

**BEFORE THE FLORIDA SUPREME COURT'S
COMMITTEE ON ALTERNATIVE
DISPUTE RESOLUTION RULES AND POLICY**

**Comments of Brian F. Spector
in Opposition to the Amendments Proposed
by the Florida Supreme Court's Committee
on Alternative Dispute Resolution
Rules and Policy**

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The Committee on Alternative Dispute Resolution Rules and Policy (the “Committee”) has invited interested persons to comment on proposed amendments to court rules of procedure regarding the appointment and selection of Florida Supreme Court certified mediators in court cases. *See Exhibit A.*

The comments below are offered on behalf of Brian F. Spector. Mr. Spector has retained the undersigned to represent him before the Committee and the Florida Supreme Court with regard to the Committee’s proposed rule amendments in recognition of the oft-quoted statement, attributed to Abraham Lincoln, that “he who represents himself has a fool for a client.”

Despite not being a Florida Supreme Court certified mediator, the undersigned, too, is sometimes asked to mediate cases. Consequently, the views expressed here are Mr. Spector’s but endorsed by the undersigned.

COMMENTER’S CREDENTIALS

For those unfamiliar with Mr. Spector, attached as Exhibit B are a one-page biographical sketch and a complete resume. His mediation philosophy is detailed on his website, located at <http://bspector.com>.

Mr. Spector is a respected 39-year member of the Florida Bar who for many years practiced complex commercial litigation. He has a long record of service to the Florida Supreme Court, The Florida Bar, the legal academy, and the administration of justice in the State of Florida. He has served on the Florida

Supreme Court’s Commission on Professionalism; its Committee on Standard Jury Instructions (Civil); and its Committee on Standard Jury Instructions – Contract and Business Cases (member and vice chair). He also has served on many Bar committees, including the Standing Committee on Professionalism; the Business Litigation Certification Committee; the Florida Civil Procedure Rules Committee (vice chair and chair); a Florida Bar Grievance Committee (member and chair); and the Business Law Section’s Business Litigation Committee (vice chair and chair). Mr. Spector also has served as an adjunct professor at the University of Miami School of Law and the Florida International University College of Law. He has taught courses in Remedies, Professional Responsibility, Professional Liability, and Corporate Crimes.

Mr. Spector is also one of an increasing number of highly respected, and experienced mediators who has chosen *not* to be a Florida Supreme Court Certified mediator. The reasons for his decision are explained in Exhibit C.

INTRODUCTION

Mr. Spector believes in lawyer certification, as evidenced by his service on the inaugural Business Litigation Certification Committee and—during his years of actively practicing law—his ten years as a Business Litigation Certified Lawyer. In contrast to the certification of lawyers, however, the word “certified” in the term “Florida Supreme Court Certified Mediator” does not signify special knowledge,

special skills, experience in mediating cases, or passing an examination. The term is misleading in this context. The terms “registered” or “screened” would be more accurate. Yet there is value to having mediators credentialed, especially for litigants who are unable to agree on a mediator; for unsophisticated, self-represented (pro se) litigants who have no other basis to select a mediator; and, for those who are required to participate in a public mediation program where mediators may be or are selected for them by those in charge of the program.

Although Mr. Spector remains opposed to mandatory certification of mediators, the current Florida certification requirements for mediators are adequate for the purposes identified above. Mandatory mediator certification, however, is unjustified under the current system; and if the Committee and the Florida Supreme Court want to change the system so that mediator certification becomes more like lawyer board certification (indicating demonstrated prowess in the field), the proposed amendments are woefully inadequate to achieve that goal. The proposed amendments either go too far or not far enough.¹

BACKGROUND OF THE RULE

In 1990, the Florida Supreme Court approved amendments to the mediation rules, Fla. R. Civ. P. 1.700-1.780. *In re Amendments to Florida Rules of Civil*

¹ Real mediator certification would require, as a minimum, completion of a specified number of mediations (*e.g.*, 100) and passing a written examination on the then applicable Florida Rules for Certified and Court-Appointed Mediators.

Procedure, 563 So.2d 85 (Fla. 1990). In footnote 1 of the Opinion, the Court cited the Committee's report:

The Committee's proposed rule changes reflect a blend of three philosophical approaches. First, the Committee sought to take maximum advantage of the one year of practical experience Florida has had in court-sanctioned ADR procedures. Based on this experience, the Committee is recommending rather substantial deletions from certain parts of the old rules which, although originally implemented with the best of intentions, have proven to serve no real purpose as procedural guidelines. Second, the Committee sought to enhance the overall consensual atmosphere of ADR in Florida by putting more control of the process in the hands of the parties involved. Hence, suggested modifications of the rules have been made to allow more direct involvement by the parties in initiating mediation, selection of mediators, timing of the mediation conference, and initiating enforcement procedures. Finally, the Committee was keenly aware of the colloquial axiom, "If it ain't broke, don't fix it." Every effort was thus made to preserve the functions that are working.

(emphasis added). Among the rules adopted at that time was Rule 1.720(f), entitled "Appointment of the Mediator." That rule stated:

- (f) Appointment of the Mediator.
 - (1) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:
 - (a) A certified mediator: or
 - (b) A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

The current version of the mediation rules contains almost identical language. Rule 1.720(j) now provides:

- (j) Appointment of the Mediator.

(1) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(A) a certified mediator, other than a senior judge presiding as a judge in that circuit; or

(B) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

The only difference is the phrase, “other than a senior judge presiding as a judge in that circuit,” added in 2005. *See In re Report of the Alternative Dispute Resolution Rules and Policy Com. on Senior Judges As Mediators*, 915 So. 2d 145 (Fla. 2005).

Therefore, for almost three decades, litigants have enjoyed the right to select someone *not* certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience. The rule adopted in 1990 was proposed by the predecessor of the current Committee. That committee “sought to enhance the overall consensual atmosphere of ADR in Florida by putting more control of the process in the hands of the parties involved.” It sought to allow parties to be more directly involved in, among other things, selecting mediators. The committee attempted to preserve the mediation functions that were working. This Committee should do the same.

**THE COMMITTEE SHOULD NOT RECOMMEND THE PROPOSED
RULE AMENDMENTS TO THE FLORIDA SUPREME COURT**

Mr. Spector opposes the Committee’s proposed amendments because they:

(1) would represent a radical act by the Florida Supreme Court similar to

permitting only Florida Bar Certified Lawyers to handle matters in their respective areas of certification and prohibiting all other Florida lawyers from undertaking representations in the areas in which certification for lawyers exists; (2) are contrary to self-determination; (3) do not serve the public interest; (4) are inconsistent with positions the Committee has recently taken before the Florida Supreme Court; (4) are not rationally based; and (5) are anti-competitive. We elaborate on these reasons below.

1. Mandatory Mediator Certification Would Represent A Radical Act By The Florida Supreme Court Similar To Permitting Only Florida Bar Certified Lawyers To Handle Matters In Their Respective Areas Of Certification.

The Florida Supreme Court has never required lawyers to be certified. It has never adopted a rule prohibiting lawyers not certified from representing clients in an area of law in which certification exists, such as appellate practice, business litigation, civil trial, criminal trial, and myriad others. Being a member in good standing of The Florida Bar is enough to represent clients because lawyers are licensed to practice law. In contrast, mediators—including *non-lawyers*—have never been licensed to be mediators. They may choose to be credentialed. But the Florida Supreme Court has never required a credential for someone the parties have mutually selected to mediate their case. The Committee's proposed rule amendment would represent a radical shift in policy. If mediators must be certified, one must ask whether lawyers will be next.

2. The Proposed Amendments Are Contrary To Self-Determination.

In contrast to litigation or arbitration, mediation allows litigants to decide their fate. This is often referred to as “self-determination” — that is, the parties can decide whether and on what terms to settle their dispute.

In identifying mediation concepts, Rule 10.230 of the Florida Rules for Certified and Court-Appointed Mediators lists self-determination *first*. This is no accident: self-determination is the essence and foundation of mediation.

Self-determination in mediation begins with the parties’ selection of the mediator—they select someone they deem appropriate to the circumstances of their case—such as the mediator’s success rate; actual experience and competence; style (facilitative, evaluative, or a combination of styles – sometimes referred to as the “tool box” approach); substantive knowledge and experience in the areas of law involved in the case; intelligence (*e.g.* book smarts, street smarts and psychological acumen); skills (*e.g.* communication, foreign language, interpersonal); age; gender; ethnicity; and charisma.

The Model Standards of Conduct for Mediators²—adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution—endorses this position, stating:

² The Model Standards of Conduct for Mediators may be found at: https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf

Parties may exercise self-determination at any stage of a mediation, including mediator selection.” *Id.* Standard I, paragraph A, at 3.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator’s competence and qualifications. *Id.* Standard IV, paragraph A.1., at 5.

The same position is adopted in the 2012 Final Report of the Alternative Dispute Resolution Section of the ABA Task Force on Mediator Credentialing,³ which states in relevant part:

The Task Force is concerned that credentialing not operate to exclude new methods of resolving disputes or persons with non-traditional backgrounds, or more generally to constrain the evolution and growth of mediation as a method of dispute resolution. Nor should credentialing have the effect of preventing informed disputants from selecting a mediator of their choice. The Section should therefore not support credentialing systems that:

1. Operate as mandatory licensing. Credentialing should provide information about prospective mediators and/or a signal of quality, and organizations should be able to require members of their panels to satisfy requirements. Credentialing should not, however, operate as a de facto licensing system that bars non-credentialed persons from practicing as mediators generally.

* * * * *

3. Bar disputants from selecting a non-credentialed mediator. Self-determination is the first principle of the ABA’s Model Standards of Conduct for Mediators and the essence of the process of mediation. It follows that if disputants knowingly decide to select a non-

³ The 2012 Final Report of the Alternative Dispute Resolution Section of the American Bar Association Task Force on Mediator Credentialing may be found at: https://www.americanbar.org/content/dam/aba/images/dispute_resolution/CredentialingTaskForce.pdf.

credentialed person to mediate their dispute, they should be able to do so. Thus if courts or other organizations require mediation and/or provide the names of approved mediators to disputants, they should also allow disputants to select non-credentialed mediators by informed, arms-length agreement. *Id.* at 4-5. (emphasis added)

The Uniform Mediation Act⁴—drafted by the National Conference of Commissioners on Uniform State Laws and approved by the ABA—also addresses self-determination, including the style used by the mediator of choice:

The primary guarantees of fairness within mediation are the integrity of the process and informed self-determination. Self-determination also contributes to party satisfaction. Consensual dispute resolution allows parties to tailor not only the result but also the process to their needs, with minimal intervention by the State. For example, parties can agree with the mediator on the general approach to mediation, including whether the mediator will be evaluative or facilitative. This party agreement is a flexible means to deal with expectations regarding the desired style of mediation, and so increases party empowerment. Indeed, some scholars have theorized that individual empowerment is a central benefit of mediation. See, e.g., Robert A. Baruch Bush & Joseph P. Folger, *The Promise of Mediation* (1994). Uniform Mediation Act, Prefatory Note ¶ 2, at 10-11 (emphasis added).

