

BUSINESS LITIGATION COMMITTEE
FLORIDA BAR BUSINESS LAW SECTION RETREAT
SEPTEMBER 2, 2017 @ 9:30 a.m.
MEETING AGENDA

- I. Call Meeting to Order
- II. Approval of Minutes
- III. Subcommittee/Taskforce Updates
 - a. Antitrust & Trade Regulations Subcommittee: Honorable Edward LaRose
 - b. Legislation Overview: Kacy Donlon
 - c. Uniform Commercial Real Estate Receivership Act Taskforce: Amanda Fernandez
- IV. State/Federal Court Judicial Liaison Committee: Detra Shaw-Wilder
 - a. Introduction of Judges
 - Honorable Lisa Walsh –State Court Judicial Liaison
 - Magistrate Judge Benton Smith – Federal Court Judicial Liaison
 - Honorable Robert Luck – Appellate Court Judicial Liaison
- V. Committee Liaison Updates
 - a. Inclusion Mentoring & Fellowship
 - b. Pro Bono
 - c. E-discovery
 - d. Membership
 - e. Communications
 - f. Appointment of New Liaisons for 2017/2018 Year
- VI. New Business
 - a. Committee on Alternative Dispute Resolution Rules and Policy's proposed rules to the Florida Supreme Court: Judge Scott Silverman (*see* attachments to agenda)
- VII. Adjourn

Scott J. Silverman

600 Brickell Avenue
Miami, Florida 33130
Telephone 305.542.0900
scott@the-beach.net

June 27, 2017

Committee on Alternative Dispute Resolution Rules and Policy
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

RE: Comment on the Committee's Proposed Rules

Dear Sir/Madam,

I read with great interest the Committee on Alternative Dispute Resolution Rules and Policy's (hereinafter "Committee") proposed rules to the Florida Supreme Court. Unfortunately, I am unable to support its proposal, in part, because the Committee's proposed rules, which seek to make certification for Florida lawyers mandatory, are radical and outside of the norm. Certification should remain aspirational and not mandatory for members of the Florida Bar

I am a retired circuit court judge having served nearly 22 years on the bench. While a judge, I served twice as Chair of the Florida Supreme Court's Judicial Ethics Advisory Committee and once as Chair of the Florida Bar's Committee on the Rules of Judicial Administration. At present, I work exclusively with JAMS, the largest private provider of mediation and arbitration services worldwide.

Since 1975, mediation has been an integral part of the fabric of Florida's legal system. Over 40 years have passed, and it is only *now* that the Committee deems it necessary to propose rules that would require all Florida Bar members, acting as mediators in litigated matters, to be certified.

The Committee has Not Presented Reasons or for its Proposal

The paradox of the Committee's proposal cannot be ignored. Florida lawyers are empowered to try complex cases before trial courts and argue matters of great significance before the appellate courts of our state. Everyday, Florida lawyers settle cases *without* the use of mediators - certified or non-certified. Yet, even with all of their immense responsibility, the Committee, in 2017, suggests they would be incompetent to mediate a case unless they receive a certification from the Court.¹ The Committee's proposed rules do not present compelling reasons for its proposal nor does it present an underlying rationale.

A Drastic Departure - Certification should be aspirational, but not mandatory

The Committee should refrain from creating additional bureaucracy and regulation where it is unnecessary. The proposed rules would require all attorneys who mediate litigated disputes to be certified. The Committee's proposal is a drastic departure from the way in which certification is currently viewed and treated by the Florida Supreme Court and the Florida Bar – which make certification optional. Certification is, and should continue to be, aspirational and not mandatory.

Having been engaged in the rule making process, my experience has taught me that new rules are suggested to the Court when there is a problem that needs to be solved. When that happens, it is common and expected that remedial measures will be taken. The present iteration of the proposed rules do not recite or allude to any problems or issues that the Committee is trying remediate. Rather, the proposed rules appear to be a solution in search of a problem.

An Attempt at Mandatory Licensure, Lawyer Protectionism, & Denial of Choice

Certification by members of the Florida Bar is not mandatory. It is voluntary. While the Committee's proposal of these rules may be well intentioned, its proposal is misguided. The Committee's proposal is not comparable with any other Florida Bar Rule or Florida Supreme Court Rule, because it establishes mandatory certification where none presently exists within any area of law governed by these rules.

¹ The proposed rules would preclude a single family lawyer from mediating even a minor dispute between two divorcing spouses (assuming there are valid waivers), unless the lawyer is a certified mediator or the parties are compelled to hire a certified mediator. It is difficult to justify the additional expenses and burdens on the parties in the name of mandatory certification.

The Florida Bar's website provides, "...certification recognizes attorneys' **special knowledge, skills and proficiency** in various areas of law and **professionalism and ethics** in practice." If successful, the Committee's proposal would create a scheme of licensure that invades the province of the legislature, promotes in-state lawyer protectionism, and denies litigants and their counsel the fundamental selection of the person or people who will help them resolve their disputes.

Radically Out of Step with the Norm

Candidly, the proposed rules are radical. They would require every lawyer who mediates litigated disputes be certified. The proposal represents a drastic departure from optional certification, which has long been the accepted norm.

Florida Bar members are not currently mandated to obtain certification in any area of their practice. It is sufficient, however, to be just a member in good standing with the Florida Bar. At present,

1. The Florida Supreme Court does not require lawyers to be certified in Business Litigation in order to be commercial litigators.
2. The Florida Supreme Court does not require lawyers to be certified in Marital and Family Law in order to practice family law.
3. The Florida Supreme Court does not require prosecutors and criminal defense attorneys to be certified in Criminal Trials in order to prosecute and defend criminal matters.
4. This list can be expanded for the remaining 23 areas of certification

Yet for some unexplained reason, the Committee has decided to deviate from these long ago accepted norms and propose rules that would ask our Court to engage in extreme and unnecessary regulation.

The First Casualties: Self Determination, the Needs and Interests of the Parties, Fairness, and Procedural Flexibility

The adoption of the proposed rules would immediately defeat several core principles of mediation – self determination, the needs and interests of the parties, fairness, and procedural flexibility. See, *Rules for Certified and Court-Appointed Mediators Rule 10.230*. Ironically, these fundamental concepts would be the first victims of the rules, since they would prohibit litigants and their counsel from exercising their fundamental freedom of choice in the selection of the person who would assist them in the resolution of their dispute.

Lawyer Protectionism – Less Competition Typically Means Higher Prices for the Citizenry

The adoption of the proposed rules would impede the ability of mediators from other states from coming into Florida to help resolve state court disputes, since the rules would require they be certified. For example, at JAMS, we frequently see mediators, including retired judges, in our office from other states serving the courts by assisting parties' in the resolution of Florida cases. The decision to bring in an outside mediator is not uncommon in the world of mediation. The reasons for bringing in a mediator from another state can be due to the mediator's qualifications, experience in a particular area of the law, language, nationality, or other factors. Regardless, the most important factor for doing so is the parties and their attorneys trust the mediator they've selected. The proposed rules would end this practice and possibly send the mediation out of the state.

By eliminating uncertified attorney mediators, who may be less expensive, the proposed rules, if adopted, could increase the costs of mediation and stymie competition, since each new certified mediator will have to spend funds (about \$1,000) to be certified and experience lost time in order to meet the certification requirements.² This will likely be passed on to the consumer in the form of higher prices.

Adding to the Costs of the Bureaucracy

According to the Florida Bar website, there are 1,163 attorneys who list "Mediation" as a practice area. At the same time, the Court's ADR and Mediation web page lists, as of 2016, there are 5,784 certified mediators. There are now five standing ADR Committees/Board – all of which are staffed by the Florida Dispute Resolution Center.

Mandatory certification will most certainly drive up the cost of administering the center. Without a budget impact statement for the Court, the Committee should refrain from presenting its proposal.

Two Final Examples of Irony

The Committee wants the Court to require all lawyers to be certified in order to mediate litigated cases. At the same time, lawyers frequently sit as arbitrators in binding quasi-judicial proceedings, and they are not required to have any certification. Arbitrators can be lawyers or non-lawyers. While lawyers may sit as arbitrators making definitive

² As an aside, I am unable to locate any empirical evidence that uncertified lawyer mediators are less effective than their counterparts or that they are subject to more complaints than their certified brothers and sisters.

findings of fact and conclusions of law without any certification, the Committee seems to be of the opinion those same people would be inept at facilitating the resolution of the same disputes.

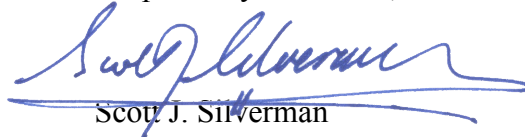
As a presiding trial court judge, the Code of Judicial Conduct authorized me to mediate cases. Canon 3B (7)(d), “A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.” The Code did not require my certification as a precondition to mediating the matter before me. Instead, the Code gave judges the option, if they desired, to become certified. Canon 5F (1).

While a judge, I was authorized and legally competent to mediate matters on the bench. However, the Committee’s proposed rule suggests that I became inept or incompetent to do so the moment I retired from the bench. How very ironic.

In Closing

For the reasons expressed above, I cannot support the Committee’s proposal. Their adoption will defeat the long-standing principle of self determination and serve as a radical departure from the norm of optional certification in favor of mandatory certification.

Respectfully submitted,



Scott J. Silverman



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

John F. Harkness, Jr.
Executive Director

Joshua E. Doyle
Executive Director Designate

August 4, 2017

VIA EMAIL (rsmith@jud11.flcourts.org)

Committee on Alternative Dispute
Resolution Rules & Policy
73 West Flagler Street, Room 1401
Miami, Florida 33130
Attn: The Honorable Rodney Smith

VIA EMAIL (Drcmail@flcourts.org)

Committee on Alternative Dispute
Resolution Rules & Policy
Florida Dispute Resolution Center
Supreme Court Building
500 S. Duval Street
Tallahassee, FL 32399
Attn: Susan Marvin

Re: Proposed changes to Rule 1.720, Florida Rules of Civil Procedure

Dear Judge Smith and Ms. Marvin,

On behalf of the Civil Procedure Rules Committee ("CPRC"), I submit this comment in response to the Committee on Alternative Dispute Resolution Rules & Policy ("Committee") Recommendations for Revisions to Court Procedural Rules, specifically the Proposed Revision of Court Procedural Rules Regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases ("Proposal"). This comment is directed primarily at the proposed modifications to Florida Rule of Civil Procedure 1.720, but may also apply to the remainder of the Proposal. The CPRC appreciates the Committee's work and the opportunity to comment.

In the brief period of time since becoming aware of the Proposal, the CPRC has given it thorough consideration. Among other actions, the CPRC has convened a subcommittee to analyze the Proposal, has discussed the Proposal at a full meeting of the CPRC, and invited Meah Tell, the Immediate Past Chair of the Alternative Dispute Resolution Section of the Florida Bar, to discuss

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the Proposal at a full CPRC meeting. Both the former Chair, R.J. Haughey, and I, the current chair, have spoken with Susan Marvin, the Chief of Alternative Dispute Resolution at the Florida Dispute Resolution Center. Additionally, numerous members of the CPRC have reached out to their constituent members of The Florida Bar. The CPRC also has considered the Comments submitted by Brian F. Spector in Opposition to the Amendments Proposed by the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy ("Spector Comment"), as well as various articles and editorials published since the Proposal was announced.

Based upon the CPRC's research, as well as a thorough review of the aforementioned information and materials, the subcommittee, the full CPRC, and the constituent bar members polled by the CPRC are nearly uniform in opposition to the Proposal. From the CPRC's perspective, the Proposal is both unnecessary and counterproductive for the majority of litigants that will be affected by it. The basis for the Proposal is a perception that litigants are being coerced by abusive uncertified mediators. That stated basis surprised members of the CPRC, none of which had ever heard of this purported problem. In fact, the subcommittee's members had never heard of any instance of coercive mediation techniques, or the existence of complaints regarding such abusive practices. To the extent there are such documented complaints, the CPRC would appreciate receiving copies of them, as well as any reports or studies evidencing the existence or scope of problems the Committee believes warrant the Proposal.

With respect to the purported problems reported to the CPRC during its review of the Proposal, it appears that the parties who are thought to be adversely affected by the allegedly abusive uncertified mediators have been *pro se* litigants. To the extent there is any real and substantial problem affecting *pro se* litigants, the Proposal goes far beyond addressing it. Instead, the Proposal attempts to "fix" a problem that members of the CPRC do not believe exists for lawyers and their clients. There are numerous reasons why lawyers and their clients regularly use, and often prefer, mediators who are not certified. Among the primary reasons voiced and identified by CPRC members were the following: 1) many litigants and lawyers want evaluative mediators; and 2) many otherwise well-qualified and experienced mediators do not obtain certification for various reasons other than retaining the ability to perform evaluative mediation.

Moreover, after careful thought and discussion with anecdotal examples, the CPRC has identified several reasons why many mediators may choose not to obtain certification. Primary reasons include: 1) that the burden of the certification process far outweighs the minimal value of the training to many lawyers, in part because of the perception that the certification classes are taught to the level of the most basic attendees, namely non-lawyers; and 2) that the designation is insignificant. Anyone can be certified as long one pays the fees, sits through five days of classes, and spectates the minimum amount of shadow mediations. There is no test nor requirement that one actually be hired to perform a mediation. The CPRC also shared general agreement with the substance of other issues raised in the Spector Comment.

The CPRC submits the following additional concerns, and respectfully suggests said concerns should be further evaluated and addressed before the Proposal or any modification thereof is presented for approval. First, the CPRC questions why the Proposal endorses the use of non-Florida bar member mediators to mediate Florida law cases. The CPRC has serious concerns for Florida litigants using out of state mediators and also expresses that this practice may undermine The Florida Bar's strong opposition to reciprocity in any form. Moreover, this endorsement could run afoul of Florida statutes, which prohibit the unlicensed practice of law. Second, the CPRC questions the constitutionality of the Proposal. Although the CPRC urges this Committee to conduct further in-depth research on the issue of constitutionality, the CPRC

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recognizes that similar infirmities in this Proposal were stricken down as unconstitutional in *Searcy v. The Florida Bar*, 140 F. Supp. 3d 1290 (N.D. Fla. 2015).

Further, the CPRC respectfully suggests that it would be valuable for the Committee to formally respond to the substantive disagreements raised by the Spector Comment and the numerous other articles and comments in opposition to the Proposal. A formal response to said concerns would not only enhance the development process of the Proposal, but also promote a greater understanding of the pros and cons of the proposed changes.

In short, based on a comprehensive review of the information in its possession, the CPRC strongly opposes the Proposal. The CPRC does not perceive a need for the proposed changes, and does not believe that the Proposal will benefit Florida Bar members and their clients. While we understand that alternative proposals may be considered at a later date, we limit our comments to the actual Proposal. We welcome your response or inquiries and thank you for the opportunity to present this comment.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s/ Rodolfo Ruiz

Honorable Rodolfo A. Ruiz, II
Circuit Court Judge

THE FLORIDA BAR ADMIRALTY LAW COMMITTEE

www.MaritimeLaw2017@Gmail.com

August 2, 2017

The Committee on Alternative Dispute Resolution Rules
and Policy c/o the Florida Dispute Resolution Center
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399

Via Email: DRCmail@flcourts.org

RE: Comments of the Admiralty Law Committee of the Florida Bar in Opposition to Rule Amendments Proposed by the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy.

