for the essential role it plays by parties, attorneys and judges.

“Dispute resolution is a profession, and when the Supreme Court set up its rules, it recognized that. For this reason, Florida is a national leader in ADR.”



Karen Evans-Putney, 2013-2014.

As a then-commercial litigator, Karen was an early fan of mediation. Certified in 1992, Karen was also a founding member of the ADR Section. She began to mediate while still litigating with Kluger Peretz Kaplan & Berlin (now known as Kluger Kaplan).

A graduate of the University of Miami School of Law, Karen was drawn to mediation from its early days as a rewarding and family-friendly career option. For more than twenty-five years, Karen has practiced mediation and arbitration exclusively. Having founded her firm, Litigation Resolution, Inc. in 1992, she specializes in employment, civil rights, disability and commercial law claims.

Additionally, Karen serves as a panelist for the American Arbitration Association (AAA) where she regularly arbitrates both employment and commercial disputes. Karen is also a charter member of the National Academy of Distinguished Neutrals, and an executive board member of the Labor & Employment Section. Karen previously served for approximately twenty years on the Ad Hoc Advisory Committee on Court-Annexed Mediation for the USDC, Southern District of Florida, chairing that committee May 2017–May 2020. Her tenacity and her commitment to generating options has earned her the respect of colleagues and clients.

“In mediation, every day you have to prove yourself. There are no short cuts.”

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Chairs of the ADR Section

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Karen Evans-Putney, continued. A self-described “Southern girl,” she seeks to combine strength with grace and professionalism. Karen recognizes Bar service as a way to positively affect her profession and community.

As a founding member of the ADR Section of the Florida Bar (2011), Karen served as its first female Chair. She embraced the opportunity to work on the future of ADR as Section Chair, with an ambition to grow and diversify the then-new section and raise its profile within the Bar itself.

John J. “Jake” Schickel, 2012-

2013. In the late 1970s, while Jake Schickel was working at the State Attorney’s Office in his hometown of Jacksonville, his boss, Ed Austin, asked him to set up a program where neighbors could address their community grievances with the help of volunteer neutrals. The program was called the Jacksonville Citizen’s Dispute Settlement Program, and it was successful in resolving cases before they made it into court, which also helped save the state time and money. Now, as a person who mediates multi-million-dollar circuit civil cases, he looks back and sees the connection between the high-end dispute resolution cases that he is called to work on, and those early cases dealing with garbage cans left out too late, or dogs left loose.



Jake’s illustrious legal career includes Florida Bar board certification in Civil Trial and Workers’ Compensation, recognition as Florida Bar Board Certified Lawyer of the Year, and Lawyer of the Year by the Jacksonville Record. The Professionalism Award of Florida’s five Workman’s

To this end, she modeled her efforts on the more established Bar sections such as the Labor and Employment, the Real Property, Probate and Trust Law, and the Business Law sections. Her personal goal is to help bridge our societal divisiveness by engaging in civil and persuasive conversation among people with different political views, with an eye towards softening diametrically opposed and entrenched perspectives – just as she tries to do in mediation each day.

Compensation Inns of Court chapters is named after him. Jake has served as Chair of ABOTA in Jacksonville and on The Florida Bar Board of Governors, on The Florida Bar’s Committee to Review the Future of the Practice of Law, and on the Florida Supreme Court ADR Rules and Policy Committee.

A chance conversation with a Bar member caused Jake to reflect about how The Florida Bar had no voice in ADR policy-making, and there was no space that would bring together all of the different areas and sections of law that were mediating—trial lawyers, business law, family law. To respond to this need, Jake helped to create the ADR Section. In the early days, he would bring a homemade loaf of bread to the Section meetings.

The Section has provided input on ADR-related issues on behalf of attorneys practicing mediation and arbitration, particularly when it comes to rule-making from Rules and Policy, MEAC, and DRC-related administrative processes that affect attorney-mediators and attorney-arbitrators. Jake sees himself as an advocate of reasonable expectations and common-sense solutions that help solve problems.