The Final Report of the ABA Section of Dispute Resolution Task Force on Improving Mediation Quality,⁵ in recognition of the different meanings given to “evaluative” mediation, chose instead to use the terms “analytical inputs” and “analytical techniques.” The report provides examples:

⁴ Found at: http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf.

⁵ The Report may be found at: <https://www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalTaskForceMediation.authcheckdam.pdf>.

- Mediator discussion and analysis of legal and factual issues (including strengths and weaknesses) without necessarily articulating conclusions and opinions;
- Mediator questioning about specific legal or factual issues, sometimes referred to as “reality testing:” E.g., how do you think a jury will evaluate your testimony about an oral agreement, when the other side has a writing that seems to contradict it? Will the court permit any testimony about the oral agreement? Isn’t the case you rely on substantially distinguishable from these facts based upon . . . ?;
- Mediator observations such as: Who knows what a jury might do with this case, but based on what I have learned about this case, it looks like a horse race that either side could win. Or, who knows, but I like the other side of this case better than yours. Or, who knows, I would agree with you that you should win this case, but I am having a very hard time with your damages claims—I wonder if a judge or jury might have the same difficulties?;
- Mediator suggestions or proposals about settlement, sometimes based on the mediator’s views of the value of the case or what the parties might accept, or both; and
- Specific mediator opinions, delivered to all sides, or delivered selectively only to one side, about potential outcomes, dispositive factual or legal issues or settlement values. *Id.* at 15-16.

Perhaps the most significant of the Task Force’s conclusions about mediators’ analytical techniques was:

[A] substantial majority of lawyers who are repeat mediation users (again, in the arena of civil cases where parties are represented) favor use of what we have described as analytical techniques. *Id.* at 16.

The focus groups conduct by the Task Force revealed that:

[M]any reasonably sophisticated mediation users in civil cases want mediators to provide certain services, including analytical techniques.

A substantial majority of survey participants (80%) believe some analytical input by a mediator to be appropriate. *Id.* at 14.

The surveys conducted by the Task Force revealed that:

The following percentages of our users surveyed rated the following characteristics important, very important or essential:

95%—making suggestions;
about 70%—giving opinions. *Id.*

The Task Force’s conclusions are consistent with the experience in Florida.

No competent Florida lawyer would advise a client to select a mediator *solely* because of the credential “Florida Supreme Court Certified Mediator.” That credential does not measure or signify competence or experience: a lawyer admitted to The Florida Bar may become and remain a Florida Supreme Court certified mediator without taking any examinations and without ever mediating a single case. Specifically, under the current regime for mediator certification, a Florida lawyer: (a) may become a Certified Circuit Mediator by sitting through a 40-hour course—which apparently no one has ever failed—and observing eight mediations conducted by a Certified Circuit Mediator; and (b) may renew certification every two years by sitting through 16 hours of Continuing Mediator Education (“CME”) classes. *See* Exhibit D. In essence, to paraphrase Woody

Allen, an applicant for mediator certification who is a member in good standing of The Florida Bar must do little more than show up to become certified.⁶

Of course, should the parties and their counsel fail to agree on a mediator, “the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.” Fla. R. Civ. P. 1.720(j)(2). The mediator appointed under Rule 1.720 will be “certified,” but that credential does not assure competence or experience.

3. The Proposed Amendments Do Not Serve The Public Interest.

Rule 1.720(j)(1)(B) recognizes the public interest of self-determination in the context of mediator selection. Florida lawyers who litigate and help clients select mediators view mediator selection as a right. This right should not be abrogated lightly, especially after it has become ingrained in the fabric of mediation. Respectfully, the Committee should bear the burden of demonstrating by clear and convincing evidence a compelling need, in the public interest, to change the current rules.

4. The Proposed Amendments Are Inconsistent With Positions The Committee Has Recently Taken Before The Florida Supreme Court.

Last year the Florida Supreme Court Amended the Florida Rules for Certified and Court-Appointed Mediators. *See In re Amendments to the Florida*

⁶ Woody Allen is recognized as having said “Eighty percent of success is showing up.” *See* <https://www.brainyquote.com/quotes/quotes/w/woodyallen145883.html>.

Rules for Certified and Court-Appointed Mediators, 202 So. 3d 795 (Fla. 2016).

Those amendments arose from a petition the Committee filed, in which it said:

Specifically, professionals such as attorneys, physicians, and others must undergo rigorous testing to establish their professional proficiency or competency to receive their licenses. Mediators, on the other hand, undergo no testing or evaluation process to establish their competency. Consequently, the DRC is forced to rely, in large part, upon relevant information regarding an applicant's or mediator's good moral character to establish or gauge that applicant's or mediator's fitness to receive and maintain certification. While the loss of a professional license in a disciplinary proceeding will necessarily end that professional's ability to practice, the loss of a mediator certification does not effectively preclude a mediator from mediating. A mediator who has been decertified or whose certification has been suspended, or an applicant who is denied certification may still mediate by consent of the parties. (emphasis added)

Florida Supreme Court Case No. SC15-875, Response of The Supreme Court Committee On Alternative Dispute Resolution Rules And Policy To Comments Of The Eleventh Judicial Circuit And The Florida Bar Alternative Dispute Resolution Section at 4-5. See http://www.floridasupremecourt.org/clerk/comments/2015/15-875_121115_Response.pdf.

The Committee now takes a contrary position: under the proposed amendments, someone who is not a certified mediator, or who has been decertified, or whose certification has been suspended, or an applicant who is denied certification will be prohibited from mediating with party consent. The proposed amendments permit only certified mediators to mediate cases pending in Florida

courts even though, in the Committee's words, certified mediators "undergo no testing or evaluation process to establish their competency."

While offering no reasons for the proposed rule amendments, the Committee does offer proposed committee notes. For example, the committee notes for the proposed amendment to Florida Rule of Civil Procedure 1.720 states:

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate circuit cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified circuit mediator. In addition, the revision expanding the selection of a circuit mediator who is licensed to practice law in any United States jurisdiction rather than a member of The Florida Bar makes the rule consistent with the language of the 2011 adoption of the appellate mediation procedural rules. (underlining in original omitted).

The committee notes for proposed amendments Florida Rule of Civil Procedure 1.750 and Family Law Rule of Procedure 12.741 are similar. None explains why, after almost three decades, certification has suddenly become necessary.

5. The Proposed Amendments Are Not Rationally Based.

Assuming a compelling need in the public interest to ensure that only certified mediators conduct mediations in litigated cases, the Committee fails to offer any reason why mediators who are not certified are free to conduct pre-suit mediations. Any compelling need would apply equally to mediations of disputes *before* and *after* suit is commenced.

Obviously, no rational person would suggest that anyone should be permitted to practice medicine or law without a license. Similarly, no rational person would suggest that: (1) anyone may practice medicine without a license until the patient arrives at the hospital, or (2) anyone may practice law without a license until a dispute results in a lawsuit. Of course, “licenses” are not “credentials”: licenses are required; credentials, customarily, are not. The Committee’s proposed amendments function as a license for filed cases but not for pre-suit mediation. If a need for a license exists, it should apply regardless of whether a lawsuit has been filed. And in that case, licensure would be a substantive matter for action by the Florida Legislature, not a matter of procedure for the Florida Supreme Court, especially with regard to non-lawyers certified as mediators. *See Fla. Const. art. II, § 3, and art. V, § 2(a).*

6. The Proposed Amendments Are Anti-Competitive.

Since 1990, non-certified mediators have mediated cases. Some non-certified mediators have earned sterling reputations. Others have not. The same is true of certified mediators. This is how a competitive market operates. The proposed amendments would grant certified mediators a competitive advantage over those not certified. But the Committee has proffered no evidence for the need to micromanage this market.

The anti-competitive nature of the proposed amendments is exemplified by a recently conducted, but seriously flawed, sampling of opinions touted as a “survey.” Mr. Spector is advised that the Chair of the Florida Bar’s Alternative Dispute Resolution Section (the “ADR Section”) wrote a letter to the Committee’s Chair containing the ADR Section’s recommendations, *see* Exhibit E, and that The Florida Bar has asked the Committee to disregard the letter. In the event the Committee considers the recommendations, it should also consider the following.

The ADR Section’s recommendations are based on a so-called “survey” of only Section members, many of whom are certified mediators and certified trainers who would gain financially from the amendments, as shown in the table below.

| ADR Section Survey Results | |
|--|------------|
| Total number of members of The Florida Bar as of 2/1/17 | 90,746 |
| Total number of members of the Alternative Dispute Resolution (ADR) Section of The Florida Bar | 968 |
| Survey return rate | 33% |
| Total number of ADR Section members who responded to the survey | 319 |
| <i>Question: Do you believe that in all filed circuit civil disputes the parties shall mediate with a Florida Supreme Court certified circuit civil mediator?</i> | |
| Percentage of ADR Section members who responded to the survey and answered this question “yes” | 68% |
| Number of ADR Section members who responded to the survey and answered this question “yes” | 217 |
| Percentage of ADR Section members who responded to the survey and answered this question “yes” <i>as a percentage of the total number of Florida Bar members</i> | 0.2393706% |

As the table shows, only 319 members responded to the survey, representing less than a quarter of one percent of Florida Bar members, and even those are taken from a narrow pool—members of the ADR Section.

The pitfalls of such sampling and selection bias are well known from the 1948 presidential election. On election night, the Chicago Tribune printed the headline “DEWEY DEFEATS TRUMAN.” Harry S. Truman, the actual winner, was famously photographed holding a newspaper bearing the headline. The reasons for the Tribune’s historic error were later analyzed:

The reason the Tribune was mistaken is that their editor trusted the results of a phone survey. Survey research was then in its infancy, and few academics realized that a sample of telephone users was not representative of the general population. Telephones were not yet widespread, and those who had them tended to be prosperous and have stable addresses. (In many cities, the Bell System telephone directory contained the same names as the Social Register.) In addition, the Gallup poll that the Tribune based its headline on was over two weeks old at the time of the printing.⁷

The ADR Section’s survey suffers from a similar flaw. Its survey is similar to asking Florida orange growers whether only Florida-grown oranges should be sold in Florida stores. The answer is self-evident and one to be expected from the population to which the question is posed. A statistically valid sample would have included, *at least*, all members of The Trial Lawyers Section of the Florida Bar. Such members are certainly more representative of the population of consumers of mediation services than are members of the ADR Section.