Dear Committee Members:

The Committee on Alternative Dispute Resolution Rules and Policy ("Committee") has invited 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.

The tenets of admiralty and maritime law have developed into a highly specialized area of practice navigated only by few. Of the 103,000 (plus) lawyers licensed to practice law in the State of Florida, 63 are board certified in the area of admiralty and maritime law. This committee is comprised of a total of 86 members. Of those, there is one who is board certified in the area of admiralty and maritime law and also a Florida Supreme Court certified mediator.

For the reasons that follow, the Florida Bar Admiralty Law Committee ("ALC") opposes the Proposed Amendments and respectfully recommends that the Committee not file a petition with the Supreme Court to revise the rules currently in place.

A brief review of the Chapters of the *Florida Maritime Law and Practice*, Fifth Edition, 2017, a Florida Bar publication, distributed by Lexis Nexis and written by members of the 2016 – 2017 Admiralty Law Committee, under the tutelage of last year's Chair, Ryan Eslinger, and the book's steering committee, identifies the degree to which lawyers trained in the area of admiralty and maritime law have become specialized. The Chapters of the publication identify the specialized areas that are involved in admiralty and maritime litigation.

These include the following:

Chapter 1 **Admiralty and Maritime Jurisdiction**

Matthew John Valcourt and Carl R. Nelson

Chapter 2 **Practice and Procedure**

Raúl J. Chacón, Jr and Andrew D. Craven

Chapter 3 **Personal Injury and Wrongful Death of Seamen and Other Maritime Workers**

Robert D. Peltz and Andrew L. Waks

Chapter 4 **Personal Injury and Wrongful Death of Passengers**

William B. Milliken and Tonya J. Meister

Chapter 5 **Maritime Workers' Compensation**

C. Ryan Eslinger

Chapter 6 **Carriage of Goods**

Lindsey C. Brock

Chapter 7 **Charters**

Michael E. Conroy and Attilio M. Costabel

Chapter 8 **Salvage**

John Howard Thomas and Andrew W. Anderson

Chapter 9 **General Average**

Allen Von Spiegelfeld

Chapter 10 **Collision**

David F. Pope

Chapter 11 **Marine Insurance**

Michelle Ortero Valdés

Chapter 12 **Maritime Liens**

David W. McCreadie and Adam D. Griffin

Chapter 13 **Limitation of Liability**

Allan R. Kelley and Michael W. McLeod

Chapter 14 **Pleasure Boats**

Captain Alan S. Richard, Joanne M. Foster and Anthony J. Cuva

Chapter 15 **Florida Boating Law**
Captain Alan S. Richard

Chapter 16 **Pilotage And Towage**
Christopher R. Koehler

Chapter 17 **Marina Liability**
James N. Hurley

Chapter 18 **Maritime Security Law**
Captain Robert L. Gardana

Chapter 19 **Sales Of Vessels**
Attilio M. Costabel and David R. Maass

In view of the particularly specialized knowledge and experience required to mediate an admiralty and maritime matter, the ALC's principal concern is that, if implemented, the Proposed Amendments would effectively exclude mediators qualified in area of Admiralty and Maritime Law from mediating Florida-based litigation. Specifically, if disputes involving admiralty and maritime law in the Florida courts are required to be mediated by a Florida Supreme Court certified mediator, the Proposed Amendments would immediately and drastically reduce the available pool of potential mediators that may be selected to mediate maritime legal disputes.

For these reasons, the Admiralty Law Committee opposes the Proposed Amendments and respectfully recommends that the Committee not file a petition with the Supreme Court to revise the rules currently in place.

Thank you for your consideration.

Yours truly,



Robert L. Gardana, Chair

cc:
Raul Julio Chacon, Jr, Vice Chair
Barbara A Cook, Vice Chair
Alan Sanders Richard, Vice Chair
Tyler Jon Tanner, Vice Chair
Florida Bar Admiralty Law Committee

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, July 5, 2017 8:25 AM
To: Kimberly Kosch
Subject: Fw: Comment on Mandatory Mediator Certification
Attachments: 17-06.26 Spector Comments and Objections.pdf; image001.jpg; image003.jpg

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

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From: David Ackerman <DAckerman@alslaw.com>
Sent: Thursday, June 29, 2017 2:48 PM
To: DRC Mail
Subject: Comment on Mandatory Mediator Certification

I am writing to say I agree with the Comments of Brian Spector (attached) on this issue. I think it would not be in best interests of clients I represent to take away their right to select a mediator of their choice. In commercial matters where each side is represented by counsel, it can be hard enough to find a mediator we can all agree to. This amendment will make that even harder and cases may not settle. In addition, I believe many lawyers want a mediator to evaluate and react to each party's positions. That critique helps us revisit our views. That is what a good mediator does. There has to be an option for parties to select a mediator who can offer a candid even opinionated view of the case.

I fully appreciate the concern the amendment is designed to address for cases vulnerable to duress or overreaching. That risk is not present in cases I handle.

Thank you for considering my views and for the work you do for our legal system.

David P. Ackerman

[cid:image001.jpg@01CF2E11.93C8DD10]

777 South Flagler Drive, Suite 800 East | West Palm Beach, FL 33401

P: 561.838.4100 | F: 561.838.5305 | Email: dackerman@alslaw.com<<mailto:dackerman@alslaw.com>>

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Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, May 31, 2017 4:34 PM
To: Kimberly Kosch
Subject: FW: Proposed revisions to Court Procedural Rules

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Wednesday, May 31, 2017 2:45 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: Proposed revisions to Court Procedural Rules

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Linda Agnant <lagnant@agnantlaw.com>
Sent: Wednesday, May 31, 2017 2:30 PM
To: DRC Mail
Subject: Proposed revisions to Court Procedural Rules

I am a Supreme Court certified mediator.

With respect to the Committee's consideration of 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, I would ask that the committee NOT so petition the Court.

Mediation at its very core is a voluntary process, and parties should be free to select whomever they want to mediate their dispute, regardless of whether the case is in litigation or not.

Thank you,
Linda Dickhaus Agnant

Linda Dickhaus Agnant, Esq.
AGNANT & LAMBDIN LLC
2 South University Drive, Suite 315
Plantation FL 33324
(954) 368-4164
Fax (561) 293-2526
Email: lagnant@agnantlaw.com



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Kimberly Kosch

From: DRC Mail
Sent: Friday, June 16, 2017 7:56 AM
To: Kimberly Kosch
Subject: Fw: Certified Mediators

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Alaina Fotiu-Wojtowicz <alaina@bfwlegal.com>
Sent: Thursday, June 15, 2017 7:21 PM
To: DRC Mail
Subject: Certified Mediators

Members of the Committee:

I write briefly to express my opposition to any attempt to restrict parties' ability to select the mediator that they believe is most likely to be able to successfully assist them in resolving their dispute. I have had much success with mediators that are certified, and those that are not. I believe that the parties and lawyers involved in a particular case are most able to determine which mediator is best suited for their purposes.

Sincerely,

Alaina Fotiu-Wojtowicz, Esq.



BRODSKY FOTIU-WOJTOWICZ

169 E. Flagler Street
Suite 1224
Miami, Florida 33131
T. 305-503-5054
F. 305-677-5089
alaina@bfwlegal.com
www.bfwlegal.com

Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 1, 2017 7:35 AM
To: Kimberly Kosch
Subject: Fw: A petition against non-certified mediator's

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
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From: icrctraining <icrctraining@comcast.net>
Sent: Wednesday, May 31, 2017 4:12 PM
To: DRC Mail
Subject: A petition against non-certified mediator's

Hello DRC Representatives,

I wanted to share my opinion in regards to having uncertified mediators take pre-suit and non-court connected cases. Just as a doctor or an attorney cannot practice in their areas of medicine or law, I believe that we have to uphold the field of Mediation with integrity and ethics and in doing so I believe the minimum qualifications of having mediators be certified is necessary. Many of these pre-suit cases end up in the courts because there may be unqualified mediators who are working with clients.

While this is my professional opinion and I have taught graduate and doctoral level students in this arena for over 20 years, I hope that professionals and mediators alike share my opinion in majority.

Sincerely,

Alexia Georgakopoulos, Ph.D.
Director, Trainer, and Mediator
Institute of Conflict Resolution & Communication
7050 W. Palmetto Park Road - Suite #15-117
Boca Raton, FL 33433
E-mail: icrctraining@comcast.net
Phone: (561) 900-5308
Homepage: www.icrctraining.com

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, June 28, 2017 8:21 AM
To: Kimberly Kosch
Subject: Fw: Comments on Proposed Mediator Rules Changes

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Amanda Esquibel <akesquibel@aol.com>
Sent: Tuesday, June 27, 2017 3:03 PM
To: DRC Mail
Subject: Comments on Proposed Mediator Rules Changes

To The Committee on Alternative Dispute Resolution Rules and Policy:

My name is Amanda K. Esquibel. I am (and have been for over twenty years) a licensed attorney, as well as a certified county and circuit court mediator in the State of Florida. I was also, for a time, a tenured professor of law at the University of Memphis. While there, I taught, among other things, Antitrust and Professional Responsibility. I write in opposition to the proposed rule amendments that would limit mediators of court-filed disputes to those who are certified.

I am not familiar with any evidence that certified mediators are "better" mediators than non-certified mediators, much less that it is the Florida certification process specifically that makes them "better." If the Committee has such evidence, I would appreciate it making such available so that those interested may assess its worthiness to be a predicate for significant rules changes.

In the absence of such evidence, one can surmise that these changes are the product of some anti-competitive pressure. Although mediation has been promoted as an effort to stem the prohibitive expense of litigation, these changes will reduce competition and drive up the price of mediations. This will only favor the holders of certifications and the cottage certification industry.

Even, however, if evidence does exist that the Florida certification process makes someone a "better" mediator, usurping the power of parties to decide who may help them resolve their dispute through mediation runs up hard and fast against the bedrock principle of mediation - self-determination. Who is "better" or "best" to mediate a dispute has to be in the eyes of the parties to the dispute. They are the ones that have to decide whether and, if so, under what terms, to compromise their action. Their willingness to explore that may be based on their primal sense of trust (or other feeling about) the mediator. The certification credential may or may not enter into their equation.

Whatever the Committee's motive, I don't believe it should limit this variable to certified mediators.

Thank you for your consideration

Respectfully submitted,

Amanda Esquibel.

HALL, LAMB, HALL & LETO, P.A.

ATTORNEYS AT LAW

OFFICES AT GRAND BAY PLAZA

PENTHOUSE ONE

2665 SOUTH BAYSHORE DRIVE

MIAMI, FLORIDA 33133

TELEPHONE 305 374-5030

FACSIMILE 305 374-5033

TOLL FREE 800 376-5030

www.hhlhlawfirm.com

OF COUNSEL
JON W. ZEDER

ANDREW C. HALL
ADAM S. HALL
ADAM J. LAMB
MATTHEW P. LETO
ROARKE O. MAXWELL
DANIEL DAVIS
VANESSA PALACIO
KEITH R. GAUDIOSO
JOSHUA M. SALMON

July 7, 2017

Sent via Email: DRCmail@flcourts.org

Florida Dispute Resolution Center

Supreme Court Building

500 South Duval Street

Tallahassee, Florida 32399

Re: Opposition to Mandatory Certification of Florida Mediators

The proposed amendments to the Florida Rules of Procedure would limit the ability of my firm and our clients to select highly qualified mediators and appears to me to be an unacceptable limitation on an attorney's right to practice law including as a mediator, and an attorney's right to select a distinguished member of the Bar who is not a certified mediator to mediate. Further, if passed, these amendments will harm the legal profession in a number of material ways: 1) the loss of evaluative mediation as a valuable tool for litigators; 2) anticompetitive exclusion of mediators who have chosen not to maintain certification; and 3) increased mediation costs due to passing on of the fees associated with certification of mediators.

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. . .

Any expression of an opinion from a mediator who is respected carries with it an intent to shape opinion and the more respected the mediator based on trial experience the more coercive effect that opinion has. However, that opinion is essential to the resolution of complex cases. This means that by virtue of certification, a seasoned mediator would be barred from offering fair and impartial evaluations of the weaknesses of a party's position to help manage expectations or provide his or her view on a controverted point which would influence the case toward settlement. This provision deprives the parties of the

mediator's knowledge and experience in the field and reduces him to merely shuttling messages and numbers between parties, a role which will reduce the effectiveness of this tool. While it is not the job of a mediator to act as Judge or Arbitrator, a Mediator's insights into the deficiencies of a party's case can be crucial to reaching successful resolution.

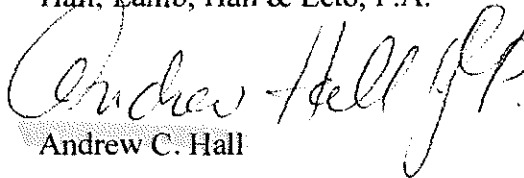
Secondly, in practical terms, I have found the certification is meaningless and not indicative of a mediator's experience or qualification. The title "Florida Supreme Court Certified Mediator" means only that the mediator has attended a 40 hour course and observed a few mediations and that has never been a factor in any mediation I have ever attended.

Finally, despite not reflecting a mediator's skill or experience, certification is expensive. An applicant must pay for a course for initial certification, continuing mediator education classes, and biennial renewal fees. These additional charges will be reflected in mediators' fees and add an unnecessary cost to the litigation process. Higher costs will almost certainly serve as a deterrent to parties willingly attending mediation and settling their claims without the need for further court resources.

For the foregoing reasons, I strongly oppose the proposed amendments to the Florida Rules of Procedure regarding required certification of mediators.

Sincerely,

Hall, Lamb, Hall & Leto, P.A.



Andrew C. Hall

Kimberly Kosch

From: DRC Mail
Sent: Monday, July 10, 2017 7:28 AM
To: Kimberly Kosch
Subject: Fw: Opposition to Mandatory Certification of Florida Mediators
Attachments: Florida Dispute Resolution ltr 7 7 2017.pdf

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

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From: Jacqueline Poli <jpoli@hlhlawfirm.com>
Sent: Friday, July 7, 2017 4:13 PM
To: DRC Mail
Cc: Andy Hall
Subject: Opposition to Mandatory Certification of Florida Mediators

Attached please find correspondence being sent to you on behalf of Andrew C. Hall.

Thank you,

Sent on behalf of Andrew C. Hall, Esq.

Jacqueline Poli, Legal Assistant to
ANDREW C. HALL, Esq.
HALL, LAMB, HALL & LETO, P.A.
2665 South Bayshore Drive
Penthouse One
Coconut Grove, Florida 33133
Tel. (305) 374-5030
Fax. (305) 374-5033
jpoli@hlhlawfirm.com

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Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 1, 2017 7:35 AM
To: Kimberly Kosch
Subject: Fw: Comments Requested: Proposed Revision of Court Procedural Rules

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Angie Carioni <acarioni@aol.com>
Sent: Wednesday, May 31, 2017 5:11 PM
To: DRC Mail
Subject: Fwd: Comments Requested: Proposed Revision of Court Procedural Rules

Hello;

Does it mean that people can choose a median who is NOT certified with the FL S Ct to mediate (just about anybody) to mediate when the case has not been filed.
If we allow this to happen our certification will be meaningless and anybody would be able to mediate? Is my interpretation correct?