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Chairs of the ADR Section

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Chester B. (“Chuck”) Chance, 2011-2012. Chuck, a former chair of the Democratic party, construction litigator, and educator gave thirty years to the bench and retired from the 8th Judicial Circuit in 2005.

Chuck grew up in Coconut Grove, FL. In a family of chiropractors—including his grandmother, father, brothers, nephews and son—Chuck calls himself the black sheep who became a lawyer. He fell in love with Gainesville after going there for college. Chuck and his wife (also a lawyer) have two children and four grandchildren. When he was 13 years old, Chuck developed a love of sailing, learning the craft from a neighbor—a cranky and demanding former Swedish Navy officer who the other neighborhood boys shied away from. Never running away from a challenge, Chuck relays, “If you know how to leverage wind, you can go anywhere.”

Chuck, a trailblazer, navigated through a hurricane level windstorm of resistance to help bring mediation to Florida, assisting David Strawn with drafting rules for mediation, over The Florida Bar objections and then introducing the first mandatory mediation administrative order as an 8th Circuit judge.

Many prominent attorneys, some of whom are now accomplished mediators or strong advocates of mediation, did not want mediation. Chuck recalls that the 1988 Bar President, Rutledge Liles, currently an advocate of mediation, initially objected to

mandatory mediation, arguing that mediation was interfering with the “right to a jury trial.”

As Chief Judge of the 8th Judicial Circuit, Judge Chance helped introduce the first standing order for mandatory pre-trial mediation, which is now nearly ubiquitous throughout the state courts .

Chuck also introduced Florida’s first civilian guardian ad litem program, as well as cost-benefit analyses to alternative release options (like ankle monitoring) for prison overcrowding, particularly for bail (which is not meant to be punitive, but rather ensure a trial). Chuck quotes Alice in Wonderland, and the surreal, “down the rabbit hole” logic of the Queen: “‘There’s the Kings Messenger. He’s in prison now being punished; and the trial does not begin until next Wednesday: and, of course, the crime comes last of all.’ ‘Suppose he never commits the crime?’ said Alice. ‘That would be all the better, wouldn’t it?’”

As the second chair of the ADR, Chuck feels like we continue to accomplish what he and the other early ADR section members set out to do, which is have a real section of the Bar, like the trial section, to have input into ensuring best practices, and get together with real practitioners. Leaving behind one recommendation to practicing mediators, he wishes them to remember that they are there not just listen, but to guide. He cautions us not to confuse neutrality with inactivity, and help the parties harness their own power to guide them to their destination.

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Chairs of the ADR Section

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Alan B. Bookman, 2010-2011.

After graduating from Tulane University and Tulane University School of Law, Alan Bookman served almost four years as an attorney in the U.S. Army JAG Corps. In 1975, and upon completion of his military service, he joined the firm Emmanuel Sheppard & Condon, P.A., where he is still a partner today. Growing from a general practitioner into an attorney specialized in commercial and business litigation and commercial real estate development matters, Alan has been a mediator for nearly 30 years.



“If I can impart anything, it’s to do it the right way.”

Given his deep roots in Bar service, and his experience with mediation, Alan was the logical choice for the ADR Section’s first Chair. While ten years ago, there were statewide mediator organizations, there was no real organization for mediators as far as the Bar was concerned. Alan spreads the credit for the creation of the Section as having been a true team effort. “A lot of people are doing little things and if you can get people talking to each other, see what each can add to the other, you can get a better product.” While he believes that mediators do not have to be lawyers, Alan highlights how a mediator who is a lawyer has something unique to impart in the way that they can recognize the issues, assist and guide parties through the resolution of a conflict. A persuasive personality, and credibility, can help in moving people towards coming to their own decisions. The creation of the Section offered an opportunity for attorney mediators to learn together and from each other, to exchange ideas on the business and practice of mediation, and to get their names out there.