The motivations underlying the ADR Section’s survey are evident from an article that appeared in the February 15, 2017 edition of *The Florida Bar News*. It

⁷ “Sampling Bias” (footnote omitted) found at http://www.wow.com/wiki/Sampling_bias.

reports statements made about “professional mediators” and that “there needs to be some level of competence and understanding of the ethical rules and some control over *those people*” (emphasis added).⁸ There is no Florida definition of what constitutes a “professional mediator.” And because a lawyer may be certified and recertified as a mediator without taking any examination or mediating even one case, the existing certification system assures neither competence nor understanding of the ethical rules. Moreover, no one—not the Committee, not the Dispute Resolution Center, not the ADR Section, and not the person who referred to “those people,” meaning non-certified mediators—has offered proof that “there *needs* to be some level of competence and understanding of the ethical rules and some control over *those people*.”

CONCLUSION

The proposed rule amendments should be considered on the merits. The financial, anticompetitive impact on non-certified mediators is noted only because of the statements reported in *The Florida Bar News* article discussed above. But any proposed rule change must be guided by the principle of self-determination, the essence and foundation of the mediation process. The public is ill served by any rule that denies the voluntary, informed, arms-length selection of a mediator deemed most qualified by those who have the most at stake.

⁸ The entire article can be found at <https://www.floridabar.org/news/tfb-news/?durl=/DIVCOM/JN/jnnews01.nsf/Articles/0CB43C9E66BD75E7852580BF0048B5AD>.

It is true that Florida's current standards for mediator certification and the credential "certified" help unsophisticated, self-represented (pro se) litigants decide on a mediator. For litigants represented by counsel, however, the success of mediation is due to the functioning of an efficient market populated by sophisticated advisors (lawyers) who counsel clients on mediator selection. The proposed amendments would substitute the judgment of the Committee and, ultimately, the Florida Supreme Court, for the more informed, case-specific judgment, knowledge, and experience of tens of thousands of lawyers and hundreds of thousands of their clients. The Committee's proposals should not be presented to the Florida Supreme Court.

Respectfully submitted,

/s/ Raoul G. Cantero

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Exhibit “A”

News from the Field

Proposed Revision of Court Procedural Rules Regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

The Committee on Alternative Dispute Resolution Rules and Policy (Committee) invites all interested persons to comment on the [proposed amendments](#) to court rules of procedure regarding the appointment and selection of Florida Supreme Court certified mediators in court cases. Under the proposed revisions, parties would be able to choose a mediator who is not Florida Supreme Court certified in any case not filed with the court system (pre-suit, administrative, etc.). The Committee is considering filing a petition with the Supreme Court to revise the rules to require that only mediators who hold Florida Supreme Court certification may mediate cases which are filed in the court system and would like to consider comments before doing so.

Any interested person may send comments for the Committee to the Florida Dispute Resolution Center (DRC) by **July 7, 2017**, at DRCmail@flcourts.org ; Florida Dispute Resolution Center, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399; or fax: (850) 922-9290.

<http://www.flcourts.org/resources-and-services/alternative-dispute-resolution/>

Committee on Alternative Dispute Resolution Rules & Policy Recommendations for Revisions to Court Procedural Rules

Florida Rules of Civil Procedure - Rule 1.720 Mediation Procedures

(j) ~~Appointment~~Assignment of the Mediator.

(1) Selection of the Mediator. ~~In all civil actions, except those pending in county court and those governed by the Florida Family Law Rules of Procedure or the Florida Rules of Juvenile Procedure~~Within 10 days of the order of referral, the parties shall mediate with a Florida Supreme Court certified circuit mediator.~~may agree upon a stipulation with the court designating:~~

~~(A) a certified mediator, other than a senior judge presiding as a judge in that circuit; or~~

~~(B) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.~~

(2) Selection by the Court. ~~In the event the parties cannot agree upon a Florida Supreme Court certified circuit mediator, the plaintiff or petitioner shall, within 10 days after a lack of agreement,~~If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall select~~appoint~~a Florida Supreme Court certified circuit mediator.~~selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.~~ At the request of ~~any~~either party, the court shall ~~select~~appoint a Florida Supreme Court certified circuit court mediator who is a member of The Florida Bar~~also licensed to practice law in any United States jurisdiction.~~

(3) If a mediator agreed upon by the parties or ~~selected~~appointed by ~~at~~the court cannot serve, a substitute mediator ~~can~~shall be agreed upon or ~~selected~~appointed in the same manner as the original mediator. ~~A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.~~

Committee on Alternative Dispute Resolution Rules & Policy Recommendations for Revisions to Court Procedural Rules

Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate circuit cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified circuit mediator. In addition, the revision expanding the selection of a circuit mediator who is licensed to practice law in any United States jurisdiction rather than a member of The Florida Bar makes the rule consistent with the language of the 2011 adoption of the appellate mediation procedural rules.

Florida Rules of Civil Procedure - Rule 1.750 County Court Actions

- (c) ~~Scheduling~~Small Claims Mediation and Scheduling of the Mediator. In small claims actions, ~~the~~a Florida Supreme Court certified county mediator shall be appointed and the mediation conference held during or immediately after the pretrial conference unless otherwise ordered by the court. In no event shall the mediation conference be held more than 14 days after the pretrial conference.
- (d) ~~Appointment~~Selection of the Mediator. In all county court actions not governed by~~subject to~~ the Florida Small Claims Rules, ~~rule 1.720(f) shall apply unless the case is sent to a mediation program provided at no cost to the parties.~~the parties shall mediate with a Florida Supreme Court certified county mediator. In the event the parties cannot agree upon a Florida Supreme Court certified county mediator, the plaintiff or petitioner shall, within 10 days after a lack of agreement, so notify the court and the court shall select a Florida Supreme Court certified county mediator.

2017 Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate county cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified county mediator.

Florida Rules of Juvenile Procedure - Rule 8.290 Dependency Mediation

- (e) ~~Assignment~~Appointment of the Mediator.
- (1) ~~Selection of the Mediator~~Court Appointment. The ~~parties~~court, in the order of ~~referral to mediation~~, shall mediate ~~appoint~~ with a Florida Supreme Court certified dependency mediator~~selected by rotation or by such other procedures as may be~~

Committee on Alternative Dispute Resolution Rules & Policy Recommendations for Revisions to Court Procedural Rules

~~adopted by administrative order of the chief judge in the circuit in which the action is pending.~~

~~(2) Selection by the Court. Party Stipulation. In the event, Within 10 days of the filing of the order of referral to mediation, the parties cannot~~may agree upon a Florida Supreme Court certified dependency mediator, the plaintiff or petitioner shall, within 10 days after the lack of an agreement, so notify stipulation with the court and the court shall select a Florida Supreme Court certified dependency mediator designating:

- ~~i. another certified dependency mediator, other than a senior judge presiding as a judge in that circuit, to replace the one selected by the judge; or~~
- ~~ii. a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.~~

2017 Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate dependency cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified dependency mediator.

Florida Rules of Appellate Procedure - Rule 9.730 Appointment & Compensation of Mediator

(a) ~~Selection of the Mediator. Appointment by Agreement. The parties shall mediate~~Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a Florida Supreme Court certified appellate mediator~~certified as an appellate mediator pursuant to rule 10.100(f), Florida Rules for Certified and Court Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction.~~

(b) ~~Appointment~~Selection by Court. ~~In the event~~If the parties cannot agree upon a mediator ~~within 10 days of the order of referral, the appellant shall, within 10 days after lack of an agreement, so notify the court immediately and the court shall appoint a Florida Supreme Court certified appellate mediator selected by such procedure as is designated by administrative order. At the request of any party, the court shall appoint~~select a Florida Supreme Court certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.

Committee on Alternative Dispute Resolution Rules & Policy Recommendations for Revisions to Court Procedural Rules

(c) Disqualification of Mediator. Any party may move to enter an order disqualifying a mediator for good cause. Such a motion to disqualify shall be filed within a reasonable time, not to extend 10 days after discovery of the facts constituting the grounds for the motion, and shall be promptly presented to the court for an immediate ruling. If the court rules that a mediator is disqualified from a case, an order shall be entered setting forth the name of a qualified replacement. The time for mediation shall be tolled during any period in which a motion to disqualify is pending.

(d) Substitute Mediator. If a mediator agreed upon by the parties or ~~selected~~appointed by the court cannot serve, a substitute mediator ~~may~~shall be agreed upon or ~~appointed~~selected in the same manner as the original mediator.

(e) Compensation of a Court-Selected Mediator. If the court selects the mediator pursuant to subdivision (b), the mediator shall be compensated at the hourly rate set by the court in the referral order or applicable administrative order. Unless otherwise agreed, the compensation of the mediator should be prorated among the named parties.

Committee Notes

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate appellate cases.

2011. This rule is not intended to limit the parties from exercising self-determination in the selection of any appropriate form of alternative dispute resolution or to deny the right of the parties to select a neutral. The rule does not prohibit parties from selecting an otherwise qualified non-certified appellate mediator prior to the court's order of referral. Parties may pursue settlement with a non-certified appellate mediator even within the ten-day period following the referral. However, once parties agree on a certified appellate mediator, or notify the court of their inability to do so, the parties can satisfy the court's referral to mediation pursuant to these rules only by appearing at a mediation conducted by a supreme court certified appellate mediator.

Family Law Rules of Procedure - Rule 12.741 Mediation Rules

(6) ~~Assignment~~Appointment of the Mediator.

(A) Selection of the Mediator. ~~Within 10 days of the order of referral, the parties may shall mediate with a Florida Supreme Court certified family mediator, agree upon a stipulation with the court designating:~~

Committee on Alternative Dispute Resolution Rules & Policy Recommendations for Revisions to Court Procedural Rules

~~(i) a certified mediator, other than a senior judge presiding as a judge in that circuit; or~~

~~—— (ii) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.~~

(B) Selection by the Court. ~~In~~ if the event the parties cannot agree upon a Florida Supreme Court certified family mediator within 10 days of the order of referral, the plaintiff or petitioner shall, within 10 days after the lack of agreement, so notify the court ~~within 10 days of the expiration of the period to agree on a mediator,~~ and the court shall appoint a Florida Supreme Court certified family mediator ~~selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.~~

(C) Substitute Mediator. ~~If a mediator agreed upon by the parties or appointed~~ selected by a court cannot serve, a substitute mediator ~~can~~ may be agreed upon or appointed in the same manner as the original mediator. ~~A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.~~

Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate family cases. These amendments do not preclude parties from mediating pre-suit cases with a mediator who is not a Florida Supreme Court certified family mediator.