Ummm, so I wonder what would be the need to continue renewing our certification?

Warm regards,
Angie

CONSULTING ACROSS BORDERS, INC.
Angeles Carioni, Ph.D.
Mediation/Cross-Cultural Awareness
Florida Supreme Court Certified Family and Circuit Mediator
Elder Decision-Making and Conflict Resolution

-----Original Message-----

From: Do-Not Reply <DoNotReply@flcourts.org>
To: 'acarioni@aol.com' <acarioni@aol.com>
Sent: Wed, May 31, 2017 8:28 am
Subject: Comments Requested: Proposed Revision of Court Procedural Rules

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

July 7, 2017

The Honorable Rodney Smith, Chair
Committee on Alternative Dispute Resolution
Rules & Policy
Florida Dispute Resolution Center
DRCmail@flcourts.org

Via Email

Dear Judge Smith,

On behalf of the Appellate Court Rules Committee ("ACRC"), I am writing to provide you our Committee's comments to the proposed amendments to Florida court rules of procedure regarding the appointment and selection of mediators. The ACRC discussed the proposed amendments to Florida Rule of Appellate Procedure 9.730 at the June 23, 2017, committee meeting.

As currently proposed, and without having had the opportunity to discuss the proposal with the Dispute Resolution Committee, the ACRC has concerns regarding both the concept and substance of the proposed amendments to rule 9.730. The ACRC is interested in having a clearer understanding of the reason for these proposed amendments to the mediation rules. The ACRC is interested in having members from both committees meet to discuss the proposal.

A. Concept

The ACRC is concerned the proposed amendments to rule 9.730 are too restrictive in that they restrict parties to using a Florida Supreme Court certified appellate mediator, no matter when the mediation takes place in the appellate process. The ACRC believes the goal of the appellate mediation rules is to promote early resolution of appeals, which saves valuable resources of the court and litigants. The proposed amendments may undermine this goal.

The Committee Notes to the current rule state that the rule "does not prohibit parties from selecting an otherwise qualified non-certified appellate mediator prior to the court's order of referral." Thus, the current rule gives parties to an appeal the flexibility to use any qualified mediator before expiration of the 10-day period after the court's referral to mediation. The ACRC believes this flexibility is

important. It allows parties to choose a qualified, though uncertified, mediator during the early stages of the appeal. It also allows parties to use a mediator certified in another substantive area at those early stages. There are occasions when parties to an appeal would prefer to use a mediator who specializes or is certified in a substantive area of the law, rather than a certified appellate mediator. For example, in family law appeals, parties may want to engage a mediator who specializes in family law mediation because of the mediator's familiarity with family law issues. Appellate mediation experience may not be as important in these cases.

The report from the Dispute Resolution Committee does not explain why the Committee proposes to remove this flexibility from rule 9.730. The ACRC is interested in understanding the reason for the proposed change. As it currently stands, the ACRC objects to this change. The ACRC believes it is unnecessary and counterproductive to the goals of the mediation rules.

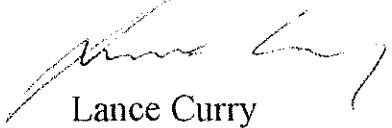
B. Substance

As to the language of the proposed amendments, the ACRC has two comments. First, the ACRC is concerned that the timeframe for notifying the Court of lack of agreement on a mediator is indefinite and may cause confusion. The proposed rule does not define when "lack of agreement" occurs. The ACRC is interested in understanding why the Dispute Resolution Committee changed the current timeframe in the rule—"within 10 days of the order of referral"—which seems to provide a more definite time.

Second, for consistency between the body of the rule, the subdivision titles, and the title of the rule, the ACRC suggests changing the title of the rule to "SELECTION AND COMPENSATION OF THE MEDIATOR."

The ACRC appreciates the Dispute Resolution Committee's attention to these concerns. If you have any questions, please feel free to contact me.

Sincerely,



Lance Curry
Chair

Appellate Court Rules Committee

cc: Heather Savage Telfer, Liaison, Appellate Court Rules Committee
(htelfer@floridabar.org)

Susan Marvin, Chief of Alternative Dispute Resolution
(marvins@flcourts.org)

Kimberly Kosch

From: DRC Mail
Sent: Monday, July 10, 2017 7:29 AM
To: Kimberly Kosch
Subject: Fw: ACRC comments re mediation rules
Attachments: 013848.pdf

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From: Lance Curry <lance.curry@hwhlaw.com>
Sent: Friday, July 7, 2017 6:55 PM
To: DRC Mail
Cc: 'Telfer, Heather'; Susan Marvin
Subject: ACRC comments re mediation rules

Please see attached. Thank you.

Lance V. Curry, III

HILL WARD HENDERSON
3700 Bank of America Plaza
101 East Kennedy Boulevard
Tampa, FL 33602
<http://www.hwhlaw.com>
Main: 813-221-3900
Fax: 813-221-2900
Direct: 813-227-8457
lance.curry@hwhlaw.com



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TAMPA | CLEARWATER

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Kimberly Kosch

From: DRC Mail
Sent: Friday, June 2, 2017 7:42 AM
To: Kimberly Kosch
Subject: Fw: Commend re Proposed Rules about Family Law Cases and Supreme Court Certified Mediators

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From: Arthur Grossman <AJ@markslawfla.com>
Sent: Thursday, June 1, 2017 4:54 PM
To: DRC Mail
Subject: Commend re Proposed Rules about Family Law Cases and Supreme Court Certified Mediators

I am writing today to express my objection to the proposed amendment prohibiting any non-Supreme Court Certified mediator from mediating family law cases that have been filed.

I passed the bar in 2010 after receiving my J.D. in 2009 and my LL.M. in Dispute Resolution in 2010 from The Straus Institute at Pepperdine University School of Law. I am also a collaboratively trained family law attorney. I am not Supreme Court Certified and I am qualified to mediate family law cases.

I sacrificed one full year of employment to pursue my LL.M. in dispute resolution at significant cost to me and my family. My coursework went above and beyond any mediation course offered for certification. In addition, the actual mediations and observations I had to perform were also beyond the certification requirements. I was required to write a thesis paper on mediation to earn my degree!

I don't believe that one certification course, some observations, and a few mediations qualifies anyone to mediate family law cases. In my own professional family law experience, I have encountered quite a few certified mediators who were not helpful or "qualified." I don't understand what problem is being solved by limiting the family law mediation pool to only certified mediators and I do not agree with this approach.

Thank you for the opportunity to voice my objection.

Sincerely,

Arthur J. Grossman III, J.D., LL.M.
Senior Level Attorney
The Marks Law Firm, P.A.
733 N. Magnolia Avenue
Orlando, Florida 32803
PH: (407) 872-3161
FAX: (407) 373-0168
www.markslawfla.com

Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 8, 2017 6:03 PM
To: Kimberly Kosch
Subject: FW: Comments Requested: Proposed Revision of Court Procedural Rules

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Tuesday, June 6, 2017 10:06 AM
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: Comments Requested: Proposed Revision of Court Procedural Rules

From: Bob Rasch [<mailto:rwrasc@earthlink.net>]
Sent: Tuesday, June 6, 2017 9:35 AM
To: DRC Mail <drcmail@flcourts.org>
Subject: FW: Comments Requested: Proposed Revision of Court Procedural Rules

To Whom It May Concern:

I believe that requiring parties to select only a certified mediator once a case is part of the court system makes common sense. Only certified mediators are required to take CME courses to stay abreast of the latest developments, not only on mediation but also ethics. This is vitally important to ensure the quality and ethics of mediation.

Bob Rasch

Kimberly Kosch

From: DRC Mail
Sent: Monday, June 26, 2017 1:57 PM
To: Kimberly Kosch
Subject: Fw: Comments of Brian F. Spector in Opposition to the Amendments Proposed by the Florida Supreme Court's Committee on ADR Rules and Policy
Attachments: 17-06.26 Spector Comments and Objections.pdf

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From: Dominguez, Lillian <lillian.dominguez@whitecase.com>
Sent: Monday, June 26, 2017 1:05 PM
To: DRC Mail
Cc: Cantero, Raoul
Subject: Comments of Brian F. Spector in Opposition to the Amendments Proposed by the Florida Supreme Court's Committee on ADR Rules and Policy

ADR Rules Committee,

Please see attached.

Lily Dominguez | Practice Assistant to
Raoul G. Cantero | Partner
Former Justice, The Florida Supreme Court
Board Certified Appellate Lawyer
T + 305-925-4796 E lillian.dominguez@whitecase.com
White & Case LLP | Southeast Financial Center
200 South Biscayne Boulevard, Suite 4900 | Miami, FL 33131-2352
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**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**

Raoul G. Cantero
rcantero@whitecase.com
Florida Bar # 552356
White & Case LLP
Southeast Financial Center, Suite 4900
200 South Biscayne Boulevard
Miami, Florida 33131-2352
Telephone 305.995.5290
Facsimile 305.358.5744/5766

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 of 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” <u>as a percentage of the total number of Florida Bar members</u>	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

Raoul G. Cantero

Florida Bar No. 552356

White & Case LLP

200 S. Biscayne Blvd., Suite 4900

Miami, FL 33131-2352

Telephone: (305) 371-2700

E-mail: rcantero@whitecase.com

Counsel for Brian F. Spector

Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 8, 2017 5:55 PM
To: Kimberly Kosch
Subject: FW: ADR Committee Rules & Policy

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Monday, June 5, 2017 4:07 PM
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: ADR Committee Rules & Policy

From: C L BARI [mailto:cl_bari@bellsouth.net]
Sent: Monday, June 5, 2017 1:00 PM
To: DRC Mail <drcmail@flcourts.org>
Subject: ADR Committee Rules & Policy

As almost an eleven year volunteer county court mediator for the 7th judicial circuit, I agree with the committee to file a petition with the Florida Supreme Court to revise the rules requiring only mediators who hold Florida Supreme Court certification may mediate cases which are filed in the court system. Thank you DRC for accepting our comments on this matter, Carol Lynn Bari #19465C.

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 27, 2017 7:54 AM
To: Kimberly Kosch
Subject: Fw: Rule requiring certified mediators

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services _____

From: Catherine Rodriguez <crodriguez@fillerrodriguez.com>
Sent: Monday, June 26, 2017 2:43 PM
To: DRC Mail
Subject: Rule requiring certified mediators

I oppose the rule requiring mediators used in Florida to be certified.

I have used an extremely effective mediator who is tremendously qualified who is not certified.

Please excuse any typographical errors this message is being sent from my iPhone to avoid delay.

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 27, 2017 7:58 AM
To: Kimberly Kosch
Subject: Fw: Objection to proposed rule

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Chase Berger <Chase@bergerfirm.com>
Sent: Monday, June 26, 2017 5:35 PM
To: DRC Mail
Subject: Objection to proposed rule

I write to you to object to the troubling news that the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy (the "Committee") is considering filing a petition with the Florida Supreme Court to revise the mediator rules to preclude mediators who have chosen not to maintain my certification, from mediating filed cases.

Chase

Chase Berger
BERGER FIRM P.A.
3050 Biscayne Boulevard
Suite 402
Miami, Florida 33137
Tel: 305.501.2808
954.780.5577
Fax: 954.780.5578



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Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 8, 2017 6:08 PM
To: Kimberly Kosch
Cc: Juan Collins
Subject: FW: Comment on rule change requiring court certified mediators in all civil cases other than county court cases.

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Tuesday, June 6, 2017 3:11 PM
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: Comment on rule change requiring court certified mediators in all civil cases other than county court cases.

From: Clayton D. Simmons, Esquire [<mailto:clay@simmons-law.com>]
Sent: Tuesday, June 6, 2017 3:06 PM
To: DRC Mail <drcmail@flcourts.org>
Subject: Comment on rule change requiring court certified mediators in all civil cases other than county court cases.

I believe that retired judges regardless of certification should be permitted to be selected as mediators if the attorneys chose to use them.

Attorneys know the retired judges and know which ones are skilled at mediation, regardless of certification.

Retired judges have a wealth of information about the court system and cases they have presided over that they can pass on to the litigants.

Thank you,

Clayton D. Simmons, Esquire
Clayton D. Simmons, P.A.

Kimberly Kosch

From: DRC Mail
Sent: Monday, June 26, 2017 8:17 AM
To: Kimberly Kosch
Subject: Fw: reply to proposed revision

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Connie Ingram <cingram@ingramcounseling.com>
Sent: Friday, June 23, 2017 12:08 PM
To: DRC Mail
Subject: reply to proposed revision

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

In commenting on the proposed changes, I feel that the they only serves to reduce the freedom of the parties to choose who they believe can best assist them and they give more control to the D.R.C. and the training organizations. The legal system and the public sector can do a fine job of weeding out people who are not skilled or capable of providing adequate mediation services. Word spreads fast in those circles.

I truly don't think imposing more restrictions, which only create more hoops for people to go through, is going to accomplish anything other than creating more income for Mediation training groups and the D.R.C.

I would much rather see stricter standards for the training organizations regarding truth in advertising. They make false promises of significant income after taking a 40 hour training to people who are often struggling to keep their financial heads above water or are hoping to significantly increase their incomes. Once the course is completed, many trainees are given no assistance in getting their observations and are left to flounder as they seek to make good on the dream they recently bought and paid for. In reality, I have found the vast majority of non-lawyers who take their training don't get a mediation within a year after finishing their training and many never earn as a mediator more than they paid for their training. I see them all the time; coming to me for observations. It is no different that the get rich quick scams we all get in our emails. (How about them giving a little honesty here? Well, they wouldn't have full classes then.) Where is the ethical oversight for this area of mediation?

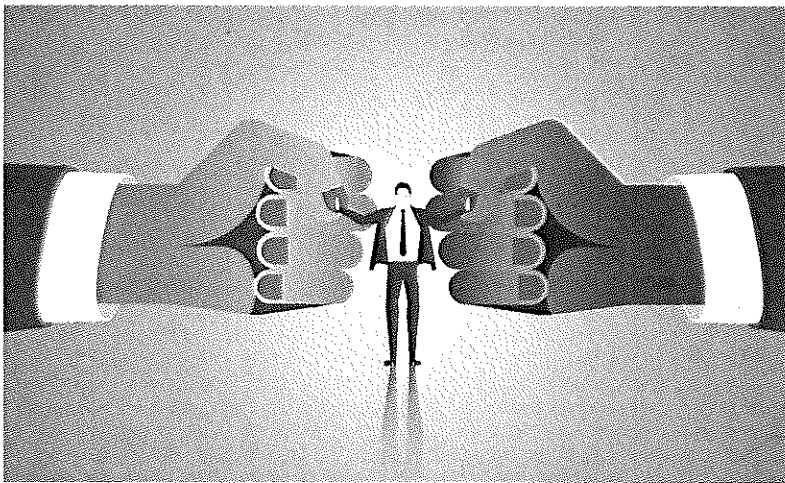
Respectfully,

Connie L. Ingram, Ph.D., LMHC
Ingram & Associates Counseling & Consulting, Inc.
1402 Royal Palm Beach Blvd. Suite 400B
Royal Palm Beach, FL 33411
(561) 792-9242
www.ingramcounseling.com

Lawyers Oppose Mediation Rule Change, Call for Rejection

Daily Business Review

July 6, 2017



Mediators are fond of saying that the first rule of mediation is "self-determination" — the right of a party to make his or her own decisions about how to resolve a pending dispute.