Alan’s service to the legal profession covers the range of the state’s legal institutions: The Florida Bar Young Lawyers Section (1977–1983), the Escambia Santa Rosa County Bar Association 1982 through a 1991–1993 term as president, The Florida Bar Foundation (1984–1990) and (2000–2005), and The Florida Bar Board of Governors (1995–2005). Most notably, Alan served as the 2005–2006 President of The Florida Bar. All of this has been done in the spirit of his philosophy of “practicing law in a way that would make your Mother proud,” with professionalism, ethics, and character.



Special thanks to Shari Elessar and Ana Cristina Maldonado for originating the idea of a feature on ADR Section chairs.



If you practice family law in Florida, the Family Law Section of The Florida Bar's **Bounds of Advocacy** can guide you through "the quagmire of professional and ethical dilemmas that are unique to the practice of family law." Download the free guide at [bit.ly/FLS Bounds](https://bit.ly/FLS_Bounds).

Revisiting Mediation Provisions Within Federal Court Case Management Orders

By David Henry, Esq.
Florida Supreme Court Certified Civil Mediator
Henry Mediation, P.A., Orlando



The extent to which federal courts are expected to follow state law has academic and practical implications. Federal courts issue case management orders (CMO's) which include several provisions related to mediation warranting discussion. Many CMO's from the Middle District of Florida read in relevant part:

1. All parties shall participate in *good faith* in mandatory mediation. See Local Rule 4.01. (Emphasis added).
2. Authority – Except as limited by this CMSO, the appointed mediator shall have all powers and authority to conduct a mediation and to settle this case as are described in Chapter Four of the Local Rules. . . . The mediation shall continue until adjourned by the mediator. Only the mediator may declare an impasse or end the mediation.
3. Attendance and Settlement Authority Requirements – Each attorney acting *as lead trial counsel*, and each party (and in the case of a corporate party, a corporate representative) with full authority to settle, shall attend and participate in the mediation conference.
4. Participants shall be prepared to spend as much time as may be necessary to settle the case. No participant may force the early conclusion of a mediation because of travel plans or other engagements. The Court will impose sanctions upon lead counsel and parties who do not attend and participate in *good faith* in the mediation conference.
5. Case Summaries – Not less than *two days prior* to the mediation conference each party shall deliver a case summary to the mediator. The summary shall a) concisely summarize the facts and issues of the case; and b) if a corporate party is involved, identify the name and general job description of the employee or agent who will

attend and participate with full authority to settle on behalf of such corporate party.

We should critically examine this language with an eye on the Rules Governing Florida Supreme Court Certified Civil Mediators and Mediator Ethics Advisory Committee (MEAC) opinions. Because the order requires the parties to carefully consider attendance, to bring senior or key decision-makers, and instructs counsel to prepare a summary in advance, the process is improved. This is helpful instructive language, or as behavioral economists might say, “a helpful nudge.” Although the order requires the parties to send a case summary, many mediators will tell you they rarely get one written summary and almost never two. The parties rarely share information in advance other than what has been disclosed in discovery.



The second laudable part makes clear that arbitrary scheduling limitations and time constraints not born of necessity are to be avoided because the process is unpredictable. We all recognize it takes time and effort to set up a mediation and it shouldn't be cut short because someone myopically scheduled a flight home at 3:00 PM or has some non-essential scheduling conflict. As mediators frequently quip, “All mediations really start at 4:30 PM.” The language in the CMO makes clear that scheduling should be thoughtful.

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The language of the CMO suggesting that the mediation continues until an impasse has been declared by the mediator is somewhat misleading because a certified civil mediator in Florida is obligated to declare an impasse if a party so requests. MEAC Op. 2011-005. A mediator can encourage a party to stay a while, but one cannot make someone stay if they want to leave. The language from the CMO suggests to the uninformed that only the mediator can say when “it’s over.” This is simply not consistent with existing ethical standards. *Id.*

Experienced mediators get squeamish when they see language in CMO’s suggesting that parties must participate in “good faith” and stating that sanctions may be imposed for those who do not. Here we find ourselves in rough seas. It has always been understood in Florida that no party is obligated to participate in “good faith” nor are they held hostage by the mediator. Physical attendance but not intellectual or spiritual engagement is required.