Commentary

1995 Adoption. This rule combines and replaces Florida Rules of Civil Procedure 1.710, 1.720, and 1.730. The rule, as combined, is substantially similar to those three previous rules, with the following exceptions. This rule deletes subdivisions (a) and (b) of rule 1.710 and subdivisions (b) and (c) of rule 1.730. This rule compliments Florida Family Law Rule of Procedure 12.740 by providing direction regarding various procedures to be followed in family law mediation proceedings.

Exhibit “B”

Brian Spector has been a lawyer since 1978. He presently concentrates on alternative dispute resolution, principally mediating complex matters. Brian is a member of The Florida Circuit-Civil Mediator Society (<http://www.floridamediators.org>) and The National Academy of Distinguished Neutrals (<http://www.nadn.org>).



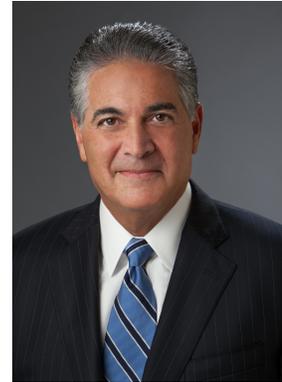
For 28 years Brian practiced with the Kenny Nachwalter law firm, a Miami-based commercial litigation boutique. His practice focused on complex business litigation, intellectual property litigation, legal ethics, professional responsibility, legal malpractice, accountant liability, securities litigation, and securities arbitration.

Starting in the early 1990's he also began mediating matters in these substantive areas and others, including class actions, construction, employment, real estate, and a wide variety of business disputes. While actively engaged in the practice of law, he was certified for 10 years by The Florida Bar in Business Litigation, having been a member of the inaugural Business Litigation Certification Committee.

Brian earned his undergraduate degree (cum laude) at Syracuse University and his J.D. (magna cum laude) at the University of Miami School of Law. After law school he clerked for Senior U.S. Circuit Judge Bryan ("Cowboy") Simpson on the "old" U.S. Court of Appeals for the 5th Circuit.

Brian has been recognized in: "The Best Lawyers In America" in the areas of Mediation, Alternative Dispute Resolution, Bankruptcy and Creditor Debtor Rights/Insolvency & Reorganization Law, Business and Commercial Litigation, and Legal Malpractice Law; Florida Trend's Florida Legal Elite 2007 in the Mediators category; and the 2006 inaugural edition of Florida Super Lawyers as among the Top 100 lawyers in Florida. Brian has served as an adjunct professor at the University of Miami School of Law and the Florida International University College of Law. He has taught courses in Remedies, Professional Responsibility, Professional Liability, and Corporate Crimes. He has served as a court appointed receiver and special master, as well as an arbitrator for the American Arbitration Association and the National Association of Securities Dealers (now known as the Financial Industry Regulatory Authority).

Brian F. Spector
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Miami, Florida 33256-6206
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Fax 305.661.8481
brian@bspector.com
www.bspector.com



EXPERIENCE

BRIAN F. SPECTOR, LLC

Miami, Florida (September 2007 –)
Concentrating on alternative dispute resolution, principally mediating complex matters in federal and state courts

KENNY NACHWALTER, P.A. (formerly known as Kenny Nachwalter Seymour Arnold

Critchlow & Spector, P.A.)

Miami, Florida

Associate (1979-84), Shareholder (1984-2007), Firm Counsel (1/1/05-8/31/07)

Practice areas included complex business litigation, intellectual property litigation, legal ethics and professional responsibility, legal malpractice, accountant liability, and securities litigation and arbitration.

Starting in the early 1990's also began mediating matters in these substantive areas and others, including class actions, construction, employment, real estate, and a wide variety of business disputes.

THE HONORABLE BRYAN SIMPSON

Senior Circuit Judge, U.S. Court of Appeals, "Old" Fifth Circuit

Jacksonville, Florida

Judicial Clerkship (August 1978 - July 1979)

UNIVERSITY OF MIAMI SCHOOL OF LAW

Coral Gables, Florida 33124

Adjunct Professor

Pleading & Discovery Workshop (Spring Semester 1985)

Professional Responsibility (Fall Semester 2004, Spring Semester 2005, Fall Semester 2005, Spring Semester 2006, Fall Semester 2006, Spring Semester 2010, Fall Semester 2010, Fall Semester 2011)

Professional Liability (Fall Semester 2005, Spring Semester 2006)

Corporate Crimes (Spring Semester 2006)

Remedies (Fall Semester 2006, Spring Semester 2007)

Instructor

Legal Research & Writing (1980-81 Academic Year)

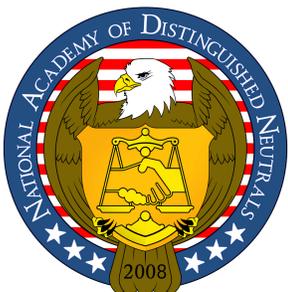
FLORIDA INTERNATIONAL UNIVERSITY COLLEGE OF LAW

Miami, Florida 33199

Adjunct Professor

Professional Responsibility (Fall Semester 2008, Fall Semester 2009, Fall Semester 2010)

Remedies (Spring Semester 2009)



EDUCATION**UNIVERSITY OF MIAMI SCHOOL OF LAW**

Coral Gables, Florida 33124

Juris Doctor (Magna Cum Laude), May 1978

Class Rank No. 4 of 312

Honors

University of Miami Law Review

Dean's List

American Jurisprudence Book Awards: Banking Law, Constitutional Law II, & Federal Jurisdiction

Omicron Delta Kappa, National Leadership Honor Society

Who's Who Among Students in American Universities and Colleges

The Society of Wig & Robe

The Society of Bar & Gavel

Finalist, Freshman Moot Court Competition

Activities

Articles & Comments Editor, University of Miami Law Review

Chairman, Moot Court Advisory Board

President, The Society of Wig & Robe

SYRACUSE UNIVERSITY

Syracuse, New York 13210

B.A. in Political Science (Cum Laude), December 1974

Honors - Dean's List

Activities

Student Association Representative

Chairman, Subcommittee on Academic Advising

Co-Chairman, Subcommittee on Tripartite Judicial System

Moot Court Participant in U.S. Constitutional Law class

**BAR
ADMISSIONS**

Florida, 1978

U.S. Supreme Court, 1985

U.S. Court of Appeals, Eleventh Circuit, 1981

U.S. Court of Appeals, Fifth Circuit, 1978

U.S. District Court, Southern District of Florida, 1978

U.S. District Court, Middle District of Florida, 1978

PUBLICATIONS

Co-Author, "Ethical Conundrums for the 21st Century Lawyer Mediator - 'Toto, I've a Feeling We're Not in Kansas Any More,'" 2 American Journal of Mediation 73 (2008)

Book Review, "Definitive Treatise on Business and Commercial Litigation in Federal Courts Comprehensive, User-friendly and Invaluable," Dade County Bar Association Bulletin (June 2008) (reviewing Business and Commercial Litigation In Federal Courts, Second Edition (Robert L. Haig, ed. 2005) (ABA Section of Litigation and Thomson-West))

"Pre-Dispute Agreements To Arbitrate Legal Malpractice Claims: Skating On Thin Ice In Florida's Ethical Twilight Zone?," The Florida Bar Journal, April 2008

Co-Author, Chapter 13, Jury Instructions For Business Litigation, Florida Bar Continuing Legal Education Manual "Business Litigation In Florida," 1989

PUBLICATIONS
(cont.)

“Justice Without A Day In Court,” Trial Lawyer’s Forum, The Florida Bar Journal, April 1985

“Venue Under the Antitrust Laws: Amenability of Parent Corporations to Suit by Virtue of Their Subsidiary's Activities,” 33 Univ. Miami L. Rev. 271 (1978)

Co-Author, “Permitting Sale of Insurance by Bank Holding Company Subsidiaries: A Reviewed Analytic Framework,” 32 Univ. Miami L. Rev. 543 (1978)

**LECTURES
& SEMINARS**

Dade County Bar Association Annual Bench and Bar Conference, Moderator, panel discussion entitled “An Intimate Conversation on Winning with the Federal Rules of Civil Procedure,” with Southern District of Florida U.S. District Judges Cecilia M. Altonaga and Darrin P. Gayles, February 10, 2017

Dade County Bar Association Bench and Bar Conference, Moderator, panel discussion entitled “Winning with the Federal & State Rules of Civil Procedure,” February 20, 2015

Dade County Bar Association Bench and Bar Conference, Moderator, panel discussion entitled “A Conversation With The Chief Judges,” February 28, 2014.

Dade County Bar Association Young Lawyer Section Continuing Legal Education Committee presentation of “The Road to Becoming A Superlawyer,” “Alternative Dispute Resolution” panelist, February 7, 2014

Dade County Bar Association Bench and Bar Conference, Moderator, panel discussion entitled “Mediation Best Practices and Pitfalls for the Trial Lawyer,” February 8, 2013

Spellman-Hoeveler American Inn of Court & Daily Business Review – Litigators Luncheon, Moderator, panel discussion entitled “Complex Commercial Litigation With The Legends,” October 12, 2012

Association of South Florida Mediators and Arbitrators, presentation entitled “Navigating The Mediator's Ethical Minefield,” Ft. Lauderdale, Florida, June 14, 2011

Daily Business Review – A View From The Bench – Litigation Best Practices, Moderator, panel discussion entitled “Ethics and Professionalism in Trial Practice,” Miami, Florida, June 2, 2011

American Bar Association Section of Dispute Resolution’s 8th Annual Advanced Mediation and Advocacy Skills Institute, Group Discussion Leader - “Negotiating in the Caucus Stage of Mediation” and “Breaking Impasse in Mediation,” Ft. Lauderdale, Florida, November 12, 2010

Daily Business Review – A View From The Bench, Moderator panel; discussion entitled “Ethics and Professionalism,” October 1, 2010

Broward County Bar Association 2009 Bench-Bar Convention, Moderator, panel discussion entitled “Federal Civil Procedure – Getting It Right,” Ft. Lauderdale, Florida, October 16, 2009

The Spellman-Hoeveler American Inns of Court, Panelist, “The Mind of the Mediator,” Miami, Florida, October 13, 2009