Ironically, the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy has proposed rules that eliminate self-determination in one of the most important aspects of your mediation: the selection of the mediator of your choice.

Recently, the committee invited comments on proposed rules that prohibit mediators that are not currently certified by the Florida Supreme Court from mediating cases that have been filed in court — rules that would sideline many experienced mediators, including retired judges, that have decided, often for very good reasons, not to become or remain certified.

Before we explore the merits of the proposal, let's put mediation certification in context: Unlike Florida Bar board certification for lawyers — a merit-based process that requires years of demonstrated excellence, experience and passing a difficult exam — mediation certification requires nothing of the kind. Instead, one can become (and remain) certified by taking expensive courses and observing eight mediations.

The committee's effort to prohibit uncertified mediators from mediating filed cases will sharply restrict a lawyer's ability to select the mediator of his or her choice. For example, lawyers handling a case that requires a mediator with expertise in a given area will be prohibited from selecting the best lawyer in the field unless he or she has been certified by the Florida Supreme Court.

Likewise, lawyers who have spent years successfully working with their "go-to" mediators will not be permitted to use them unless they have been certified. Similarly, lawyers handling multi-jurisdictional cases filed in Florida will be required to select a mediator certified by the Florida Supreme Court, even if the mediation takes place in another state.

Finally, many attorneys choose mediators that have not been certified here because the rules governing Florida certified mediators arguably constrain the mediator's ability to express an honest opinion about the merits of the case — something lawyers and clients often urge mediators to do.

The prohibition against "evaluative mediation" is frequently honored in the breach, and many mediators have decided that rather than dance around the often-illusory line between asking hard questions and directly opining on a party's position, they can best serve mediation participants by dropping their certification and speaking candidly — but not coercively — with litigants and their lawyers who solicit their views.

Lawyers often seek out mediators with substantive knowledge of the law, who are willing and able to help the parties evaluate the legal and factual questions at issue. In our view, lawyers and parties should continue to have the right to choose between "evaluative" and "facilitative" mediation. But if the proposed rule passes, that choice may become a thing of the past.

Why Change?

Many of us have asked what prompted the proposed rules. No one has been provided information about a precipitating event or a reason for concern. Indeed, the comments that accompany the proposed rules do not even purport to offer a basis for them.

Instead, it appears that the proposal would reduce the pool of skilled mediators in this state, limit a lawyer's ability to select the mediator — and mediation style — he or she believes is best for the case at issue, create a captive market for mediation trainers and sharply increase certification fees collected by Florida's Dispute Resolution Center, or the DRC.

Many well-respected lawyers and mediators have spoken out against this anti-competitive rule — some in much greater detail than this brief comment. You can email the DRC at DRCmail@flcourts.org and request copies of their comments and include yours.

Finally, we urge you to ask your friends and colleagues in the bar and on the Florida Bar board of governors to oppose these proposed rules and tell them that self-determination starts with the selection of the mediator of your choosing. You may find the email addresses of the board of governors at <https://www.floridabar.org/about/bog/>.

In sum, a rule that unnecessarily limits self-determination undermines the mediation process and threatens to undermine public confidence in this key component of our civil justice system. We urge the bar leadership and all lawyers to speak up to preserve your right to select the mediator of your choice.

Pamela I. Perry, Florida Supreme Court Certified Mediator; Ellen L. Leesfield, Former Judge, Miami-Dade Circuit Court; Brian F. Spector, Brian F. Spector LLC; Ronald B. Ravikoff, Florida Supreme Court Certified Mediator; Leslie J. Lott, International Trademark Association Panel of Neutrals; David H. Lichter, Florida Supreme Court Certified Mediator; Mercedes Armas Bach, Former Judge, Miami-Dade Circuit Court; Howard A. Tescher, Former Judge, Broward Circuit Court; Patricia H. Thompson, JAMS; Scott J. Silverman, Former Judge, Miami-Dade Circuit Court; Gill S. Freeman, Former Judge, Miami-Dade Circuit Court; Thomas E. Scott Jr., Former U.S. District Judge

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 13, 2017 8:10 AM
To: Kimberly Kosch
Subject: Fw: Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Daniel Gielchinsky <dan@dyglaw.com>
Sent: Monday, June 12, 2017 7:15 PM
To: DRC Mail
Cc: M. Higer; William J. Schifino, Jr.; deborah.baker@gmlaw.com
Subject: Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy

Colleagues,

I write to express my opposition to the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy's consideration of filing a petition with the Florida Supreme Court to revise the rules to preclude mediators who have chosen not to be certified from mediating filed cases. I often use a non-certified mediator in my commercial litigation practice when I wish to have a very experienced former litigator use an evaluative approach to mediation. I have found that the evaluative approach is a great assistance to counsel and clients alike, and very often results in achieving a meaningful dialogue and a settlement.

Please do not propose changes that would limit our ability to use non-certified mediators.

Thank you for your consideration of this matter.

Respectfully yours,

Daniel Gielchinsky



Law Office of
Daniel Y. Gielchinsky

Daniel Y. Gielchinsky, P.A.
1135 Kane Concourse, 3rd Floor
Bay Harbor Islands, FL 33154
Phone: 305-763-8708
www.dyglaw.com

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Kimberly Kosch

From: DRC Mail
Sent: Friday, June 2, 2017 7:43 AM
To: Kimberly Kosch
Subject: Fw: Proposed Revision of Court Procedural Rules regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Danni Hoefling <DHoeflin@pbcgov.org>
Sent: Thursday, June 1, 2017 5:09 PM
To: DRC Mail
Subject: Proposed Revision of Court Procedural Rules regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

Good afternoon,

If the intention is to remove the word "*appoint/appointed*" for the word "*select/selected*",

Would these paragraphs keep the word appoint/appointed:

Page 4, (b) on the third line,the court shall **appoint or select** a Florida Supreme Court ?

Page 5, (B), on the fifth line,the court shall **appoint or select** a Florida Supreme Court?

Page 5, (C), on the third line,upon or **appointed or selected** in the same manner as the original mediator.....?

Just a thought? Or, otherwise what is the difference between appointed and selected?

Kind regards,

Danni D. Hoefling ✉
Family Court Mediator
Alternative Dispute Resolution Office
North County Courthouse
3188 PGA Boulevard, Room 2717
Palm Beach Gardens, Florida 33410
561-624-6728
DHoeflin@pbcgov.org

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Kimberly Kosch

From: DRC Mail
Sent: Wednesday, June 28, 2017 10:54 AM
To: Kimberly Kosch
Subject: Fw: Mediator certification

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: David Chase <david@davidchaselaw.com>
Sent: Wednesday, June 28, 2017 8:37 AM
To: DRC Mail
Subject: Mediator certification

Dear Sir or Madame:

I am a licensed attorney in Florida and strongly believe that I should have the right to choose any mediator, regardless of certification, to assist my clients in the settlement of their claims in the mediation process.

Thank you.

Law Firm of David R. Chase
David R. Chase, Esq.
1700 East Las Olas Boulevard
Suite 305

Fort Lauderdale, FL 33301

Phone: (954) 920-7779

Fax: (954) 923-5622

E-Mail: david@davidchaselaw.com

Website: davidchaselaw.com (SEC, FINRA defense, defrauded investor representation and securities litigation)

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, June 14, 2017 10:54 AM
To: Kimberly Kosch
Subject: Fw: Opposition to Proposed Revision to Mediator Rules by Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy (the "Committee") to Preclude Uncertified Mediators from Mediating Filed Cases

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: David Salazar <David.Salazar@csklegal.com>

Sent: Wednesday, June 14, 2017 10:43 AM

To: DRC Mail

Subject: Opposition to Proposed Revision to Mediator Rules by Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy (the "Committee") to Preclude Uncertified Mediators from Mediating Filed Cases

To Whom this May Concern:

I am a trial lawyer who has been practicing in Florida for twelve years. I am also a Board Certified Specialist in Construction Law. Moreover, I am the administrative partner of the construction law practice at Cole, Scott & Kissane, P.A. This construction group is comprised of over 30 lawyers who practice out of 10 different offices throughout the State of Florida.

In my capacity as a trial lawyer who litigates complex commercial matters, often in the construction context, I have found it difficult – to put it mildly – to find mediators who can effectively handle multi-party, multi-issue, multi-million dollar matters. One typically either comes across a mediator who is not strong on the substantive liability law or weak on damage models. It is also seldom that one encounters a mediator who has tried complex cases to juries in South Florida who can communicate the experience and what it entails to the litigants. To add insult to injury, some of the very few academically astute mediators do not handle the collective psyche of entrenched litigants and lawyers effectively so as to bring contentious cases to resolution. In other words, they have trouble herding the cats to settlement. Accordingly, when one comes across a mediator like, say, Brian Spector – who has chosen not to be certified – but who is nevertheless comprehensively versed in the aspects of commercial litigation discussed above, it is like finding the proverbial “needle in the haystack.”

Ms. Spector has successfully mediated a variety of complex matters handled by my group and me personally. He is always thoroughly prepared, engaging both sides from all critical vantage points, including liability theories, damage models, trial strategy, litigation burdens, human psychology. With so few truly qualified complex commercial mediators, it would be a

tremendous loss to the South Florida litigation community if Mr. Spector was precluded from mediating filed cases.

As an example, I am currently litigating a \$10,000,000.00 matter in which the Plaintiffs are claiming they are entitled to loss of use, property damage, loss of beneficial use and enjoyment, stigma, and other special damages from a number of defendants. The suit arises from a very large, very expensive construction project. Underlying this liability matter are complex coverage issues because the defendants are all arguably covered by a wrap insurance policy. The litigation is highly contentious.

When the court directed the 5 parties to mediate, the lawyers exchanged 5 or 6 names of rather qualified mediators. Within the hour, everyone agreed to Mr. Spector as their first choice. This was no doubt because everyone was concerned with the mediator having a strong grasp on the various challenging issues this matter presents.

To say it would be a shame to preclude Mr. Spector from mediating such cases is a gross understatement. It would not only be a shame, it would weaken the mechanisms in place to resolve expensive and protracted pieces of litigation that can otherwise inundate the court system and, in some instances, even bankrupt litigants.

I sincerely hope that this Opposition is given its due consideration as I believe I speak on behalf of a large community of complex commercial litigators and potential litigants.

Thank you. And please feel free to contact me with any questions, comments, or concerns.

Best,



www.csklegal.com

David Salazar, Esq.

David.Salazar@csklegal.com
Tel: 305-350-5363
Fax: 305-373-2294
Cole, Scott & Kissane Building
9150 South Dadeland Boulevard, Suite 1400
Miami, Florida 33156



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Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 27, 2017 7:56 AM
To: Kimberly Kosch
Subject: Fw: Proposed Change in Parties' Freedom to Select Mediators

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Deborah Baker <Deborah.Baker@gmlaw.com>
Sent: Monday, June 26, 2017 3:15 PM
To: DRC Mail
Subject: Proposed Change in Parties' Freedom to Select Mediators

Good afternoon,

I am a shareholder at the law firm of Greenspoon Marder in Miami, FL, and practice in the area of commercial litigation. I am licensed to practice law in Florida, New York and California, and sit on the Florida Bar Board of Governors as an Eleventh Circuit Representative. I am strongly opposed to the proposed rule which would prohibit the hiring of non-certified mediators in Florida cases. I have received countless emails from constituents who oppose this change, and none who support it.

In my experience, the most important decision in mediation is selection of a mediator who is most qualified to help the parties achieve a settlement, and that mediator is one who is permitted to express an opinion regarding the merits of the case. In fact, I routinely ask mediators if he or she is certified and shy away from those who are certified. In my experience, certified mediators are nothing more than messengers who travel between conference rooms conveying dollar figures, adding little to the process, except time and money.

It is almost always in a client's best interest to hear from a neutral third party regarding the merits of the particular case. In my experience, evaluative mediators are much more effective, and can provide a client with news he or she may not want to hear, but needs to hear. Often, clients at mediation do not want counsel to be the "devil's advocate" and doing so can cause a client to lose confidence in counsel's desire to strongly advocate should the case proceed. Hearing a balanced view of the case from a mediator who has experience with the relevant practice area has always been welcomed by, and helpful to, my clients.

The Committee's proposed rule is an unnecessary intrusion into the practice of law, stripping tools from litigants and their counsel as they attempt to resolve a matter without further litigation.

Thank you for your consideration.

Sincerely,

/s/

Deborah Baker-Egozi
Greenspoon Marder - Shareholder
600 Brickell Ave., Suite 3600
Miami, FL 33131

deborah.baker@gmlaw.com

305.789.2770 Office

305.789.2709 Direct

305.537.3909 Direct Fax

GreenspoonMarder

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Kimberly Kosch

From: dennis wkm-law.com <dkainen@wkm-law.com>
Sent: Thursday, July 6, 2017 2:41 PM
To: Kimberly Kosch
Cc: 'Francis Carter'
Subject: RE: Proposed Revision of Court Procedural Rules Regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

Dear Ms. Kosch,

Thank you for your e-mail. This is my personal comment. I am on the Board of Governors but I am speaking for myself and cannot bind the Board. I do not agree with the proposed rule. It is a fix to a problem that does not exist.

Cordially,

Dennis

Weisberg/Kainen/Mark 
Attorneys at Law

Dennis G. Kainen, Esq.
Weisberg Kainen Mark, PL
1401 Brickell Avenue, Suite 800
Miami, Florida 33131
Tel: (305) 374-5544
Fax: (305) 358-8565
Email: dkainen@wkm-law.com
www.wkm-law.com



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From: Kimberly Kosch [<mailto:KoschK@flcourts.org>]
Sent: Thursday, July 06, 2017 12:53 PM
To: dennis wkm-law.com
Cc: Kimberly Kosch; 'Francis Carter'
Subject: FW: Proposed Revision of Court Procedural Rules Regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

Mr. Kainen – I received a copy of your email to Mr. Carter. Is your statement to him an official comment for the Committee? Thank you for the clarification, Kimberly

Kimberly Ann Kosch

Senior Court Operations Consultant
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, Florida 32399-1900
Phone 850-921-2910
Fax 850-922-9290
Email Koschk@flcourts.org

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From: DRC Mail

Sent: Wednesday, July 5, 2017 8:26 AM

To: Kimberly Kosch <Koschk@flcourts.org>

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

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: dennis wkm-law.com <dkainen@wkm-law.com>

Sent: Friday, June 30, 2017 2:45 PM

To: Francis Carter

Cc: DRC Mail

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

Dear Francis,

Thank you for your email. I completely agree with you.