To the extent the language urging “good faith” evidences a judicial belief that “mediation needs to be taken seriously” there is no objection, and we are all for the better. But no Florida Supreme Court Certified Civil Mediator should be commenting upon much less reporting to the court about the good faith or bad faith of a participant. Any jurist attempting to evaluate good faith will find it difficult given the absence of clear channel markers that can delineate between “bad faith” and poor risk assessment, misguided optimism, garden variety stupidity or simple disdain for the process. Defining “bad faith,” much less articulating an objective standard, is hugely difficult. Numerous commentators have addressed the difficulties of assessing bad faith in the

context of negotiation and whether it should ever form a basis for sanctions in the first instance. Cross-cultural bias is also a major concern as negotiation styles considered offensive in some cultures pass for normative in others.

Assuming the Florida Mediation and Confidentiality and Privilege Act codified in Chapter 44 applies to federal court ordered mediation, evidence of statements made during mediation are inadmissible except for statements falling in one of the enumerated exceptions to confidentiality. See §44.405-406; *Sun Harbor Homeowner’s Association v Bonura*, 95 So.2d 262, 270 (Fla. 4th DCA 2012) (admission of evidence of statements made during mediation was error owing to the confidentiality provisions within Florida law). All of this is by way of saying any attempt to seek a judicial evaluation of good or bad faith is hugely difficult and fraught with potential confidentiality objections.

Custom and practice suggest the statutory privilege is understood to apply in federal court ordered mediations. Moreover, commonly used engagement agreements from mediators incorporate Chapter 44 making it applicable by force of contract. It would be helpful if federal courts would reference §44.405-406 in the CMO’s. (To be sure this would be valuable to out of state counsel unfamiliar with Florida’s distinctive mediation culture).

District courts could improve our mediation culture by modifying CMO’s in three ways. The CMO should be tweaked to provide that position statements or summaries should be sent *to the other side* not merely the mediator and more than two days in advance. Premediation submittals are a huge opportunity for the parties to “speak” or write candidly with one another and helps the process in numerous ways. Why not give the other side information to chew on a few weeks in advance? More information is better than less. For some reason courts are hesitant to “frontload” the process by not encouraging an exchange of mediation statements, and then sub-optimally “backload” the process by setting the mediation deadline months away from the start of the case.

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The language in the CMO directing that “each attorney acting as lead trial counsel” must attend raises two concerns. First, it runs afoul of the right of self-determination. Second, it may well be that someone other than lead trial counsel and of the client’s choosing is better at negotiation and peace-making. Mediated settlements are never the product of superlative trial skills. The “lead trial counsel” language is a carry-over from the early days when courts used that language to make sure lawyers viewed the mediation process as important and worthy of their time. Today that language is antiquated and runs afoul of principles of self-determination.

Whatever conceptually problematic language exists within the CMO’s related to mediation is ameliorated by local mediation culture, but it might improve things if the Court nudged the parties to set earlier mediation deadlines, urged parties to prepare more effectively by exchange of information outside the discovery process, and expressly recognized the confidentiality and privilege provisions afforded by Chapter 44, Fla. Stat.

Federal courts have a critical role in improving mediation advocacy in the state. Tweaking the language in case management orders would advance our mediation culture and align the federal court’s directives with existing mediator ethics standards and practices.

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His mediation clients hire David for a wide range of matters that reflects his experience as a litigator. David’s mediation practice includes business disputes, contract claims, personal injury, insurance claims, community association, intellectual property disputes, employment claims, E&O, D&O and fiduciary liability, and construction related disputes.