**LECTURES
& SEMINARS**
(cont.)

The Florida Bar Continuing Legal Education Committee and the Young Lawyers Division seminar entitled "Practicing With Professionalism," Panel Discussions on Professionalism, August 21 and 22, 2008, January 9, 2009, and October 2, 2009

St. Thomas University School of Law, Orientation Program presentation entitled "Focus on Professionalism - Values & the Practice of Law," Miami Gardens, Florida, August 15, 2008 & August 13, 2009

Florida International University College of Law, Orientation Program presentation entitled "Focus on Professionalism - Values & the Practice of Law," Miami, Florida, August 14, 2008

The Florida Bar Continuing Legal Education Committee and the Young Lawyers Division seminar entitled "Basic Discovery 2008," "Key Depositions," Miami, Florida, May 8, 2008

Florida International University College of Law, Professionalism Day Program Opening Remarks, August 12, 2007

34th Annual Meeting National Conference of Appellate Court Clerks New Orleans, Louisiana, presentation entitled "Professional Ethics," August 7, 2007

Presentation on Ethics to the Judicial Conference of the United States Court of Appeals for the Armed Forces, Columbus School of Law, The Catholic University of America, Washington, D.C., May 18, 2006

University of Miami School of Law Florida Bar CLER approved seminar entitled "The May 2006 Amendments To The Florida Rules of Professional Conduct: What You Need to Know and Why," May 12, 2006

32nd National Conference of Appellate Court Clerks, Key West, Florida, presentation entitled "Ethical Issues For Appellate Court Clerks," August 10, 2005

The Spellman-Hoeveler American Inn of Court, presentation entitled "Interviewing/Representing Corporate Constituents - An Ethical Minefield For Company Counsel," Miami, Florida, February 17, 2005

The Florida Bar Continuing Legal Education Committee and the Young Lawyers Division seminar entitled "Practicing With Professionalism," Panel Discussion on Professionalism, January 7, 2005

Dade County Bar Association • Federal Court Committee, "Rule Amendments • Federal and Local • December 2004 and Beyond," October 19, 2004

Miami, Florida Association of Mid-Sized Law Firms, presentation entitled "Lawsuits Against Lawyers: Litigation Trends, Preventive Measures," September 17, 2003

The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Courts" - "Discovery," September 27, 2002

Judicial Conference of the United States Court of Appeals for the Eleventh Circuit, Panel Discussion & State Meetings, "The Good, Bad and Ugly - What You Always Wanted To Know About Local Rules", May 1999

**LECTURES
& SEMINARS**
(cont.)

Federal Bar Association, Broward County, Florida Chapter, seminar entitled "Southern District of Florida, Local Rule Amendments: Why, How and What", May 7, 1998

The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Trial Techniques for the Business Litigator" - "Examining and Cross Examining Business Witnesses", October 3, 1996

Florida Institute of Certified Public Accountants, 10th Annual Accounting Show, Solo Practitioners Track, seminar entitled "Surprise! Subpoena - Now What?," September 21, 1995

University of Houston Law Foundation seminar entitled "Federal Civil Litigation Under The New Rules" - "Federal Pleadings And Attacks On Pleadings," April/May 1994

The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Business Litigation: Annual Update, Ethics, and Strategic Uses Of Trial Technology - Beyond The Yellow Pad" - "Florida Business Litigation 1992 Substantive Law Update," April 1992

International Anticounterfeiting Coalition seminar entitled "Florida: Problems and Solutions - Reflections Of The Trademark Owners' Counsel," October 29, 1991

The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Enforcement of Trademark Rights Through Litigation" - "The Plaintiff's Case - Litigation Strategy and Trial Tactics," May 31, 1991

Professional Education Systems, Inc.'s seminar entitled "Handling Breach of Contract Disputes In Florida" - "Recovery of Money Damages and Statutory Liability," February 1991

Florida Institute of Certified Public Accountants, South Dade Chapter seminar entitled "The Certified Public Accountant's Role As Consultant or Expert Witness In Business Litigation," November 1990

The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Current Issues and Developments In Commercial Litigation In Florida" - "Current Developments In Ethical Issues and Considerations For Commercial Litigation In Florida," April 1990

The Florida Bar Continuing Legal Education Committee and the Corporation, Banking and Business Law Section seminar entitled "Selected Issues In Commercial Litigation for the Business Litigator" - "Privilege Questions In The Commercial Litigation Area, Including Attorney-Client Privilege, Accountant-Client Privilege, and Trade Secret Protection," April 1987

Federal Court Seminar entitled "Civil Litigation In The Southern District of Florida" - "Local Rules for the Southern District of Florida." Young Lawyer's Section - Dade County Bar Association, March 1985

American Bar Association, National Institute, sponsored by the Commercial Transactions Litigation Committee, Section of Litigation "When Can You Take It With You? - Trade Secret And Non-Competition Clauses In Employment Agreements" "Strategy For The Ex-Employee, The New Employer, And Potential Defendants" February 1983

**JUDICIAL
COMMITTEES**

Ad Hoc Advisory Committee On Court Annexed Mediation, United States District Court, Southern District of Florida, Member, 2007 – 2013

Advisory (Ad Hoc) Committee On Rules & Procedures for the United States District Court for the Southern District of Florida, Chairman, 1996-2005, Member, 1994–2010

Federal Judicial Bar and Community Liaison Committee, United States District Court, Southern District of Florida, Member, 2007

Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance for the United States District Court for the Southern District of Florida, Member, 2001–2007, Chairman, 2001-2003

Supreme Court of Florida’s Commission on Professionalism, Member, 2006–2012, Ex Officio 2012 -

Supreme Court of Florida’s Committee on Standard Jury Instructions – Contract and Business Cases, Member, 2006 –, Vice Chair, 2010 – 2013

Supreme Court of Florida Committee on Standard Jury Instructions (Civil), Member, 1993-99

Eleventh Circuit U.S. Court of Appeals Ad Hoc Review Committee for Rules Consistency, Member, 1998-99

Civil Justice Advisory Group, United States District Court for the Southern District of Florida, Member, 1995

**PROFESSIONAL
ACTIVITIES,
ASSOCIATIONS
& RECOGNITION**

JUDGE JOE EATON “UNsung HERO” AWARD (First Recipient), conferred by the Judges of the United States District Court for the Southern District of Florida, May 29, 2009

MARTINDALE-HUBBELL AV Rating, October 6, 1988 –

AMERICAN LAW INSTITUTE, 2002 –

THE BEST LAWYERS IN AMERICA (Steven Naife and Gregory White Smith eds.)

www.bestlawyers.com

Alternative Dispute Resolution (2006-2011)

Mediation (2012-2017)

Bankruptcy and Creditor Debtor Rights/Insolvency
& Reorganization Law (2013-2017)

Business Litigation (1999-2006)

Commercial Litigation (2007-2008)

Legal Malpractice Law (2006-2008)

CHAMBERS USA AMERICA’S LEADING LAWYERS FOR BUSINESS 2004 -2007 • Litigation: General Commercial www.chambersandpartners.com/

FLORIDA SUPER LAWYERS 2006-2017 • Alternative Dispute Resolution, 2007-2016; Professional Liability – Defense, 2006 (selected as among the Top 100 Florida Super Lawyers in the 2006 edition www.superlawyers.com/)

**PROFESSIONAL
ACTIVITIES,
ASSOCIATIONS
& RECOGNITION**
(cont.)

FLORIDA TREND'S FLORIDA LEGAL ELITE www.floridatrend.com/
2007-Mediators; 2008-Arbitration & Mediation

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS <http://www.nadn.org/>

THE FLORIDA CIRCUIT-CIVIL MEDIATOR SOCIETY www.floridamediators.org/

AMERICAN BAR ASSOCIATION -- Member of Sections of: Business Law; Dispute Resolution; and Litigation. Member of The Center for Professional Responsibility.

THE FLORIDA BAR -- Member, 2006-09, Standing Committee on Professionalism; Member, 1994-97, Business Litigation Certification Committee of The Florida Bar; Member, 1989--, Vice Chairman 1990-1991 & 1992-93, Chairman, 1993-1994, Florida Civil Procedure Rules Committee; Member, 1990-1992, Federal Practice Committee; Member, 1992-1993, Public Relations Committee; Member, 1991-93, Chairman, 1993-94, Florida Bar Grievance Committee 11K; Member of Sections of: Trial Lawyers; Business Law. Member, 1984 --, Vice-Chairman, 1988-90, Chairman, 1990-91, Business Litigation Committee; Member, 1984--, Chairman, 1989-90, Subcommittee for Standard Jury Instructions in Commercial Cases; Member, 1988-1990, Executive Council Business Law Section.

DADE COUNTY BAR ASSOCIATION – Board of Directors, 2016-2017

Exhibit “C”

WHY BRIAN SPECTOR HAS CHOSEN NOT TO BE A FLORIDA SUPREME COURT CERTIFIED MEDIATOR

As you may know, for 28 years I practiced with the Kenny Nachwalter law firm, a Miami-based commercial litigation boutique. My practice focused on complex business litigation, intellectual property litigation, legal ethics, professional responsibility, legal malpractice, accountant liability, securities litigation, and securities arbitration.

Starting in the early 1990's, I began mediating matters in these substantive areas and others, including class actions, construction, employment, real estate, and a wide variety of business disputes.

In 2004, having been blessed through my practice of law to achieve financial independence, I decided to wind down my practice to devote my time to mediating and teaching as an adjunct at the University of Miami and Florida International University law schools.

At the urging of my good friend Mel Rubin (now deceased) — one of Florida's mediation pioneers and a nationally recognized mediator — in 2005 I took the course required for certification and became a Florida Supreme Court Certified Circuit Mediator.

I maintained my Florida Supreme Court mediator certification through September 1, 2014, when I permitted my certification to expire.

I chose not to be a Florida Supreme Court certified mediator:

(1) so I may be evaluative in conducting mediations,

(2) so I, as a member of The Florida Bar, can comply "at all times" with the Rules of Professional Conduct of The Rules Regulating The Florida Bar, and

(3) because Florida Supreme Court mediator "certification" is a meaningless and misleading credential, the maintenance of which was a waste of my time and money.

Being An Evaluative Mediator

There is a debate within the legal academy and among serious students of mediation, including yours truly, about the various styles of mediation and which is the most effective or appropriate. For example, the most commonly recognized styles of mediation are facilitative, evaluative, transformative, and narrative.¹

¹ There are some who believe that being evaluative is not mediation but a different form of alternative dispute resolution referred to as a "neutral evaluation." Those people are simply misinformed. A "neutral evaluation," sometimes referred to as an "early neutral evaluation," is a process by which disputing parties submit their case to a neutral evaluator through a confidential "evaluation session." The neutral evaluator then considers each side's position and renders an evaluation of the case.