Cordially,

Dennis



Dennis G. Kainen, Esq.

Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 7:16 PM
To: Kimberly Kosch
Subject: Fw: Proposed Mediation Rule Change

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Domingo Rodriguez <domingo@rlomiami.com>

Sent: Thursday, July 6, 2017 4:40 PM

To: DRC Mail

Subject: Proposed Mediation Rule Change

Dear Colleagues:

As a member of the Florida Bar for 33 years, I am writing to express my concern, and opposition, to the proposed change in Mediation Rules regarding the parties right to select a mediator of their choice, whether certified or not. There are many reasons why I oppose this proposed rule change. In South Florida, for example, there are many instances when it is critical to have a bilingual mediator who can communicate directly with the parties who often do not speak English. In other circumstances, it is important for a mediator to be well versed in a particular area of law, such as in my practice which includes a high percentage of maritime law. It is important in these cases for the mediator to be fluent in the nuances of the admiralty, which respectfully, most Florida lawyers and mediators are not.

In short, I oppose any change to the mediation rules that would restrict the parties and their attorneys discretion in selecting a mediator of their own choosing, and urge you not to adopt any such change.

Sincerely,

Domingo C. Rodriguez, Esq.

Rodriguez Law Office, LLC

2121 Ponce de Leon Blvd, Suite 430

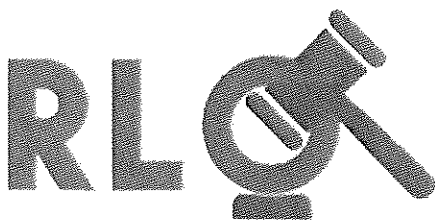
Miami, Florida 33134

Tel: (305) 774-1477

Toll Free: 1 (844) 774-1477

Fax: (305) 774-1075

sender's email: domingo@rlomiami.com



Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 1, 2017 2:54 PM
To: Kimberly Kosch
Subject: FW: The Committee on Alternative Dispute Resolution Rules and Policy

Don't know if I sent this to you previously.

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Wednesday, May 31, 2017 12:55 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: The Committee on Alternative Dispute Resolution Rules and Policy

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Duane Dandrea <duane6169@gmail.com>
Sent: Wednesday, May 31, 2017 11:40 AM
To: DRC Mail
Subject: 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.

DO NOT ALLOW THIS.

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 20, 2017 8:50 AM
To: Kimberly Kosch
Subject: Fw: Comments Requested: Proposed Revision of Court Procedural Rules

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Elizabeth Messer <emesser@reachingyes.com>
Sent: Monday, June 19, 2017 11:49 PM
To: DRC Mail
Subject: Fw: Comments Requested: Proposed Revision of Court Procedural Rules

Dear ADRR&P Committee,

Thank you for your hard work and efforts to clarify the rules for all of us. I also think it is very important that the Mediation process's integrity be protected by insuring uniformity, therefore requiring FL Supreme Court Certified Mediators to perform Court cases. In my opinion, the ADR Program provides a very tangible and valuable service to Florida's Citizens.

I have a few questions: (Some are the same for each section.) I also highlighted the sections in the original email below.

1) Florida Rules of Civil Procedure - Rule 1.720 Mediation Procedures - Section (j)(2): Could there be an appearance of favoritism if the same mediator or Firm is selected the majority of the time. Would this warrant unfair business practices or an ethical violation if some sort of rotation is not imposed in the selection process? Secondly, why might an individual be certified in Civil Mediation by the FL Supreme Court without being an attorney but the Court only selects Civil mediators that are licensed to practice law in the US? The note references the 2011 Appellate Mediation procedural rules.

2) Florida Rules of Civil Procedure - Rule 1.750 County Court Actions -Section (d) Same issue as above for Paid County Mediators; Could there be an appearance of favoritism if the same mediator or Firm is selected the majority of the time. Would this warrant unfair business practices or an ethical violation if some sort of rotation is not imposed in the selection process?

3) Florida Rules of Juvenile Procedure - Rule 8.290 Dependency Mediation - Section (e)(2) Could there be an appearance of favoritism if the same mediator or Firm is selected the majority of the time. Would this warrant unfair business practices or an ethical violation if some sort of rotation is not imposed in the selection process?

4) Florida Rules of Appellate Procedure - Rule 9.730 Appointment & Compensation of Mediator - Section (b) Could there be an appearance of favoritism if the same mediator or Firm is selected the majority of the time. Would this warrant unfair business practices or an ethical violation if some sort of rotation is not imposed in the selection process? Also is it redundant to state they must be licensed to practice law in the US, since they could only get their certification with a valid license. Or is this to mean

that they must still be licensed to practice law in the US and have a Certification to Mediate Appellate cases?

5) **Family Law Rules of Procedure - Rule 12.741 Mediation Rules** - Section (6)(B) Could there be an appearance of favoritism if the same mediator or Firm is selected the majority of the time. Would this warrant unfair business practices or an ethical violation if some sort of rotation is not imposed in the selection process?

6) If a mediator wishes to be put on a Circuit's Mediator selection list, how is this accomplished? or is this just the list online at FLCourts.org?

Sorry if my questions are elementary, I am fairly new to the Florida ADR Program and still have lots to learn. My past experience has mainly been with Federal rules and procedures.

Best Regards,
Elizabeth Messer
Med #33175CFR

From: Do-Not Reply <DoNotReply@flcourts.org>
Sent: Wednesday, May 31, 2017 10:46 AM
To: Elizabeth Messer
Subject: Comments Requested: Proposed Revision of Court Procedural Rules

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, to: DRCmail@flcourts.org; Florida Dispute Resolution Center, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399; or fax: (850) 922-9290.

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

Florida Rules of Civil Procedure - Rule 1.720 Mediation Procedures

(j) Appointment/Assignment of the Mediator.

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, June 14, 2017 10:56 AM
To: Kimberly Kosch
Subject: Fw: Proposed revision to mediator rules

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Eric Lee <Lee@leeamlaw.com>
Sent: Wednesday, June 14, 2017 10:54 AM
To: DRC Mail
Subject: Proposed revision to mediator rules

Dear Committee Members:

It recently came to my attention that there is a proposed amendment to the court procedural rules regarding appointment and selection of mediators. The proposed amendment requires that "the parties shall mediate with a Florida Supreme Court certified circuit mediator."

I have been a member of the Florida Bar for close to 25 years and have practiced exclusively in litigation matters. I have been Board Certified in Business Litigation since 1999. I have been involved in hundreds of mediations. Some of the mediations I have been involved in were with certified circuit mediators and some were not. There are many mediators, both certified and uncertified, who are qualified to assist parties with settling cases. I have also seen the use of non-lawyer mediators, such as religious leaders, family members, and business associates, as an effective way to settle cases.

I believe that it should be up to the attorneys representing their clients to decide which mediator to use in a given case.

Since settlements are favored and mediation has been an effective way to resolve cases for decades, more liberal rules for mediation should be encouraged rather than more restrictive rules. I also don't see any reason why the change was proposed. Have there been problems with non-certified mediators settling cases?

Very Truly Yours,

KENNETH A. BEYTIN
(1952-2015)
MARK E. McLAUGHLIN¹
MINDY McLAUGHLIN
KEVIN T. O'HARA
JOHN W. BOCCHINO
MARK R. BERLICK
JOSEPH F. KINMAN, JR.¹
ANDREW S. BOLIN¹
PAUL A. NUGENT
GABRIELLE S. OSBORNE

BEYTIN, McLAUGHLIN, McLAUGHLIN, O'HARA, BOCCHINO & BOLIN

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

CHRISTIE ALISCA
MICHAEL Q. BERKLEY
ADAM C. BROWN
CARISSA W. BRUMBY
PIETRINA S. HEARN
SCOTT B. JOHNSON, II
RENEE F. KNAUST
KEVIN A. LONZO
KYLE S. MORAT
DAVID E. WEBER¹
REBECCA L. WILLIAMSON

¹ Board Certified Civil Trial Lawyer, Florida Bar
² Of Counsel

TAMPA

1706 East 11th Avenue
Tampa, Florida 33605
Phone: (813) 226-3000
Fax: (813) 226-3001

ORLANDO

1063 Maitland Center Commons Blvd.
Maitland, Florida 32751
Phone: (407) 622-6725 • (407) 849-1060
Fax: (407) 622-6741 • (407) 843-4751

www.LAW-FLA.com

REPLY TO: TAMPA OFFICE ADDRESS

July 6, 2017

Via Facsimile (850) 922-9290 and E-mail (DRCMail@flcourts.org):

Susan C. Marvin, J.D., Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Supreme Court Building
500 S. Duval Street
Tallahassee, FL 32399

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

Dear Ms. Marvin:

The Executive Council of the Trial Lawyers Section of the Florida Bar writes to respond to the Committee on Alternative Dispute Resolution Rules and Policy's request for comments on the proposed amendments to the court rules of procedure concerning the appointment and selection of mediators in court cases. Having reviewed the proposed amendments and the various comments that have already been submitted, including the well-reasoned comment of Former Florida Supreme Court Justice Raoul Cantero, it is the position of the Executive Council of the Trial Lawyers of the Florida Bar that the Committee should not file the proposed petition with the Florida Supreme Court to revise the rules to require that only mediators who hold the Florida Supreme Court certification may mediate cases which are filed in the court system.


We believe that the proposed rules arbitrarily substitute "certified" mediators for qualified mediators. Mediation has become a substantial part of the civil justice system. Litigants routinely select and retain the services of mediators in such capacities as will enable the litigants, represented or unrepresented, to resolve their disputes. The selection of a mediator should not be dependent upon whether the mediator is "certified." Litigants should have the right to exercise their discretion and make their own decisions in selecting a mediator that is most qualified to mediate their

Susan C. Marvin, J.D., Chief of Alternative Dispute Resolution
July 6, 2017
Page 2

disputes. The mediation process should protect and preserve a litigant's right of self-determination, which should include the freedom to select a mediator. See Rules 10.230 and 10.310, Florida Rules for Certified and Court-Appointed Mediators.

For the foregoing reasons and those expressed in the various comments that have already been submitted, the Committee's proposed petition should not be presented to the Florida Supreme Court.

Sincerely,



Joseph F. Kinman, Jr.
Chairman of Executive Council

JFK/je

Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 1:06 PM
To: Kimberly Kosch
Subject: Fw: Appointment and Selection of Mediators
Attachments: TLS.pdf

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Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Jana East <JGE@law-fla.com>
Sent: Thursday, July 6, 2017 12:43 PM
To: DRC Mail
Cc: Joseph Kinman
Subject: Appointment and Selection of Mediators

Dear Ms. Marvin:

Please see attached letter from Joseph F. Kinman, Jr., Chairman of Executive Council of the Trial Lawyers Section.

Kind regards,

Jana East

Legal Assistant to Joseph F. Kinman, Jr.
Beytin, McLaughlin, McLaughlin, O'Hara, Bocchino & Bolin, P.A.
1706 East Eleventh Avenue
Tampa, FL 33605
Email: jge@law-fla.com
Tele: (813) 226-3000
Fax: (813) 226-3001

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(1952-2015)
MARK E. McLAUGHLIN¹
MINDY McLAUGHLIN
KEVIN T. O'HARA
JOHN W. BOCCHINO
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BEYTIN, McLAUGHLIN, McLAUGHLIN, O'HARA, BOCCHINO & BOLIN

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

CHRISTIE ALISCA
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KEVIN A. LONZO
KYLE S. MORAT
DAVID E. WEBER²
REBECCA L. WILLIAMSON

¹ Board Certified Civil Trial Lawyer, Florida Bar
² Of Counsel

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1706 East Eleventh Ave.
Tampa, Florida 33605
Phone: (813) 226-3000
Fax: (813) 226-3001

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1063 Maitland Center Commons Blvd.
Maitland, Florida 32751
Phone: (407) 622-6725 • (407) 849-1060
Fax: (407) 622-6741 • (407) 843-4751

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FACSIMILE TRANSMITTAL

TO: Susan C. Marvin, J.D.

FAX #: (850) 922-9290

FROM: Joseph F. Kinman, Jr., Esq.

DATE: July 6, 2017

Number of pages including this cover page: 3

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Kimberly Kosch

From: Susan Marvin
Sent: Friday, July 7, 2017 3:04 PM
To: 'Davis, Mikalla'
Cc: merlin@merlinlaw.com; Kimberly Kosch
Subject: RE: ADR changes

Mikalla,

Hello. Yes, it is certainly acceptable for the Family Law Rules Committee to have additional time to submit comments also, submission by the end of July would be fine. I will let the Committee on ADR Rules and Policy know.

Best regards,

Susan C. Marvin, J.D.

Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: Davis, Mikalla [mailto:midavis@floridabar.org]
Sent: Friday, July 7, 2017 2:33 PM
To: Susan Marvin <marvins@flcourts.org>
Cc: merlin@merlinlaw.com
Subject: ADR changes

Good Afternoon:

I'm the Florida Bar Liaison for the Civil Rules Committee and the Family Law Rules Committee. I have received your email regarding an extension of time for Civil Rules. The Family Law Rules Committee also needs some additional time to complete their response. They will be working diligently to have the comment to you as soon as possible and certainly before the end of July. Please let me know if this is acceptable. I also called and left you a voicemail.

Thank you,

Mikalla Davis
Attorney Liaison—Rules
The Florida Bar
850-561-5663
mdavis@floridabar.org

July 7, 2017

VIA E-MAIL and U.S. MAIL – drcmail@flcourts.org

Dispute Resolution Center (DRC)
Florida Dispute Resolution Center
Supreme Court Building
500 S. Duval Street
Tallahassee, FL 32399

RE: Response to Request for Comments
Proposed Revision of Court Procedural Rules, Fla. R. Civ. P. 1.720

To Whom it May Concern:

This response is being written on behalf of The Family Law Section of The Florida Bar (The Section). The Section thanks you for your work on such an important matter to Florida's families. The Section also appreciates the opportunity to share its thoughts regarding the proposed revisions to the court rules of procedure, specifically, Fla. Fam. L. R. P. 12.741 concerning the appointment and selection of mediators in family court cases.

It is the Section's position that members of The Florida Bar, who are in good standing, should not be required to obtain Florida Supreme Court mediation certification in order to serve as mediators. Licensed Florida attorneys are governed by the Rules of Professional Conduct; therefore, there are mechanisms in place if mediation participants believe that the lawyer-mediator has engaged in inappropriate behavior. Licensed Florida attorneys are also required to remain current on rules and laws through continuing legal education; therefore, they have the necessary knowledge and training to be able to assist mediation participants in resolving their family law issues.

The Section respectfully requests that you consider an exception in the proposed language which allows members of The Florida Bar, who are in good

standing, to serve as mediators regardless of their status as Florida Supreme Court certified mediators.

Thank you for your time and attention to this matter.