MEAC: Year in Review

December 3 12 – 1 PM
Christy L. Foley, MEAC Chair



Zoom Mediation Receives High Approval Ratings From ADR Section Survey

By Harold Oehler, Oehler Mediation



A great debate has raged since the beginning of the Pandemic: is virtual mediation as effective as in-person mediation? In order to advise the Florida Supreme Court, the public and its members regarding the effectiveness of virtual mediation, the Alternative Dispute Resolution (ADR) Section of the Florida Bar surveyed its members regarding their experiences with virtual mediation during the first 18 months of the Pandemic. Virtual mediation earned high approval ratings across the board and appears to be here to stay.

The survey posed several questions to measure the effectiveness of virtual mediation compared to in-person mediation. Respondents were asked to explain their responses and their comments revealed that mediators had several fears about virtual mediation early in the Pandemic that ultimately proved to be unfounded. These fears included:

- Mediation participants and the mediator will have difficulty connecting with each other online;
- Body language and non-verbal cues may be less visible, impeding communication;
- Mediation participants may be more distracted and less engaged;
- Confidentiality may be circumvented by unauthorized eavesdropping by third parties and recording of the mediation proceedings;
- Mediations may be interrupted by technical problems and user error.

The survey responses revealed that these concerns were not realized and that virtual mediation is as effective, and more desirable from a cost, convenience and safety perspective, than in-person mediation. The following are the primary questions posed by the survey and a summary of the responses:

1. How effective were the virtual mediations you participated in?

96% of respondents indicated that virtual mediation was “effective.” Of this number, 79% judged virtual mediation as “very effective” while an additional 17% evaluated virtual mediation as “somewhat effective.” Only 3% of respondents evaluated virtual mediation as “ineffective.”

2. What is the virtual mediation settlement rate you’ve experienced compared to the settlement rate you have experienced for live mediation?

82% of respondents reported that virtual mediation settlement rates were the same or higher than settlement rates for in-person mediations. 66% of respondents indicated that settlement rates for live and virtual mediations were identical, while 16% of respondents reported that settlement rates for virtual mediations were higher than in-person mediation.

3. Would settlement rates for your remote mediations have been higher if they were conducted live?

63% of respondents indicated that live mediations would not have changed the settlement rates the respondent experienced during virtual mediations. 21% thought settlement rates would have been different if the virtual mediation would have been conducted in person (the survey did not ask if the settlement rate for in-person mediation would have been higher or lower) and 16% of respondents were unsure if settlement rates would have been different.

4. What type of feedback did you receive from lawyers and pro-se parties about virtual mediation?

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In order to investigate the opinions of mediation participants other than mediators, the survey requested that the respondents report the type of feedback they received from lawyers and pro-se parties who participated in virtual mediation. 70% of respondents characterized the feedback as “positive” while only 1% reported “negative” feedback. 11% reported “no feedback” and 19% reported “neutral or mixed feedback.”

5. Would you be in favor of the Court continuing to order virtual mediations?

85% of respondents were in favor of courts continuing to order virtual mediations after the Pandemic. An additional 12% were in favor of virtual mediations being ordered in the future for “certain situations,” therefore, 97% of respondents were in favor of courts continuing to order virtual mediation after the Pandemic. Significantly, only 3% of respondents disfavored the continued use of virtual mediations.

Survey respondents also reported that ethical breaches had not been prevalent during virtual mediation. In the vast majority of cases there was little to no eavesdropping by third parties (67% reported this never occurred or only occurred in 5% or less of cases); coaching (74% of respondents reported that this had never occurred to their knowledge); screen shots (92% reported no knowledge of this) or recording (95% reported that this never occurred to their knowledge).