Most lawyers will tell you that a mediator unwilling to be evaluative under any circumstances, i.e. one who simply acts as a messenger carrying demands and offers from one room to another, or simply asks questions, is a mediator of little, if any, value who will never be selected by lawyers to mediate another case. In fact, lawyers look for mediators who are effective (i.e. get cases settled) because they employ the mediation style and techniques necessary under the circumstances, including but not limited to being a strong, evaluative mediator.

Rule 10.370(c) of the Florida Rules for Certified and Court-Appointed Mediators provides that:

Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue....

Obviously, if I offer my opinion on the weaknesses of a party's case, I do so with the hope and expectation there will be some significant effect and will influence the parties. Whether someone believes I "intended to coerce" or to influence the parties "unduly" is, like beauty, in the eyes of the beholder. These are matters of opinion on which reasonable people can and oftentimes do disagree.

I am often asked to be evaluative or, at the end of the day, believe I need to be evaluative.² I am willing to and do in fact, at the appropriate time and under the appropriate circumstances, offer an evaluation of the merits of a dispute.

I believe a mediator who is strong and evaluative is most likely to be viewed by Florida's Mediator Qualifications and Discipline Review Board — the body empowered to adjudicate formal charges associated with a rule violation — as having violated Rule 10.370(c).

I am simply unwilling to subject myself to discipline for violating Rule 10.370(c) when the rule is subject to "know it when I see it" interpretation and application by those who, in my opinion, have an agenda.

² There are two scenarios in which I believe it appropriate or necessary to take an evaluative approach:

(1) a lawyer asks me (as mediator) to help manage the client's expectations about the case by firmly identifying and discussing the weaknesses of the client's case. I am asked to become evaluative because the lawyer is concerned that if the lawyer does so, the client will lose confidence in the lawyer, improperly accuse the contingency fee lawyer of trying to "take the money and run" contrary to the best interests of the client, or conclude erroneously that the lawyer's primary focus in the representation was milking the file to get hourly fees and then settle before trial; and

(2) at the end of a long day of mediation, after having used all other tools in my mediator tool kit — including reality testing by asking open-end or focused questions — I conclude that the only way to help a party move out of the state of denial and into a rational, decision-making mode is for me to become evaluative.

Complying “At All Times” With The Rules Of Professional Conduct Of The Rules Regulating The Florida Bar

Rule 10.650 of the Florida Rules for Certified and Court-Appointed Mediators provides that:

Other ethical standards to which a mediator may be professionally bound are not abrogated by these rules. In the course of performing mediation services, however, these rules prevail over any conflicting ethical standards to which a mediator may otherwise be bound.

The first sentence of this rule means that a mediator who is a member of The Florida Bar is bound to comply with the Rules of Professional Conduct of the Rules Regulating the Florida Bar (the “lawyer rules”).

The second sentence of this rule means that a Florida lawyer serving as a mediator must comply with the Florida Rules for Certified and Court-Appointed Mediators (the “mediator rules”) even if doing so would violate any of the lawyer rules.

As a member of The Florida Bar, I am obligated to comply with the lawyer rules, whether acting as a lawyer or mediator, and even in my personal life. A Florida lawyer/mediator who follows the mediator rules and, in doing so, violates the lawyer rules is guilty of misconduct, see Fla.R.Prof.Resp. 4-8.4(a), and is subject discipline, including but not limited to suspension and disbarment. See Rule 3-4.2 and 3-5.1 of The Rules of Discipline of the Rules Regulating the Florida Bar.

Being a Florida Supreme Court certified mediator represents a commitment I cannot and will never make to follow the mediator rules even if doing so requires that I violate the lawyer rules.

Florida Supreme Court Mediator “Certification” Is A Meaningless And Misleading Credential, The Maintenance Of Which Was A Waste Of My Time And Money

Anyone admitted to the Florida Bar and licensed to practice law in Florida may become and remain a Florida Supreme Certified Circuit Mediator without ever having mediated one case and without ever taking any type of examination. In short, a Florida lawyer may become a Certified Circuit Mediator by sitting through a 40-hour course — which to my knowledge no one has ever failed — and then observing 8 mediations conducted by at least two others who are certified Circuit Mediators. In essence, all one must do is show up!

Consequently, Florida Supreme Court mediator certification does not in any meaningful way measure or signify competence or experience as a mediator.

Certification is limited to two years, at which time one must file an application to renew one's certification. Again, there is **no requirement that the applicant for renewal have mediated one case**. However, for certification renewal, one is required to have taken 16 hours of Continuing Mediator Education ("CME"), which must include, *inter alia*, two hours of training dealing with domestic violence. Domestic violence is a serious societal problem. However, given the areas in which I mediate, such a course is utterly irrelevant to me. Moreover, I quickly surmised that virtually all the certified mediators conducting the required CME courses had nothing to teach me, making the required courses a waste of my time and money.

What Got Me To Thinking

Before closing, I want to explain what got me to thinking about permitting my certification to expire.

I began seriously thinking about permitting my certification to expire after reading a letter appearing in the July 15, 2014 issue of *The Florida News* written by Roger C. Benson. Mr. Benson resides in St. Petersburg, Florida. He has been certified by the Florida Supreme Court since 1989, and remains certified, as a County Mediator, a Family Mediator, and Circuit Mediator. Below I quote the relevant portion of Mr. Benson's letter.

Letter appearing in the July 15, 2014 issue of *The Florida News* written by Roger C. Benson.

Let me begin with the badge "Florida Supreme Court Certified Mediator" and what it actually means. The 40-hour course (why 40 hours and not 30 hours or 50 hours?) involves sitting through a curriculum that is stretched out over five days and requires nothing more than showing up. That "classroom" experience is followed by a requirement that the student observe a small number of mediations. There is no test. Woody Allen said that 80 percent of success is showing up, but I do not think it should be the case in training mediators. I am not suggesting that the training does not offer much that is worthwhile and relevant. **I simply believe that the imprimatur of the Florida Supreme Court, Florida Supreme Court certified mediator, misleads the public into believing that the court thinks that after taking their training course, a person is a competent mediator.** The standards to become a court certified mediator have evolved over time, principally in response to pressure from one group or another to gain the opportunity to buy the Supreme Court badge (think Better Business Bureau, Google retailer certification, eBay four-star site). The badge allows anyone who has completed the certification process to market themselves as an authentic mediator.

Compare this to the rigor the Supreme Court imposes on a person who wants to become a lawyer or a lawyer who wants to tell the public that he or she knows more than the average lawyer about probate, employment law, etc. Take it a step further — it is far more

demanding to become a nail tech giving manicures and pedicures at the mall than to become a Supreme Court certified mediator. . . .

[M]ediators in Florida are being taxed to subsidize the court annexed ADR program. If a litigant (represented or otherwise) is being provided a discounted or free mediation, court certified mediator money is helping to pay for it. Court certified mediators are also paying for the renewed annual August conference and paying to attend it. Mediators are paying for lawyers to prosecute grievance cases against other mediators, along with paying the salaries of DRC staff while they support various committees, process applications, etc. The state courts administrator did not question my approximation of the amount of money mediators pay each year for their badge (more than \$600,000). That leaves standing my question: Why are Florida's 6,300 court certified mediators paying to subsidize Florida's court annexed mediation/arbitration program?

The state court administrator confirms [in a letter appearing in the June 15, 2014 issue of *The Florida Bar News*] that the DRC [The Dispute Resolution Center] makes no effort to collaborate with Florida's academic community in studying and improving the court system's efforts to provide citizens with ways of resolving conflict different from litigation. The state is a vast laboratory with tens of thousands of real mediations every year. Such an academic approach, including law schools and others who study conflict and ways to resolve conflict, might reveal methods to improve the peacemaking skills of mediators, lawyers, and the pro se public. There is no statewide outreach to train citizens to mediate community-centered disputes, no requirement for private sector mediation trainers to offer scholarships, and no connection to Florida's school children. Compare this last fact to the lonely and noble effort of Justice Lewis to introduce school children to their Constitution.

The Florida court system should be actively involved in both the idea and the practice of mediation, and it is clearly not. The DRC started by doing pioneering work — persuading the judiciary and the Legislature to weave mediation into the fabric of Florida's legal system. It was a remarkably skillful and successful effort. **What exists today is an ossified artifact of that effort that continues on as a revenue stream for a court system desperately short of cash.** (emphasis added)

Exhibit “D”

How To Become Certified As A Florida Supreme Court Certified Circuit Mediator

Rule 10.100(a) General. For certification as a county court, family, circuit court, dependency, or appellate mediator, a mediator must be at least 21 years of age and be of good moral character. For certification as a county court, family, circuit court, or dependency mediator, one must have the required number of points for the type of certification sought as specifically required in rule 10.105.

Rule 10.100(d) **Circuit Court Mediators.** For initial certification as a mediator of circuit court matters, other than family matters, **an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:**

(1) 30 points for successful completion of a Florida Supreme Court certified circuit mediation training program;

(2) 25 points for education/mediation experience; and

(3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

Rule 10.105
Point System
Categories

(a) Education. Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed and honorary degrees are not included):

Doctorate (e.g., Ph.D., **J.D.**, M.D., Ed.D., LL.M) **30 points**

(c) Mentorship. Ten points will be awarded for each supervised mediation completed of the type for which certification is sought and **five points will be awarded for each mediation session of the type for which certification is sought which is observed.**

Point System Categories

| | | |
|---------------------------|------------|--|
| Mediation Training course | 30 | |
| J.D. | 30 | |
| Mentorship | 40 | Observe eight (8) mediations each worth 5 points |
| Total Required | 100 | |

How to Become A Florida Supreme Court Certified Mediator

Step By Step Guide



In order to assist applicants, the
Dispute Resolution Center has created the following
guide which outlines the mediator certification qualifications
and application process.