Respectfully Submitted,

//s// Nicole L. Goetz

NICOLE L. GOETZ

Chair

Family Law Section, The Florida Bar

4933 Tamiami Trail N.

Naples, FL 34103

ngoetz@nlg-pl.com

FLORIDA BAR NO: 117374

//s// C. Debra Welch

C. DEBRA WELCH

Co-Chair

Rules and Forms Committee,

Family Law Section

2701 PGA Blvd Ste C

Palm Beach Gardens, FL 33410-2982

cdw@thewelchlawfirm.com

FLORIDA BAR NO: 974821

//s// Anthony Genova

ANTHONY M. GENOVA

Co-Chair

Rules and Forms Committee,

Family Law Section

19 W Flagler St. #802

Miami, FL 33130

amg@genovafamilylaw.com

FLORIDA BAR NO: 637130

Kimberly Kosch

From: DRC Mail
Sent: Friday, July 7, 2017 7:59 AM
To: Kimberly Kosch
Subject: Fw: Comment to Proposed Mediator Rule from The Family Law Section of The Florida Bar
Attachments: FLS Comment to Proposed Mediator Rule 07-07-17.pdf

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Sarah Kay <Sarah@sbcf-famlaw.com>
Sent: Thursday, July 6, 2017 10:46 PM
To: DRC Mail
Cc: Nicole Goetz; 'Anthony Genova'; 'cdw@thewelchlawfirm.com'
Subject: Comment to Proposed Mediator Rule from The Family Law Section of The Florida Bar

To Whom it May Concern:

Please find attached The Family Law Section of The Florida Bar's Comment to the Proposed Mediator Rule. A hard copy is following in the U.S. Mail.

Thank you,

Sarah E. Kay

Attorney

Board Certified by the Florida Bar

In Marital and Family Law



Office 813.251.9200
307 S. Magnolia Ave.
Tampa, FL 33606
[website](#) | [bio](#) | [e-mail](#) | [map](#)

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CHAIR
Arnoldo B. Lacayo
Sequor Law, P.A.
1001 Brickell Bay Drive, Floor 9
Miami, FL 33131
(305) 372-8282
alacayo@sequorlaw.com



THE FLORIDA BAR INTERNATIONAL LAW SECTION

www.internationallawsection.org

CHAIR-ELECT
Carlos F. Osorio
Aballi Milne Kalil, P.A.
1 S.E. 3rd Avenue, Suite 2250
Miami, FL 33131
(305) 373-6600
cosorio@aballi.com

July 7, 2017

Via E-mail

SECRETARY
Clarissa A. Rodriguez
Tenzer PLLC
1001 Brickell Bay Drive, Suite 1812
Miami, FL 33131
(305) 400-7995
crodriguez@tenzer.com

TREASURER
Robert John Becerra
Becerra Law, P.A.
1001 Brickell Bay Dr., Ste. 1200
Miami, FL 33131
(305) 375-0112
rbecerra@rjbecerralaw.com

IMMEDIATE PAST CHAIR
Alvin F. Lindsay, III
Hogan Lovells US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
(305) 459-6633
Alvin.Lindsay@HoganLovells.com

BOARD LIAISON
Ian M. Comisky
2000 Market Street, Floor 20
Philadelphia, PA 19103-3222
(215) 299-2795
icomisky@foxrothschild.com

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PROGRAM ADMINISTRATOR
Angie Froelich
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399
afroelich@floridabar.org

The Committee on Alternative
Dispute Resolution Rules and Policy
c/o the Florida Dispute Resolution Center
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399
DRCmail@flcourts.org

RE: Comments of the International Law Section of the Florida Bar in Opposition to Rule Amendments Proposed by the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy

Dear Committee Members:

The Committee on Alternative Dispute Resolution Rules and Policy ("Committee") has invited all interested person 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. The proposed amendments are attached hereto as **Exhibit A** for ease of reference ("Proposed Amendments").

For the reasons that follow, the International Law Section, the Florida Bar ("ILS") opposes the Proposed Amendments and respectfully recommends that the Committee not file a petition with the Supreme Court to revise the rules currently in place.

1. The Proposed Amendments Restrict the Ability of Litigants to Select Mediators Ideal for Each Case

The ILS's principal concern is that, if implemented, the Proposed Amendments would effectively exclude any foreign (whether out-of-state or out-of-country) mediators from mediating Florida-based litigation. By requiring disputes in the Florida courts to be mediated by a Florida Supreme Court certified mediator, the Proposed Amendments would immediately and drastically reduce the available pool of potential mediators that may be selected to mediate international legal disputes.

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With any dispute, mediators are selected based on their particular skills and experience to ensure they are uniquely tailored to the interests of the litigants and the needs of each case. As it impacts international legal issues, litigants in Florida-based international legal disputes must often evaluate potential mediators using criteria such as foreign language skills, an understanding of and experience with foreign law and legal systems, and experience in mediating multijurisdictional and often cross-border disputes. While of course local and foreign mediators may possess the requisite skills and experience, the Proposed Amendments would almost certainly exclude foreign mediators from consideration unless they happen to possess Florida Supreme Court mediator certification. Likewise, litigants who have freely contracted to select a mediator or a process to select a mediator that is not in compliance with the Proposed Amendments would be unnecessarily prejudiced by these new rules.

Accordingly, in this respect, it is important to afford parties' maximum flexibility in selecting mediators with diverse skills and experience and from diverse backgrounds, depending on the needs of each case.¹

2. The Proposed Amendments Stand Contrary to Florida's Position as Global Leader in International Dispute Resolution

In September 2014, the New York Times lauded Florida as a hub of international dispute resolution, noting that a concerted effort of the Florida Bar, the Florida Courts, and the Florida Legislature have done much to attract such high-profile cases to the State as the \$1.6 billion dispute involving the expansion of the Panama Canal.²

Florida's rise to a global leader of international dispute resolution is due, in large part, to the following:

- ❖ Florida boasts a skilled, multilingual professional workforce;
- ❖ Florida's proximity to Europe, South, and Central America;
- ❖ Florida's affordability and convenience when compared to other destinations such as New York, Paris, and London;
- ❖ In 2010, Florida adopted the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration;³
- ❖ The Rules Regulating the Florida Bar permit the temporary practice of law by attorneys barred in other jurisdictions in arbitrations, mediations, or other alternative dispute resolution proceedings in Florida;⁴
- ❖ Florida has attracted prominent dispute resolution centers, such as the American Arbitration Association, which has established a regional office in Miami;
- ❖ Miami, Florida hosts ILS's annual iLaw conference, which brings together world-renowned panelists and attendees to discuss topics concerning international litigation,

¹ This is also, as the ILS understands, entirely consistent with the principle of self-determination and the standards of conduct that bind mediators. See Standard I, *Model Standards of Conduct for Mediators* and Rule 10.230 of the Florida Rules for Certified and Court-Appointed Mediators.

² See <https://dealbook.nytimes.com/2014/09/11/cities-compete-to-be-the-arena-for-global-legal-disputes/>. Law360 also called Miami, Florida a "major hub for the resolution of international disputes," following the advent of the world-renowned ICCA Conference in 2014. See <https://www.law360.com/internationalarbitration/articles/522870/icca-congress-signals-miami-s-arrival-as-arbitration-hub>.

³ Fla. Stat. §§ 684.001 *et seq.*

⁴ See Rule 4-5.5(c), (d) of the Rules Regulating the Florida Bar.

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ICDR Arbitration, and international business transactions. Additionally, Florida has attracted other major international dispute resolution conferences such as the annual International Centre for Dispute Resolution's (ICDR) Miami International Arbitration Conference and the 2014 ICCA conference.

However, the Proposed Amendments stand in stark contrast to this trend. Again, by limiting litigants to only Florida Supreme Court certified mediators, litigants are deprived of maximum flexibility in selecting mediators that may possess unique skills or experience ideal for their dispute. Over the course of time, this will certainly result in Florida's lessened appeal as a dispute resolution venue. This is an unacceptable result and contrary to the hard work of the Florida Bar, the Florida Courts, and the Florida Legislature to expand Florida's footprint in this space.

3. The Proposed Amendments Do Not Promote Any Clear Public Interest

Lastly, it is unclear what, if any, public interest is promoted by adoption of the Proposed Amendments. If the Committee believes that the Proposed Amendments would promote consistency or quality in the mediation process, the ILS agrees with the recent, thorough, and well thought out Comments in Opposition submitted by Mr. Raoul G. Cantero on behalf of Mr. Brian F. Spector.⁵ In summary, the "certification" of mediators of the Florida Supreme Court denotes neither competence nor experience—at least not in the same manner as Florida Bar Board Certifications in specific areas of practice. Requiring litigants to select a "certified" mediator is no assurance that the mediator selected by the parties will be suited to the task. Accordingly, the Proposed Amendments do not accomplish that goal. Further, there is no indication in the Proposed Amendments or the Committee Notes that there is a concern justifying such a remedy.

Rather, consistent with the principles of self-determination, the Committee should avoid any rules purporting to restrict the pool of potential mediators litigants may select. In fact, doing so works against the public interest for several reasons. First, securing competent mediators is already a process that can be difficult and time-consuming. Rules that limit potential mediators will only make the process more burdensome; and, as basic economics dictates, with fewer service providers available, this will over time increase the costs of that service. Second, as is often the case in the realm of international global disputes, clients are represented by skilled, sophisticated counsel and thus parties are in no danger of selecting a mediator that is not suited to the case. At a minimum, the Proposed Amendments should not apply when parties are represented by counsel.⁶ Finally, as detailed above, the Proposed Amendments stand contrary to Florida's rise to prominence in the field of international dispute resolution.

For these reasons, the ILS opposes the Proposed Amendments and respectfully recommends that the Committee not file a petition with the Supreme Court to revise the rules currently in place.

Yours truly,



Arnoldo B. Lacayo
ILS Chair

⁵ Mr. Raoul G. Cantero is also a long-time member of the ILS.

⁶ As was similarly done for the *pro hac* admission rules for arbitration cases in Florida, *see* n.4 *supra*, the Committee may further consider whether to exclude international commercial arbitrations from the ambit of the Proposed Amendments.

Exhibit A

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 ~~a~~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, Tthe court shall appointselect 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# 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.

Kimberly Kosch

From: DRC Mail
Sent: Friday, July 7, 2017 3:23 PM
To: Kimberly Kosch
Subject: Fw: ILS Comments in Opposition to Proposed Revision of Court Procedural Rules re Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases
Attachments: 2017-07-07 ILS Comments in Opposition to Proposed Amendments re Selection of Mediators (00271781x9F5D7).pdf

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Website: www.flcourts.org click on Resources and Services

From: Andres H. Sandoval <asandoval@sequorlaw.com>
Sent: Friday, July 7, 2017 3:01 PM
To: DRC Mail
Cc: Arnoldo B. Lacayo; Osorio, Carlos; Clarissa Rodriguez; 'Robert Becerra'; Lindsay, Alvin F.; Angie Froelich; Deblinger, Matthew
Subject: ILS Comments in Opposition to Proposed Revision of Court Procedural Rules re Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

Dear Sirs:

Please see attached letter from Mr. Arnoldo B. Lacayo on behalf of the International Law Section, The Florida Bar.

Kindly confirm receipt.

Best regards,

Andres

Andres H. Sandoval

Attorney



SEQUOR LAW

1001 Brickell Bay Drive, 9th Floor
Miami, Florida 33131

work (+1) 305-372-8282 ext. 234

cell (+1) 786-972-8007

email asandoval@sequorlaw.com

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Kimberly Kosch

From: DRC Mail
Sent: Friday, July 7, 2017 7:58 AM
To: Kimberly Kosch
Subject: Fw: ADR/Mediation Changes to Civil Rules

Importance: High

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Ruiz, Rodolfo <rruiz@jud11.flcourts.org>
Sent: Thursday, July 6, 2017 10:24 PM
To: DRC Mail; Susan Marvin
Cc: Haughey II, Roger; Davis, Mikalla
Subject: Re: ADR/Mediation Changes to Civil Rules

Dear Ms. Marvin:

I hope this email finds you well. My name is Rudy Ruiz, and I am the current chair of the Florida Bar Civil Rules Committee. We currently have a subcommittee reviewing your proposed mediation rule change, and understand that the requested comment deadline is tomorrow. Unfortunately, our subcommittee has yet to complete their review; we have concerns over both the advisability and legality of the proposal, and would respectfully request additional time to vet the changes. The Civil Rules Committee only recently became aware of the DRC proposal, and would ideally need an extra thirty (30) days to review it.

Please let me know if the Florida Dispute Resolution Center is willing to afford us additional time; we are studying the issue as quickly as possible.

Thank you in advance for your understanding.

Best,
Judge Ruiz

Rodolfo A. Ruiz
Circuit Court Judge, Civil Division 22
Eleventh Judicial Circuit of Florida
Dade County Courthouse
73 West Flagler Street, Chambers 804
Miami, Florida 33130
Telephone: (305) 349-7082
Fax: (305) 349-7249
rruiz@jud11.flcourts.org

Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 29, 2017 7:37 AM
To: Kimberly Kosch
Subject: Fw: Proposed Revision of Court Procedural Rules Regarding the Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Francis Carter <flc@flcarterpa.com>

Sent: Wednesday, June 28, 2017 3:36 PM

To: DRC Mail

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

Dear Ms Marvin, and Members of the ADR Rules and Policy Committee:

I am a full-time mediator in commercial civil and bankruptcy cases. I have been listed in *Best Lawyers in America* since 1991 and in *Chambers U.S.A.* since 2006. I was inducted as a Fellow of the American College of Bankruptcy in 1994.

In February 1998, I successfully completed the 40 hour course for Florida circuit civil mediators given under the auspices of Florida International University. I did not, however, follow up and do the observations or supervised mediations required for certification.

Over the last 6 years, I have officiated as mediator in nearly 1,000 commercial civil and bankruptcy cases in the Florida state and federal courts. I very much appreciate your giving me this opportunity to comment on the proposed revision of court procedural rules regarding the appointment and selection of Florida Supreme Court certified mediators.

The need for the proposed revision is not apparent and is not justified or explained in other than conclusory manner. The Committee Note merely states that, "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." There is no suggestion, however, that uncertified mediators are inferior to certified mediators as to competence, results or ethical practices, nor is there any indication that the use of

uncertified mediators has caused problems that might justify requiring universal certification of mediators.

It is my understanding that a primary purpose of certification of Florida lawyers in various practice specialties has been to protect the public by preventing lawyers who lack the requisite qualifications and experience from holding themselves out as experts. Mediators, however, are usually selected and retained by other lawyers, and, sometimes, by sophisticated clients, such as insurance carriers or financial institutions. It is unlikely that such persons will be deceived into hiring uncertified mediators who are truly unqualified. Moreover, all parties to a case have to agree on the choice of a mediator, further minimizing the likelihood of deception.

Even assuming for the sake of argument that there are good and sufficient reasons why certification ought to be required for substantially all mediators, no provision is made in the proposed revision to accommodate in any way those uncertified mediators, including many distinguished practitioners and former judges, who have long served as mediators in reliance on the rules in their current form which do not require certification. Those mediators, many of whom possess mediation skills and experience that equals or exceeds that of numerous certified mediators, the proposed revision simply throws under the bus. As written, the proposed revision requires those mediators who are currently uncertified, regardless of their level of skill or experience, to go back to square one and start over; i.e., to take – or in my case and many other cases *repeat* – the 40 hour course and to do the required observations and supervised mediations. As a result, the proposed revision is needlessly unfair in its treatment of experienced but currently uncertified mediators.