A number of respondents reported that the benefits of virtual mediation had caused them to transition their practices entirely, or nearly exclusively, to virtual mediation. The benefits of virtual mediation most often cited by survey respondents were:

- Mediation participants are more comfortable in their own environment and, as a result, more likely to reach an agreement.
- Virtual mediation is far less expensive and time consuming because travel is not required

- It is much easier to schedule and reschedule a virtual mediation
 - Safety concerns caused by potential COVID-19 exposure or hostility between parties are eliminated
- Intimidation, bullying and aggressive posturing is much less likely during virtual mediation
- Pro-se litigants are more likely to attend virtual mediation than in-person mediation
- Virtual mediation eliminates the need for participants to secure childcare to attend
- It is easier and less expensive to use a mediator from a remote location virtually

The survey responses were provided by mediators who were experienced in both in-person and virtual mediation. The survey was sent to 1,014 members of the ADR Section and the Section received 240 completed surveys for a response rate of 24%. The majority of respondents had been members of the ADR Section for over 5 years, with 30% of respondents indicating they had been members for over 10 years. 63% of the respondents indicated that they had participated in more than 10 virtual mediations since the onset of the Pandemic, while 53% reported that they had participated in more than 20 virtual mediations. While most parties who engaged in virtual mediation were represented by counsel, 31% of respondents reported that they conducted virtual mediations where all parties were pro-se.

Conclusion. While virtual mediation is not without its limitations, this medium provides safe, efficient and equal access to the dispute resolution process and has greatly assisted the judicial system in administering justice while physical appearances were not possible or safe. The survey conducted by the ADR Section revealed that mediators, litigators and litigants, have enjoyed the numerous benefits provided by virtual mediation without experiencing lower settlement rates.

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Significantly, nearly all survey respondents indicated that they intend to continue using virtual mediation after the Pandemic with many respondents reporting that they will utilize virtual mediation exclusively in the future.



The Florida Bar's ADR Section thanks Hadas Kohn Stagman, a member of its Executive Committee, and Professor Joan Sterns Johnson of the University of Florida Levin College of Law, for composing this survey. The Section also thanks Mike Garcia, Director of Research, Planning and Evaluation for The Florida Bar for finalizing the survey and analyzing the results. Finally, the Section thanks Lisa Tipton and Sheridan Hughes of The Florida Bar for their assistance in administering the survey. A complete copy of the Survey may be obtained by emailing the author, Harold Oehler, at Harold@OehlerMediation.com.

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National Alliance on Mental Illness of Florida (Nami Florida) Offers Hope, Help, Education, Support and Advocacy for Individuals and Families

By Bruce Blitman, April Chambers, NAMI Florida President, Cindy Foster, NAMI Florida Program and Administrative Officer and Gayle Giese, Florida Mental Health Advocacy Coalition President

NAMI Florida's mission is to improve the quality of life of individuals and their families affected by mental illness through education, support and advocacy. Its vision is that persons with mental illnesses can live in recovery within their community of choice. There are 24 NAMI affiliates in communities across Florida serving family members, friends, professionals and peers whose lives have been impacted by mental illness.

EDUCATION AND SUPPORT. Trained NAMI volunteers conduct free peer-led programs each week throughout Florida. These support groups and community presentations provide outstanding education, skills training and support. Since the COVID-19 Pandemic, the affiliates have gone virtual. It's now possible to find a virtual NAMI support group that meets your schedule at namiflorida.org. Please find your local NAMI affiliate [here](#).

Here is a list of NAMI programs that may be available in your community:

EDUCATION CLASSES

1. **NAMI BASICS:** This class is for parents, guardians and other family caregivers who provide care for youth (age 22 or younger) who are experiencing mental health symptoms. This course is also available in Spanish, Bases y Fundamentos de NAMI.
2. **NAMI FAMILY-TO-FAMILY:** This class is for families, significant others and friends of people with mental health conditions. The course is designed to facilitate a better understanding of mental health conditions, increase coping skills, and empower participants to become advocates for their family members. This program was designated as an evidence-based program by the Substance Abuse and Mental Health Services Administration (SAMHSA).

The course is also available in Spanish, De Familia a Familia de NAMI.