Revised March 2017

Attachment A- Mediator Qualifications

Florida Rules for Certified and Court-Appointed Mediators

Rule 10.100. Certification Requirements

- (a) **General.** For certification as a county court, family, circuit court, dependency, or appellate mediator, a mediator must be at least 21 years of age and be of good moral character. For certification as a county court, family, circuit court, or dependency mediator, one must have the required number of points for the type of certification sought as specifically required in rule 10.105.
- (b) **County Court Mediators.** For initial certification as a mediator of county court matters, an applicant must have at least a high school diploma or a General Equivalency Diploma (GED) and 100 points, which shall include:
- (1) 30 points for successful completion of a Florida Supreme Court certified county court mediation training program;
 - (2) 10 points for education; and
 - (3) 60 points for mentorship.
- (c) **Family Mediators.** For initial certification as a mediator of family and dissolution of marriage issues, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:
- (1) 30 points for successful completion of a Florida Supreme Court certified family mediation training program;
 - (2) 25 points for education/mediation experience; and
 - (3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

- (d) **Circuit Court Mediators.** For initial certification as a mediator of circuit court matters, other than family matters, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:
- (1) 30 points for successful completion of a Florida Supreme Court certified circuit mediation training program;
 - (2) 25 points for education/mediation experience; and
 - (3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

- (e) Dependency Mediators. For initial certification as a mediator of dependency matters, as defined in Florida Rule of Juvenile Procedure 8.290, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:
- (1) 30 points for successful completion of a Florida Supreme Court certified dependency mediation training program;
 - (2) 25 points for education/mediation experience; and
 - (3) 40 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

- (f) Appellate Mediators. For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program¹.
- (g) Senior Judges Serving As Mediators. A senior judge may serve as a mediator in a court-ordered mediation only if certified by the Florida Supreme Court as a mediator for that type of mediation.
- (h) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a family or circuit mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.
- (i) Special Conditions. Mediators who are certified prior to August 1, 2006, shall not be subject to the point requirements for any category of certification in relation to which continuing certification is maintained.

¹ Rule 9.730, Florida Rules of Appellate Procedure, regarding appointment of mediators

(a) Appointment by Agreement. Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a mediator certified as an appellate mediator pursuant to rule 10.100(f), Florida Rules for Certified and Court-Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction. (b) Appointment by Court. If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.

Rule 10.105. Point System Categories

- (a) Education. Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed and honorary degrees are not included):

| | |
|---|-----------|
| High School Diploma/GED | 10 points |
| Associate's Degree | 15 points |
| Bachelor's Degree | 20 points |
| Master's Degree | 25 points |
| Master's Degree in Conflict Resolution | 30 points |
| Doctorate (e.g., Ph.D., J.D., M.D., Ed.D., LL.M) | 30 points |
| Ph.D. from Accredited Conflict Resolution Program | 40 points |

An additional five points will be awarded for completion of a graduate level conflict resolution certificate program in an institution which has been accredited by Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, the American Bar Association, or an entity of equal status.

- (b) Mediation Experience. One point per year will be awarded to a Florida Supreme Court certified mediator for each year that mediator has mediated at least 15 cases of any type. In the alternative, a maximum of five points will be awarded to any mediator, regardless of Florida Supreme Court certification, who has conducted a minimum of 100 mediations over a consecutive five-year period.
- (c) Mentorship. Ten points will be awarded for each supervised mediation completed of the type for which certification is sought and five points will be awarded for each mediation session of the type for which certification is sought which is observed.
- (d) Miscellaneous Points.
- (1) Five points shall be awarded to applicants currently licensed or certified in any United States jurisdiction in psychology, accounting, social work, mental health, health care, education, or the practice of law or mediation. Such award shall not exceed a total of five points regardless of the number of licenses or certifications obtained.
 - (2) Five points shall be awarded for possessing conversational ability in a foreign language as demonstrated by certification by the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Test, qualification as a court interpreter, accreditation by the American Translators Association, or approval as a sign language interpreter by the Registry of Interpreters for the Deaf. Such award shall not exceed a total of five points regardless of the number of languages in which the applicant is proficient.

- (3) Five points shall be awarded for the successful completion of a mediation training program (minimum 30 hours in length) which is certified or approved by a jurisdiction other than Florida and which may not be the required Florida Supreme Court certified mediation training program. Such award shall not exceed five points regardless of the number of training programs completed.
- (4) Five points shall be awarded for certification as a mediator by the Florida Supreme Court. Such award shall not exceed five points per category regardless of the number of training programs completed or certifications obtained.

Committee Notes

The following table is intended to illustrate the point system established in this rule. Any discrepancy between the table and the written certification requirements shall be resolved in favor of the latter.

| Points Needed Per Area of Certification | | Minimum Points Required in Each Area |
|---|-----|---|
| County | 100 | 30 certified county mediation training; 10 education (minimum HS Diploma/GED); 60 mentorship |
| Family | 100 | 30 certified family mediation training; 25 education/mediation experience (minimum Bachelor's Degree ²); 30 mentorship [and requires 15 additional points] |
| Dependency | 100 | 30 certified dependency mediation training; 25 education/mediation experience (minimum Bachelor's Degree ³); 40 mentorship [and requires 5 additional points] |
| Circuit | 100 | 30 certified circuit mediation training, 25 education/mediation experience (minimum Bachelor's Degree ⁴); 30 mentorship; [and requires 15 additional points] |
| Appellate | | For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program ⁵ . |

²In order to amass the 25 education/mediation experience point minimum for family, dependency or circuit court certification, one must have either:

A) a Master's Degree or higher; OR B) a Bachelor's Degree (20 points) **and** have substantial mediation experience (yielding at least 5 points) or have earned a graduate certificate in Conflict Resolution (5 points).

³ See #2 above

⁴ See #2 above

A) a Master's Degree or higher; OR B) a Bachelor's Degree (20 points) **and** have substantial mediation experience (yielding at least 5 points) or have earned a graduate certificate in Conflict Resolution (5 points).

⁵ Rule 9.730, Florida Rules of Appellate Procedure, regarding appointment of mediators who are licensed to practice law
 (a) Appointment by Agreement. Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a mediator certified as an appellate mediator pursuant to rule 10.100(f), Florida Rules for Certified and Court-Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction. (b) Appointment by Court. If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.

| Education/Mediation Experience (points awarded for highest level of education received) | | | |
|---|-----------|---|----|
| HS Diploma/GED | 10 points | Master's Degree in Conflict Resolution | 30 |
| Associate's Degree | 15 points | Doctorate (e.g., JD, MD, PhD, EdD, LLM) | 30 |
| Bachelor's Degree | 20 points | Ph.D. from accredited CR Program | 40 |
| Master's Degree | 25 points | Graduate Certificate CR Program | +5 |
| Florida certified mediator: 1 point per year in which mediated at least 15 mediations (any type) OR any mediator: – 5 points for minimum of 100 mediations (any type) over a 5 year period | | | |

| Mentorship- must work with at least 2 different certified mediators and must be completed for the type of certification sought | |
|---|-----------------------------------|
| Observation | 5 points each session |
| Supervised Mediation | 10 points each complete mediation |

| Miscellaneous Points | |
|--|------------------|
| Licensed to practice law, psychology, accounting, social work, mental health, health care, education or mediation in any US jurisdiction | 5 points (total) |
| Florida Certified Mediator | 5 points (total) |
| Foreign Language Conversational Ability as demonstrated by certification by ACTFL Oral Proficiency Test; qualified as a court interpreter; or accredited by the American Translators Association; Sign Language Interpreter as demonstrated by approval by the Registry of Interpreters for the Deaf | 5 points (total) |
| Completion of additional mediation training program (minimum 30 hours in length) certified/approved by a state or court other than Florida | 5 points (total) |

Attachment B

Certified Mediation Training Providers

The mediation training programs listed below have been certified by the Supreme Court of Florida. Once you have completed a certified mediation training program, an application for certification will be provided to you.

Contact training providers directly for their schedules.

Direct links to trainer websites are located at www.flcourts.org - select Dispute Resolution

Appellate Mediation Training

| | | | |
|---------------------------------------|-----------------------------------|--|----------------|
| Dunlap Mediation | Eric D. Dunlap, Esquire | www.dunlapmediation.com | (321) 230-3088 |
| Mediation Training Group, Inc. | Susan Dubow & Elinor Robin, Ph.D. | www.mediationgroup.com | (561) 852-1633 |
| USF Conflict Resolution Collaborative | Gregory Firestone, Ph.D. | www.crc.usf.edu | (800) 852-5362 |
| Nancy Neal Yeend | Nancy Neal Yeend, Portland, OR | | (650) 857-9197 |

County Mediation Training

| | | | |
|--|---------------------------------|--|----------------|
| Matthew L. Cersine, Esquire | Matthew L. Cersine, Esquire | www.altdispute.com | (407) 592-7326 |
| Dunlap Mediation | Eric D. Dunlap, Esquire | www.dunlapmediation.com | (321) 230-3088 |
| Empowering Solutions | Toby Isaacson, Esquire | www.empoweringsolutions.org | (413) 862-9669 |
| Florida Mediation Training | Kevin Lunsford, Esquire | www.floridamediationtraining.org | (386) 269-0942 |
| Institute of Conflict Resolution & Communication | Alexia Georgakopoulos, Ph.D. | www.icrc.com | (561) 480-0155 |
| Mediation Training Group, Inc. | Susan Dubow&Elinor Robin, Ph.D. | www.mediationgroup.com | (561) 852-1633 |
| Shulman ADR Law, P.A. | Christopher M. Shulman, Esquire | www.shulmanadr.com | (813) 935-9922 |
| Arve Wikstrom, J.D. | Arve Wikstrom, J.D. | www.altdispute.com | (407) 538-5509 |
| Your Solution Group | Ailyn Gonzalez | | (321) 442-5185 |

Circuit Mediation Training

| | | | |
|------------------------------------|---|--|----------------|
| ADR Training Collaborative, LLC | MeahTell&StanleyZamor | www.adrctraining.com | (954) 733-5000 |
| Charles N. Castagna Mediation Inc. | Charles N. Castagna, Esquire | www.castagnamediation.com | (727) 446-4221 |
| Davis Mediation Firm | Donovan D. Davis, Esquire | | (407) 448-3665 |
| Dunlap Mediation | Eric D. Dunlap, Esquire | www.dunlapmediation.com | (321) 230-3088 |
| Florida Mediation Training | Kevin Lunsford, Esquire | www.floridamediationtraining.org | (386) 269-0942 |
| Florida Mediation Training Center | Barbara Peterson & Jessica Geller, Esq. | | (954) 351-7474 |
| Mediation Education, LLC | Hal Wotitzky & Stephan Widmeyer | | (941) 575-9666 |
| Mediation Training Group, Inc. | Susan Dubow&Elinor Robin, Ph.D. | www.mediationgroup.com | (561) 852-1633 |
| My Florida Mediator | Gregory Firestone, Ph.D. | www.myfloridamediator.com | (813) 494-7655 |
| Shulman ADR Law, P.A. | Christopher M. Shulman, Esquire | www.shulmanadr.com | (813) 935-9922 |
| Nancy Neal Yeend | Nancy Neal Yeend, Portland, OR | | (650) 857-9197 |