There are obvious ways that the proposed revision could be amended to accommodate experienced mediators who currently lack certification. For example, the rules could grant certification to – or grandfather in and waive the requirement for certification as to – those who have already completed the required basic mediation course, but not done observations and supervised mediations required for certification; and/or conducted 100 or more mediations. Or the rules could simply require that all mediators, whether certified or uncertified, be subject to their ethical requirements.

In sum, I am asking that the Committee reconsider whether there is a real need for revision of the rules regarding mediators; and, if the Committee finds that such revision is necessary, that the proposed revision be amended to ensure that

experienced mediators who currently lack certification be accommodated and treated fairly.

Thank you for considering these comments.

Very truly yours,

Francis L. Carter, Esq.
Mediator & Settlement Counselor
in Commercial Civil and Bankruptcy Cases

Francis L. Carter, P.A.
2665 S. Bayshore Dr., Suite 220
Miami, Florida 33133-5402
305-776-9143
FLC@FLCARTERPA.COM
WWW.FLCARTERPA.COM

Kimberly Kosch

7 pages

From: DRC Mail
Sent: Wednesday, June 14, 2017 8:15 AM
To: Kimberly Kosch
Subject: Fw: Proposed Revisions to Rules
Attachments: ATT00001.htm; Proposed Revisions of Court Procedural Rules Regarding Appointment and Selection of Florida Supreme Court Certified Mediators In Court Cases.pdf; Why Brian Spector Is Not A Certified Mediator.pdf

FLORIDA DISPUTE RESOLUTION CENTER

Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

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From: Gary S. Salzman, B.C.S. <Gary.Salzman@gray-robinson.com>
Sent: Tuesday, June 13, 2017 4:22 PM
To: DRC Mail
Subject: Proposed Revisions to Rules

I am Board Certified in Business Litigation and am a Certified Circuit Civil Mediator. I personally like the proposed changes and disagree with Mr. Spector.

Gary Salzman

From: Brian F. Spector [mailto:brian@bspector.com]
Sent: Tuesday, June 13, 2017 4:16 PM
To: Brian F. Spector
Subject: Ongoing efforts to take away your right to select whomever you and your clients want to mediate your cases

I write this email because you are a Business Litigation Certified Lawyer. I served on the inaugural Business Litigation Certification Committee and was certified in Business Litigation for 10 years. I now devote my professional time to mediating cases.

I write with the troubling news that the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy (the "Committee") is considering filing a petition with the Florida Supreme Court to revise the mediator rules to **preclude mediators like myself, who have chosen not to be certified, from mediating filed cases.**

For those of you who have no idea who I am, please see my website, specifically at: <http://bspector.com/about-brian-f-spector/>.

Attached is a copy of the Committee's proposed revisions.

IF YOU WANT TO MAINTAIN THE RIGHT YOU AND YOUR CLIENTS PRESENTLY HAVE TO SELECT ANYONE YOU AND THEY DEEM BEST QUALIFIED TO MEDIATE YOUR CASES, EVEN IF THE PERSON IS NOT CERTIFIED, NO LATER THAN JULY 7th. PLEASE EMAIL YOUR OPPOSITION AND COMMENTS TO: DRCmail@flcourts.org. YOU ALSO MAY WISH TO COPY MEMBERS OF THE BOARD OF GOVERNORS, WHOSE NAMES AND EMAILS ADDRESSES MAY BE FOUND AT <http://www.floridabar.org/about/bog/>.

I RECOGNIZE THAT YOUR TIME IS LIMITED, SO A QUICK EMAIL INDICATING THAT YOU OPPOSE THE ONGOING ANTICOMPETITIVE EFFORT TO LIMIT YOUR ABILITY TO SELECT THE MEDIATOR OF YOUR CHOOSING FOR FILED CASES SHOULD SUFFICE. PLEASE FEEL FREE TO CONTACT ME IF YOU HAVE ANY QUESTIONS, SUGGESTIONS, OR CONCERNS.

TIME PERMITTING, I ASK YOU TO CONSIDER THE REMAINDER OF THIS EMAIL.

In summary, the Committee contemplates proposing rules requiring that filed cases be mediated exclusively by Florida Supreme Court “certified” mediators.

As I have discussed with many of you, I and other experienced mediators have chosen not to be (or continue to be) Florida Supreme Court certified mediators principally because the rules governing certified mediators prohibit evaluative mediation. Moreover: (a) the credential “certified” is meaningless and materially misleading, as neither certification nor recertification require actual experience mediating cases; and (b) the required continuing mediator education (“CME”) classes/seminars are an enormous waste of time and money for competent, experienced mediators. Competent, experienced mediators are better served by attending advanced programs, for example those sponsored by the American Bar Association’s Section of Dispute Resolution.

For those who may be interested, I have attached a detailed explanation of why I chose to let my certification expire.

To my knowledge, no reason has been offered by the Committee to explain why the proposed rule amendments are needed or will benefit the citizens of Florida whose disputes end up in court. Of course, if the proposed amendments are adopted, certified mediators will benefit financially, as they will not have to compete against those who have chosen not to be certified. Alternatively, if non-certified mediators, faced with the prospect of having their practices decimated, choose to become certified: (a) certified trainers stand to make more money in fees paid by those attending the 40-hour course required for certification, and (b) the Florida Dispute Resolution Center (the “DRC”) will benefit financially by receiving more fees for certification and re-certification.

The Committee’s proposed amendments appear, even to the most objective observer, to be anti-competitive, promoting the financial interests of certified mediators, certified trainers, or the DRC. If the proposals are about money, the Committee should say so. If the proposals are in the public interest, they are hard to square with “self-determination,” the foundational principle of mediation.

With best regards,

Brian

Brian F. Spector, LLC
Telephone 305.666.1664
Cellular 305.613.5200
Facsimile 305.661.8481
brian@bspector.com
www.bspector.com

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 7 mediations conducted by someone else who is a certified Circuit Mediator. 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)

Kimberly Kosch

2 comments filed

From: DRC Mail
Sent: Monday, June 19, 2017 7:36 AM
To: Kimberly Kosch
Subject: Fw: Non-certified mediators

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900

Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Harry Payton <payton@payton-law.com>
Sent: Saturday, June 17, 2017 3:32 PM
To: DRC Mail
Subject: Non-certified mediators

Please be advised I am opposed to excluding non-certified mediators from serving as neutrals in cases. I am opposed to limiting neutrals to only Florida Supreme Court certified mediators.

Thank you.

Harry Payton



HARRY A. PAYTON, B.C.S.

PAYTON & ASSOCIATES, LLC

2 S. Biscayne Blvd., Suite 2300

Miami, FL 33131

T 305.372.3500 | F 305.577.4895 | M 305.213.3500

payton@payton-law.com | www.payton-law.com

Board Certified Specialist: Business Litigation and Civil Trial

Kimberly Kosch

2 comments filed

From: DRC Mail
Sent: Monday, June 19, 2017 10:17 AM
To: Kimberly Kosch
Subject: Fw: Florida certified mediators

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Phone: (850) 921-2910 Fax: (850) 922-9290

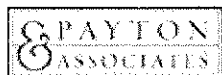
Website: www.flcourts.org click on Resources and Services

From: Harry Payton <payton@payton-law.com>
Sent: Monday, June 19, 2017 9:59 AM
To: DRC Mail
Subject: Florida certified mediators

As a board certified attorney in two litigation areas, I oppose requiring all mediators to be certified. Some of the very best mediators in Miami-Dade County are not certified and, ostensibly, the rule requiring certification could keep some very good out of state mediators from being of service. The Supreme Court does not require every lawyer to be board certified and the public has the right to choose from among those who are not certified. If a mediator is a member of the Bar, and the parties select such person, that should be sufficient. Certification should be voluntary.

Thank you for your attention to this matter.

Harry



HARRY A. PAYTON, B.C.S.
PAYTON & ASSOCIATES, LLC
2 S. Biscayne Blvd., Suite 2300
Miami, FL 33131
T 305.372.3500 | F 305.577.4895 | M 305.213.3500
payton@payton-law.com | www.payton-law.com
Board Certified Specialist: Business Litigation and Civil Trial

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, June 28, 2017 8:22 AM
To: Kimberly Kosch
Subject: Fw: Proposed rule amendments requiring certified mediators in court-filed disputes

Importance: High

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Website: www.flcourts.org click on Resources and Services

From: Harry Schafer <hrs@kennynachwalter.com>
Sent: Tuesday, June 27, 2017 2:48 PM
To: DRC Mail
Subject: Proposed rule amendments requiring certified mediators in court-filed disputes

Good afternoon.

My name is Harry R. Schafer. I am a commercial litigator and mediator with the Kenny Nachwalter law firm in Miami. I have been with the firm for almost 32 years.

During the past 22 years, I have served as a non-certified mediator and have mediated hundreds of cases in state and federal court. Recently, I had the good fortune of being nominated by the Dade County Bar Association as a Legal Luminary finalist in the "Mediators" category.

I have received and reviewed the proposed rule amendments that would limit mediators of court-filed disputes to those who are certified. Please consider this my opposition to the proposed rule amendments.

In my practice as a commercial litigator, I have had many opportunities to utilize the services of both certified and non-certified mediators. Thus far, I have not seen, read, or heard of, **any** evidence that certified mediators are "better" mediators than non-certified mediators. In fact, the negative experiences I had with some certified mediators - mediators that turned out to be unprepared and uninspired message carriers - are what launched me into conducting mediations.

Additionally, while I am not a certified mediator and am therefore not required to take any CME, my wife is. On several occasions when she has listened to continuing education conducted by certified mediators, I have listened with her and talked with her afterwards about the programs. Apart from trying to be a good husband, I have done so in order to try to improve my mediation skills. However, for the most part, the CME courses have been of little value. They have not covered much, by way of technique or otherwise, that has been of practical use to me on mediation day.

Given the lack of evidence that certified mediators are superior to non-certified mediators, it appears that the proposed rule amendments are designed to: 1) protect the jobs of certified mediators; 2) put non-certified mediators out of business; and 3) enrich those offering mediator certification courses and continuing education. That is anti-competitive (as well as protectionistic).

Shouldn't we let the marketplace decide who succeeds and who fails in the field of mediation? What about all the self-determination rhetoric associated with mediation? Where is the self-determination in being told that you cannot choose certain mediators - in some cases, mediators you have successfully used for decades?

Please do not pass the proposed rule amendments.

Thank you for your consideration.

Harry R. Schafer



Harry R. Schafer, Esq.
hrrs@knpa.com

Kenny Nachwalter, P.A.
Four Seasons Tower
1441 Brickell Avenue
Suite 1100
Miami, FL 33131

Phone: (305) 373-1000
Direct Line: (305) 381-7469
Fax: (305) 372-1861
www.knpa.com

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Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, June 7, 2017 2:36 PM
To: Kimberly Kosch
Subject: Fwd: Proposed Amendment to Florida Rules of Civil Procedure 1.720

Sent from my iPhone

Begin forwarded message:

From: DRC Mail <drcmail@flcourts.org>
Date: June 7, 2017 at 9:44:36 AM EDT
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: Proposed Amendment to Florida Rules of Civil Procedure 1.720

-----Original Message-----

From: Howard Marsee [<mailto:hrmarsee@cfl.rr.com>]
Sent: Tuesday, June 6, 2017 4:26 PM
To: DRC Mail <drcmail@flcourts.org>
Subject: Proposed Amendment to Florida Rules of Civil Procedure 1.720

I have been a certified circuit civil mediator since 1996, and I participated in a great many mediation's as an advocate beginning in the 1980's. I have read with approval the amendments to FRCP 1.720 proposed by the Committee on Alternative Resolution Rules & Policy. These are sorely needed changes. An increasing number of mediators are relinquishing their civil certifications in order to accomplish two objectives: first, to avoid the need to comply with the code of conduct governing certified mediators, and to avoid the need for continuing mediator education requirements.

The first objective is very worrisome. Those relinquishing certification, or never becoming certified in the first instance, believe that a market exists for mediators unrestrained by a code of ethics. Indeed, some of their clients would like to return to the infancy of mediation in Florida--when a laissez faire approach to mediation reined. They do so in the belief that mediators should be rendering opinions on the value or outcome of litigation; they also hope that ethically unconstrained mediators can better "strong arm" their opponents into submission. For those of us who believe in a code of conduct, this is anathema.

Mediation has come a long way in Florida since its inception in the 1980's. The Code that has developed has addressed many abuses and potential abuses. We should not now let mediation return to the unbridled, loosely governed process immediately following its birth.

If the mediators' code of ethics has become too restrictive, the solution is to examine the present code and make amendments where consistent with ethical standards. We should not permit the certification system to be circumvented by those who prefer no standards at all. A lack of clear standards will have the effect of mediation's falling into disrepute.

Howard R. Marsee-- Certification Number 7908R

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, July 5, 2017 8:27 AM
To: Kimberly Kosch
Subject: Fw: Proposed Rule Change Concerning Mediators- REVISED

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: htescher@teschermediation.com <htescher@teschermediation.com>
Sent: Sunday, July 2, 2017 5:13 PM
To: DRC Mail
Subject: Proposed Rule Change Concerning Mediators- REVISED

Please discard my prior e-mail, auto-correct changed "changes" to "changing" in the first sentence. I also added language to paragraph two to make it clear on whose behalf former Justice Cantero made his submission. Here it is in correct form:

I write to address the proposed rule changes concerning those mediators who have chosen either to decertify or who have never been certified. I fall in the former category. To give my comments appropriate context, allow me to briefly summarize my history. I began practicing law in Florida in 1985. I have completed all necessary requirements to be certified as a Circuit Mediator, and in fact was certified from May 11, 2001, through June 1, 2004. I decertified in anticipation of my appointment to the Circuit Court bench in July 2004. I left the bench in January 2006. Between 2001 and the present, I have mediated thousands of cases. I no longer actively practice law, instead concentrating 100% of my time on mediating and arbitrating. I do so in a professional manner, such that I am regularly asked by lawyers, arbitrators, government agencies, parties, sitting circuit and federal judges to mediate some of their most difficult business and complex commercial disputes. I can count on one hand the number of times in a year that I am asked if I am certified. The courses to obtain certification are instructive and helpful to the mediation process, they are not essential to being an effective and ethical mediator.

I read with great interest the very thorough submission by former Florida Supreme Court Justice Raoul G. Cantero on behalf of mediator Brian Spector. I agree with the contents of the submission and therefore will refrain from repeating the history of Rule 1.720, Florida Rules of Civil Procedure, or the arguments contained therein. Rule 1.720, as it is presently drafted, adequately addresses the mediation process in the Florida court system and does not need altering or amendment.

I believe, sadly, that the impetus for the change to Rule 1.720 is driven by a very small minority of Bar members, primarily, if not exclusively, individuals who are certified as mediators and are either unsuccessful in their mediation practice or who wish to attempt to monopolize the mediation practice in the Florida state court system. Deference should be given to the judges, lawyers and parties who regularly use the services of all mediators (both certified and not certified) to choose any mediator they believe would be ideal for a given case, instead of a small group of individuals with questionable interests.