3. **NAMI HOMEFRONT:** This class is for families, caregivers and friends of military service members and veterans with mental health conditions. The course is designed specifically to help these families understand those challenges and improve their ability to support their service member or veteran.
4. **NAMI PEER-TO PEER:** This class is for adults with mental health conditions. The course is designed to encourage growth, healing and recovery among participants. This program is also available in Spanish, De Persona a Persona de NAMI.
5. **NAMI PROVIDER:** This class is for mental health professionals. NAMI Provider is designed to expand the participants' compassion for the individuals and their families and to promote a collaborative model of care.



PRESENTATIONS

1. **NAMI FAMILY AND FRIENDS:** This is a 4-hour seminar that informs and supports people who have loved ones with a mental health condition. Participants learn about diagnoses, treatment,

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National Alliance on Mental Illness of Florida (Nami Florida) Offers Hope, Help, Education, Support and Advocacy for Individuals and Families

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recovery, communication strategies, crisis preparation and NAMI resources. Seminar leaders have personal experience with mental health conditions in their families.

2. **NAMI ENDING THE SILENCE:** This is a FREE presentation designed to give audience members an opportunity to learn about mental illness through an informative, interactive slide show and short videos. There are three types of Ending The Silence presentations: one for students, one for school staff and one for families. Each presentation outlines symptoms of mental health conditions and gives attendees ideas about how to help themselves, friends or family members who may need support. Additionally, all three presentations include personal testimony from a young adult living with a mental health condition and his/her journey to recovery.
3. **NAMI IN OUR OWN VOICE:** This presentation is for the general public to promote awareness of mental health conditions and recovery. This program is also available in Spanish, En Nuestra Propia Voz de NAMI.
4. **NAMI COMPARTIENDO ESPERANZA:** This is a bilingual presentation for Latino communities designed to promote mental health awareness, explore signs and symptoms of mental health conditions and highlight how and where to find help.
5. **NAMI SHARING HOPE:** This presentation is for African American communities designed to promote mental health awareness, explore signs and symptoms of mental health conditions and highlight how and where to find help.

SUPPORT GROUPS

1. **NAMI CONNECTIONS:** This is a support group for people with mental health conditions. Groups meet weekly, every other week or monthly depending on location. This program is also available in Spanish, NAMI Conexión.

2. **NAMI FAMILY SUPPORT GROUP:** This support group is for family members, significant others and friends of people with mental health conditions. Groups meet weekly, every other week or monthly, depending on location.

ADVOCACY

1. **NAMI SMARTS FOR ADVOCACY:** This is a hands-on advocacy training program that helps people living with mental illness, friends and family transform their passion and lived experience into skillful grassroots advocacy.
2. **ADVOCACY:** NAMI Florida partners with Florida Mental Health Advocacy Coalition (FLMHAC) to provide advocacy within Florida. By engaging local NAMI Florida affiliates to develop and grow a network of advocates throughout the state, FLMHAC can communicate, educate, and advocate with policymakers to decrease stigma associated with mental health conditions, improve access to care, and promote a quality, effective state mental health system. To sign up for advocacy alerts, visit flmhac.org

NAMI FLORIDA ANNUAL CONFERENCE

Our 2021 theme is 2021: A YEAR OF RESILIENCE & RECOVERY promoting collaboration across the continuum of care for persons who live with mental health conditions and their family and friends. The NAMI Florida 2021 Conference took place virtually on September 17-18, 2021.



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The conference focused on: Successful Community-based Mental Health Programs; Integrating Behavioral Health and Pediatrics; Adverse Childhood Experiences (ACES); Children and Adolescent Resiliency and Financial Literacy for the Family.

PARTNERSHIPS

Businesses, corporations and other groups can become a partner with NAMI Florida. For partnership opportunities and benefits, please contact the organization at info@namiflorida.org.