Dependency Mediation Training

| | | | |
|------------------------|--------------------------|--|----------------|
| My Florida Mediator | Gregory Firestone, Ph.D. | www.myfloridamediator.com | (813) 494-7655 |
| David Wolfson, Esquire | David Wolfson, Esquire | www.davidawolfson.com | (850) 329 0755 |

Family Mediation Training

| | | | |
|--|---|--|----------------|
| Family Mediation Training | Geraldine Waxman & Meah Tell | | (954) 741-1311 |
| Florida Mediation Training | Kevin Lunsford, Esquire | www.floridamediationtraining.org | (386) 269-0942 |
| Florida Mediation Training Center | Jessica Geller, Esq. & Barbara Peterson | | (954) 634-1786 |
| Institute of Conflict Resolution & Communication | Alexia Georgakopoulos, Ph.D. | www.icrc.com | (561) 480-0155 |
| Mediation Training Group, Inc. | Susan Dubow&Elinor Robin, Ph.D. | www.mediationgroup.com | (561) 852-1633 |
| My Florida Mediator | Gregory Firestone, Ph.D. | www.myfloridamediator.com | (813) 494-7655 |
| Wikstrom Peterson | Arve Wikstrom & Barbara Peterson | www.altdispute.com | (407) 538-5509 |

Attachment C Mentorship Requirements

Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

The responsibility of structuring a mentorship rests with each trainee. The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year. The certified mediator shall not charge the trainee any fees to observe a mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts a mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation.

The certified mediator shall remain in control of the case.

In order for an applicant to be awarded mentorship points, the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act, shall apply when a trainee serves as a mediator, comediator, or observer.

Ten points will be awarded for each completed supervised mediation and five points for each mediation session observed.

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Applicants shall provide original signatures of all mentors in relation to all mentorship activity claimed.

Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator of the type for which certification is sought. The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation. A trainee may not fulfill the observation

requirements before beginning a certified mediation training program. The observation requirement may be completed prior to the conclusion of the certified mediation training program. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for observation purposes. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than that of the state trial courts may not be utilized to fulfill the mentorship requirements.

Supervised Mediations

The requirement that the trainee conduct a mediation under the supervision and observation of a certified mediator may be fulfilled by the trainee co-mediating with a certified mediator, only if, in the opinion of the certified mediator, the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. At the conclusion of the mediation, the mentor shall determine if the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. If so, it may qualify as a “supervised” mediation. If not, it will qualify only as an observation.

For purposes of the requirement to conduct mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be mediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multi-session mediation, such participation qualifies as an observation regardless of the trainee’s level of participation. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for the requirements to conduct mediations under observation and supervision. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than that of the state trial courts may not be utilized to fulfill the mentorship requirements.

Attachment D CME Requirements for Certified Mediators AOSC11-1

Continuing Mediator Education

The purpose of continuing mediator education (CME) shall be to enhance the participant's professional competence as a mediator. The requirement of CME and the reporting thereof shall apply to all certified mediators seeking renewal and shall be fulfilled in accordance with the following procedures.

General Requirement

To qualify as Continuing Mediation Education (CME), a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience.

All certified mediators (mediators) must complete a minimum of:

1. Generally: Sixteen hours of CME, which shall include a minimum of four hours of mediator ethics, a minimum of two hours of domestic violence education, and a minimum of one hour of diversity/cultural awareness education in each two year renewal cycle, including the two years following initial certification.
2. Family and Dependency: Family and dependency mediators must complete an additional two hours of the required 16 hours in domestic violence education per each renewal cycle, for a total of four hours.
3. Appellate: Appellate mediators must complete no less than four hours of appellate mediation specific education. This may be part of or in addition to the required 16 hours per each renewal cycle of the underlying certification.

Mediators who are certified in more than one area must complete sixteen hours of CME applicable to each of their areas of certification. Hours completed may be utilized toward more than one area of certification if the subject matter is relevant to each field of certification. For example, courses on such topics as mediator ethics, domestic violence, and general mediation skills may be credited to any or all of the areas of certification.

At a minimum, fifty percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive Internet presentations may be counted as attendance at a live lecture. Non-interactive Internet presentations shall be applied toward the audio-visual category. A maximum of four hours of CME may be earned through mentoring as defined above.

Mentoring activities cannot be applied toward the required ethics, diversity/cultural awareness, or domestic violence CME components.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

Mediator certification shall not be renewed until all CME requirements are completed.

Definition

A CME hour is defined as fifty minutes. CME may be completed during the mediator's renewal cycle in any of the following formats:

- (1) attending a live lecture or seminar;
- (2) listening to or viewing an audio or video presentation of a lecture or seminar with a group, and participating in a discussion of the materials presented;
- (3) listening to or viewing audio or video presentations;
- (4) serving as a mentor pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators;
- (5) participating in Internet presentations;
- (6) lecturing or teaching in CME courses;
- (7) authoring or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation; and
- (8) successfully completing a self-directed program that is qualified for continuing education credit by a governmental licensing board.

Reporting Requirements

Mediators must maintain proof of attendance at CME programs or other appropriate documentation and must report their CME at the end of each two-year renewal cycle on the Center's renewal form. The mediator shall be responsible for maintaining all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules; Chapter 44, Florida Statutes; and other relevant statutes.

Any CME hours completed may be utilized for only one renewal cycle. Hours in excess of the minimum requirement shall not be carried forward to the next renewal cycle.

Attending and lecturing or teaching at the same CME presentation will not entitle a mediator to additional credit. This prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

If all other qualifications for renewal are satisfied and all fees paid or waived, but a mediator is deficient in CME credits, the mediator shall be notified in writing and certification shall be continued for ninety days from the notice of noncompliance. During those ninety days, the mediator shall complete all remaining CME requirements to be eligible for renewal.

Exhibit “E”

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and Appellate Mediator LL.M. Taxation University of Miami

The Honorable Rodney Smith, Chair
Florida Supreme Court ADR Rules and
Policy Committee
73 West Flagler Street
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Via Fax (305) 349-7059

Professor Fran Tetunic
Liaison to ADR Section of the Florida Bar
Shepard Broad Law Center
3305 College Avenue
Fort Lauderdale, Florida 33314
Via e-mail tetunicf@nsu.law.nova.edu

Re: ADR Section Florida Bar

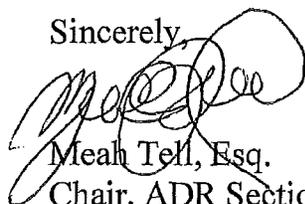
As you know, the ADR Section sent a survey to our members regarding certification and professionalism and we have provided you with the responses.

As a result, the Executive Council of the ADR Section passed two motions to send to the ADR Rules and Policy Committee. The first is designed to make sure that when a case is filed in the circuit and family divisions regardless of whether there is a court order of referral to mediation or not that the mediator who will mediate this case will be subject to the Florida Supreme Court's Ethical Standards for Certified and Court-Appointed Mediators. The second would require that the mediators in any family or civil case (other than a dependency case) filed in court be a Florida Supreme Court certified civil or family mediator. This would limit the parties right to pick non-Florida Supreme Court certified mediators, and would not allow them to pick a county court or appellate or dependency mediator (except in

dependency cases) who is not otherwise a Florida Supreme Court certified family or civil mediator. A copy of these two motions is attached.

We will encourage our members to contact you with their comments because the issue of party self-determination and picking mediators who are not subject to the Florida Supreme Court Ethics Standards and/or are not Florida Supreme Court Certified Family and Civil Mediators has raised thoughtful objections from some of our Executive Council members and from our members.

Sincerely,

A handwritten signature in black ink, appearing to read "Meah Tell", written over the printed name.

Meah Tell, Esq.

Chair, ADR Section Florida Bar

cc: Susan Marvin, Chief, Dispute Resolution Center

Final Language of Proposed Motions to Amend

Motion #1

(New)

Rule 10.201. Mediators Voluntarily Selected or Retained by the Parties to Mediate Disputes Filed in the Family and Circuit Civil Divisions in the Absence of an Order Referring the Case to Mediation

A mediator may be selected or retained by the parties voluntarily to mediate a dispute or any matters related to or arising from such dispute which has been filed in the family or circuit civil divisions of the Florida courts in the absence of a court order mandating such mediation. All mediators selected or retained by the parties to engage in voluntary mediation or designated by the court to mediate a dispute, or any matters related to or arising from such dispute, which has been filed in the family or circuit civil divisions of the Florida courts shall be subject to Part II and Part III of these rules.

Committee Note

Amendment ____ . The amendment to these rules is intended to ensure that all mediators who perform mediation services related to court cases filed in the family or circuit civil court divisions, whether selected or retained by the parties or designated by the court, must adhere to the Standards of Professional Conduct in Part II and shall be subject to discipline for violating the Standards of Professional Conduct pursuant to Part III of these rules.

Motion #4

Rule 10.201. Application

A mediator selected or retained by the parties or designated by a court to a case which has been filed in the family or circuit civil divisions of the Florida courts must be a Florida Supreme Court Certified Family or Circuit Civil Court mediator. The term "family" division is not intended to include dependency division in a unified family court.

Committee Note

The amendment to these rules is intended to ensure that all mediators who perform mediation services for court cases filed in the family or circuit civil divisions of the Florida courts selected or retained by the parties either voluntarily or pursuant to a court order or designated by the court must be Florida Supreme Court Certified Family or Circuit Civil Court mediators. Florida Supreme Court Certified Family or Circuit Civil Court mediators must meet certain standards in order to be certified and re-certified including but not limited to being "of good moral character" and must fulfill certain minimum educational requirements in order to become certified and re-certified. Florida Supreme Court Certified Family and Circuit Civil Court mediators are subject to Parts II and III of these rules and the protections of the Mediation Confidentiality and Privilege Act apply to mediations conducted by Florida Supreme Court Certified Family or Circuit Civil Court mediators, unless the parties agree otherwise. This amendment will protect the public and enhance the professionalism of mediation services which assist litigants and the courts. There are times when a Florida Supreme Court Certified Circuit Civil Court mediator is competent and qualified to mediate a case, or any matter related to or arising therefrom, filed in the family division and this amendment is not intended to preclude such service. There are times when a Florida Supreme Court Certified Family mediator is competent and qualified to mediate a case, or any matter related to or arising therefrom, filed in the circuit civil division, and this amendment is not intended to preclude such service.