NAMI Florida is the state's largest grassroots organization for individuals and their families affected by mental illness. We advocate for better access to treatment and services for people with mental illnesses; provide education and support groups; and offer public awareness presentations to schools, businesses, and the public. For more information on NAMI Florida and to locate an affiliate in your area, please go to namiflorida.org.



AUTHOR BIOS



April Chambers is a marketing leader in strategy, development, implementation, integration and team building in the marketing technology landscape. April is a proven leader with highly developed business skills. She has extensive experience across banking, construction, retail, consulting, and themed entertainment industries. April is the current President of the NAMI Florida Board of Directors.



Cindy Foster is immediate past president of the National Alliance on Mental Illness (NAMI), Florida and currently the Program Director and Administrative Officer. Cindy is a certified teacher in NAMI Family to Family, Peer to Peer, Basics and Homefront. She is a NAMI Family Support Group facilitator and presenter for NAMI Family and Friends, In Our Own Voice and Ending the Silence for Students, School Staff and Families. She shares her personal story and a family member's recovery journeys through the emotional stages from shock, denial, guilt and grief to understanding, acceptance, hope and advocacy.



Gayle Giese is a founding member of the NAMI Advocacy Group of Broward County and President of the Board of the Florida Mental Health Advocacy Coalition. She is also a NAMI Florida Board Member. She is passionate about helping those with mental illness and speaks openly about serious mental illness within her family. In 2019, she won an EPIC (Exceptional People Impacting the Community) Award from Mental Health America of Southeast Florida. Her 2021 advocacy work is focused on providing permanent supportive housing, passing legislation on insurance parity, preparing for 988, and promoting the Stepping Up Initiative in Broward County, to reduce the number of people with mental illnesses in jails.



Bruce Blitman is a Florida Supreme Court Certified County, Circuit and Family Mediator and Arbitrator, Dispute Resolution Specialist and Mediation Trainer. Bruce is a Sole Practitioner specializing in mediation of all kinds of Circuit, County and Family Disputes in state and federal courts, and mediated thousands of court-appointed and stipulated cases throughout Florida involving complex and diverse disputes in many legal areas.

MEMBERSHIP



Membership in the ADR Section of The Florida Bar gives you networking opportunities with litigators and mediators, CLE/CME on how to effectively represent clients in mediation, technology CLE, opportunities to publish articles, a Mentoring Academy for Certified Mediators, an Arbitration Advocacy Institute for attorney-arbitrators and much more. **At only \$45, ADR Section membership is an excellent return on your investment.**

- The section hosts live audio webcasts, generally monthly, so that you can consistently get quality CLE credit on ADR-related topics, technology and ethics—and section members receive discounted registration.
- Most of our CLEs are also approved as CMEs, so you can earn dual credit.
- We encourage section members to submit ideas for CLE/CME seminars and to serve as presenters.
- Section membership enables you to stay informed of changes in the rules and procedures for ADR, with an opportunity to respond to requests for comments.
- We offer the opportunity to submit articles for publication in our biannual publication, *The Common Ground*.
- The section hosts a variety of networking events—virtual and/or in-person—throughout the year, such as networking socials online at conferences like The Florida Bar Annual Convention, The Florida Bar Winter Meeting, and the annual Dispute Resolution Conference.
- We host a Mentoring Academy for certified mediators, where attendees can learn and practice new techniques and receive live, immediate feedback to improve their skills.
- We host an Arbitration Advocacy Institute at which participants hone their arbitration advocacy skills and learn tips and techniques to better represent clients at arbitration.

Florida Bar members have access to more than 70 discounted products and services from The Florida Bar Member Benefits Program.



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The Common Ground is a publication of The Alternative Dispute Resolution Section of The Florida Bar. Statements of opinions or comments appearing herein are those of the contributing authors, not The Florida Bar or the ADR Section.

Editors Ana Cristina Maldonado and Natalie Paskiewicz are soliciting articles for the Spring 2022 edition of The Common Ground. Please contact them at acmaldonado@uww-adr.com and natalie@pazmediation.com.

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