Howard A. Tescher
TESCHER MEDIATION GROUP, INC.
Bank of America Building
401 E. Las Olas Boulevard
Suite 1400

Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 8, 2017 4:29 PM
To: Kimberly Kosch
Subject: FW: Proposed changes to proposed Rules Modifications

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Thursday, June 8, 2017 4:25 PM
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: Proposed changes to proposed Rules Modifications

From: Hughes, Jack [<mailto:JHughes@CA.CJIS20.ORG>]
Sent: Thursday, June 8, 2017 3:34 PM
To: 'Simon M. Harrison' <simon@smharrison.com>; DRC Mail <drcmail@flcourts.org>
Subject: RE: Proposed changes to proposed Rules Modifications

DRC staff and committee members,
After having reviewed Mr. Harrison's interpretation of the proposed rule changes and his suggestions I am in full agreement with his assessment and proposal.
Thank you,

Jack Hughes
Civil/ADR Manager
Lee County Justice Center
1700 Monroe Street
Fort Myers, FL 33901
239-533-8424(Civil Office)

Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 29, 2017 1:10 PM
To: Kimberly Kosch
Subject: Fw: Proposed Revisions of Court Procedural Rules Regarding Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

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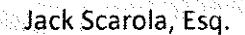
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Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Mary McCann <MEP@Searcylaw.com>
Sent: Thursday, June 29, 2017 12:03 PM
To: DRC Mail
Subject: Proposed Revisions of Court Procedural Rules Regarding Appointment and Selection of Florida Supreme Court Certified Mediators in Court Cases

Please accept this communication as an expression of my desire to maintain the right that I and our clients presently have to select anyone we deem best qualified to mediate our cases, even if the person is not certified.

 Jack Scarola, Esq.

Searcy Denney Scarola Barnhart & Shipley, P.A.

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Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 1, 2017 7:35 AM
To: Kimberly Kosch
Subject: Fw: Proposed Procedures re: Court Appointed Mediators

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: chip@chipblack.com <chip@chipblack.com>
Sent: Wednesday, May 31, 2017 9:23 PM
To: DRC Mail
Subject: Proposed Procedures re: Court Appointed Mediators

Hello:

When Florida judges refer cases to mediation, they should know that, whichever mediator is selected, they have acquired the credentials to be certified by the Florida Supreme Court, that they are bound by the Florida Mediators Code of Ethics, and they have completed re-certification courses in order to be aware of changes in laws and to acquire new mediation skills.

The courts should maintain the highest level of skill and integrity. Although there is no guarantee that the performance of every mediator in every instance will reflect this high standard, there is a much better chance that will happen if those selected to mediate have been certified by the Florida Supreme Court.

Best regards,

James C. Black
Mediator 29835C

James "Chip" Black

BROKER ASSOCIATE

THE HUTTOE GROUP, LLC.

BERKSHIRE HATHAWAY

135 San Lorenzo Avenue, Suite 150

Coral Gables, Florida 33146

CELL: 305-606-6489

OFFICE: 786-581-1487

FAX: 786-581-1449

Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, May 31, 2017 4:35 PM
To: Kimberly Kosch
Subject: FW: Comments Requested: Proposed Revision of Court Procedural Rules

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Wednesday, May 31, 2017 2:18 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: Comments Requested: Proposed Revision of Court Procedural Rules

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Website: www.flcourts.org click on Resources and Services

From: JazzAve@aol.com <JazzAve@aol.com>
Sent: Wednesday, May 31, 2017 2:16 PM
To: DRC Mail
Subject: Comments Requested: Proposed Revision of Court Procedural Rules

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.

If the parties have not filed a suit with the court, I would assume the court has no jurisdiction over the issue so private mediators can mediate them. I would also assume if an agreement is reached and fulfilled as agreed in these cases, the court never sees the case. I further assume if no agreement is reached, or an agreement is not fulfilled, in these cases the aggrieved party files a court case, and now a certified mediator mediates the case

with the court backing the outcome. I am saying any time "cases" are entered in the court, I think certified mediators should mediate.

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 27, 2017 10:38 AM
To: Kimberly Kosch
Subject: Fw: Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy

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From: Jeffrey C. Schneider <jcs@lklsg.com>
Sent: Tuesday, June 27, 2017 10:29 AM
To: DRC Mail
Subject: Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy

I am told that the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy is considering filing a petition with the Florida Supreme Court to revise the mediator rules to preclude mediators who have chosen not to maintain a certification from mediating cases. I disagree with that decision. There are many reasons why parties may choose someone to mediate their cases. Sometimes, those selected are not certified, but that does not mean that they are unsuitable for the particular task. The committee should not do this.

Thank you.

Jeffrey C. Schneider, PA
Managing Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
305.403.8788 (main)
305.403.8789 (fax)
[vCard](#) | [Bio](#) | [Website](#)

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Kimberly Kosch

From: DRC Mail
Sent: Monday, July 10, 2017 7:30 AM
To: Kimberly Kosch
Subject: Fw: Mediation Rules

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From: John P. Kelly <jkelly@businesslitigation.com>
Sent: Saturday, July 8, 2017 8:04 PM
To: DRC Mail
Cc: John P. Kelly
Subject: Mediation Rules

I strongly oppose any efforts to limit the ability of Florida lawyers from selecting whomever they desire to mediate a case regardless of whether the mediator is "certified."

Certification is meaningless and nothing other than bureaucracy. Parties who are adversaries are in the best position to negotiate and decide the person regardless of nomenclature best suited to help resolve their dispute.



John P. Kelly
Board-Certified Trial Lawyer
Business Litigation Specialist

Coastal Tower, Suite 211
2400 East Commercial Boulevard
Fort Lauderdale, Florida 33308
Phone: (954) 568-5555
Fax: (954) 568-5553

Email: jkelly@businesslitigation.com
Alternate email: kellylawyer@gmail.com

Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 10:35 AM
To: Kimberly Kosch
Subject: Fw: Proposed Amendments To Court Rules Of Procedure Regarding The Appointment And Selection Of Florida Supreme Court Certified Mediators In Court Cases.

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Website: www.flcourts.org click on Resources and Services

From: Jorge L Guerra <jlg@rtgn-law.com>
Sent: Thursday, July 6, 2017 10:31 AM
To: DRC Mail
Subject: Proposed Amendments To Court Rules Of Procedure Regarding The Appointment And Selection Of Florida Supreme Court Certified Mediators In Court Cases.

To The Honorable Rodney Smith, Chair
Alternative Dispute Resolution (ADR) Rules & Policy Committee

Dear Judge Smith,

I write to provide comments to the Committee on Alternative Dispute Resolution Rules and Policy on proposed amendments to court rules of procedure regarding the appointment and selection of Florida Supreme Court certified mediators in court cases.

I have been a member of the Florida Bar since 1986, specializing in complex commercial litigation. At times in my career I have represented sophisticated business people in seemingly intractable cases. In preparing to mediate these cases I searched for a mediator who was well-versed in the underlying subject matter and who was sufficiently well-known and respected in the field. It did not matter to me whether the person had been "certified" as a mediator; what mattered most was that my client (and the opposition) would have to respect her or his views and comments. In this vein, I have recruited (i) a well-known land-use lawyer to mediate a dispute between land developers, (ii) a well-know securities lawyer to mediate an intra-partner dispute, and (iii) a retired Florida Supreme Court Chief Justice to mediate a case pending on appeal. In fact, none of these mediators were certified at the time and on two occasions, my case was the only mediation those individuals had ever mediated. In each instance, I relied on my professional judgment to identify the person best qualified by competence or experience to address the situation and matched them to the parties and the circumstances.

Similarly, in virtually every mediation I have participated in, I have asked the mediator for an impartial evaluation of the merits of my case. In my experience, Florida Supreme Court certified mediators are reluctant to do so. Moreover, in the cases where I have sought out non-certified mediators, they have been, by virtue of my selection process, more competent, better equipped, more sophisticated, and more adept in providing meaningful case evaluations. I chose these mediators precisely to elicit their evaluation of the situation, something I often times find certified mediators reluctant to do.

If the attorneys and their clients decide – indeed, desire – that someone who they believe is better-suited than anyone else to evaluate their case, address their concerns, and help them take control of their case, I fail to see what over-riding interests the Committee or the Florida Supreme Court could have to deprive attorneys and their clients of this right.

Respectfully Submitted,

Jorge L. Guerra
Florida Bar No. 623598

Jorge L. Guerra, Esq.
Jorge L Guerra, P.A.
255 Alhambra Circle, Suite 1150
Coral Gables, Florida 33134
Office: 305.350.2300 | Fax: 305.350.2525

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Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, May 31, 2017 4:35 PM
To: Kimberly Kosch
Subject: FW: Ruling

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Wednesday, May 31, 2017 2:17 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: Ruling

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From: josette@nextstepnewstart.com <josette@nextstepnewstart.com>
Sent: Wednesday, May 31, 2017 2:15 PM
To: DRC Mail
Subject: Ruling

Good Day,

As a Florida Certified Mediator, I agree with the Alternative Dispute Resolution Rules and Policy Committee in 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.

Thank you for giving me the opportunity to express my opinion.

We are blessed as we bless others,
Josette Veltri, MS, GC-C
Transition Consultant
Certified Florida Mediator

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 13, 2017 8:20 AM
To: Kimberly Kosch
Subject: Fw: Certified Mediators

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From: Josh M. Rubens <jrubens@klugerkaplan.com>
Sent: Tuesday, June 13, 2017 7:39 AM
To: DRC Mail
Subject: Certified Mediators

Dear Committee on Alternative Dispute Resolution Rules and Policy,

I am litigation attorney. I oppose the proposed amendments to the rules to require that only Florida Supreme Court certified circuit mediators be permitted to mediate filed cases.

Thank you.



Josh M. Rubens : Partner
Kluger, Kaplan, Silverman, Katzen & Levine, P.L.
201 S. Biscayne Boulevard
27th Floor | Miami, FL 33131
tel (305) 341-3011 : fax (305) 379-3428

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Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 13, 2017 12:42 PM
To: Kimberly Kosch
Subject: Fw: Opposition to Committee on Alternative Dispute Resolution petition to change mediator rules to limit litigant choice of mediator

Importance: High

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From: Karen Kammer <kkammer@mitrani.com>

Sent: Tuesday, June 13, 2017 12:36 PM

To: DRC Mail

Cc: William J. Schifino, Jr.; M. Higer; michelle@suskauerfeuer.com; john@alpizarlaw.com; deborah.baker@gmlaw.com; TBopp@bankerlopez.com; lornab@lebburtonlaw.com; burgoon@burgoonlaw.com; josh@jpfirm.com; jcohen@jaycohenlaw.com; Laurie Mitrani; icomisky@foxrothschild.com; sdavis@bsfllp.com; sdiamond@wdclaw.com; sechsner@awkolaw.com; dori@fostermorales.com; ffranklin@rtlaw.com; whelsby@anblaw.com; hickey@hickeylawfirm.com; michael.hooker@phelps.com; dkainen@wkm-law.com; glessner@lesserlawfirm.com; llile@lile-hayes.com; ljlott@lottfischer.com; jay@manuelthompson.com; sam@sammasterslegal.com; margaret.mathews@akerman.com; emeeks@meekslawfirm.com; roland@smgqlaw.com; bwr@rkkattorneys.com; arabinowitz@broadandcassel.com; arabin@mccaberabin.com; rponzoli@richmangreer.com; richard.nail@gray-robinson.com; edmyrtetus@goodmanallen.com; maryann@billingslawfirm.com; kmiller@surfcoastlaw.com; sharonbmiddle10@gmail.com; psangi@forthepeople.com; Diana Santa Maria; cschwait@gmail.com; lscriven@trenam.com; larry.sellers@hklaw.com; marcy@mlshawlaw.com; wsmith@thesmithlawfirm.com; John Stewart; mtanner@tannerbishoplaw.com; lwttyree@gmail.com; mvsansickle@broadandcassel.com; swestheimer@smrl.com; Persante Law

Subject: Opposition to Committee on Alternative Dispute Resolution petition to change mediator rules to limit litigant choice of mediator

To whom it may concern –

As a nearly 30-year member of the Florida Bar I write to express my **opposition** to the proposed change to our state's mediation rules. As a litigator who has found a certain style of mediation to be most effective in resolving disputes and managing the parties' expectations, I believe the proposed changes could undermine those efforts. I also believe it important that the parties and their counsel be able to choose a mediator who would be best suited for a particular type of case; limiting the parties' ability to choose by requiring they select only certified mediators creates an unnecessary impediment to dispute resolution.

I therefore urge you to reject the proposed changes.

Regards,
Karen Kammer

Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 7:16 PM
To: Kimberly Kosch
Subject: Fw: Comments on Proposed Rule Change to Mediating Court Cases
Attachments: Signed letter to Committee.pdf

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From: Kenneth Stern <kdstern@gmail.com>
Sent: Thursday, July 6, 2017 3:54 PM
To: DRC Mail
Subject: Comments on Proposed Rule Change to Mediating Court Cases

Please see attached letter re Proposed Rule Changes. Thank you. Kenneth D. Stern

--
Kenneth D. Stern
P.O. Box 8018
Delray Beach, FL 33482-8018
Mobile: 561-901-4968
email: kdstern@gmail.com
website: www.kennethstern.com

KENNETH D. STERN
P. O. Box 8018
Delray Beach, FL 33482-8018

Mobile Phone: (561) 901-4968

Email: kdstern@gmail.com

Website: www.kennethstern.com

*Circuit Civil, Family and Appellate Mediator
Florida Supreme Court Qualified Arbitrator
Available for Service as Special Master, Umpire,
Hearing Officer, Private Trial Resolution Judge
And E-Discovery Neutral*

July 7, 2017

Committee on Alternate Dispute
Resolution Rules and Policy
Florida Dispute Resolution Center
Supreme Court Building
500 South Duval St.
Tallahassee, FL 32399

Re: Proposed Revision of Rules Re Mediating in Court Cases

Dear Committee Members:

In response to the Committee's invitation for comments on the proposed amendments requiring certification for any mediator mediating a case which is filed in the court system, please consider the following:

There are many mediators, including myself, who achieved certification and remained certified for years, eventually deciding to permit their certification to lapse. Upon retirement from the Circuit Bench at the end of 2010, I immediately gained certification in Circuit Civil, and soon thereafter in Family and Appellate. I have mediated approximately 175 cases in all three areas, most while certified; the majority have been in Circuit Civil. I had also mediated prior to going on the Bench.

Currently, I am working toward re-certification, and regardless of whether the proposed rule change is adopted, I shall proceed toward full certification. I have completed a Circuit Civil Certification course, and have two Observations scheduled for this month. They are difficult to schedule, and progress in that regard is slow.

July 7, 2017

Page Two

There are many mediators, including myself, who achieved certification and remained certified for years, eventually deciding to permit their certification to lapse. Upon retirement from the Circuit Bench at the end of 2010, I immediately gained certification in Circuit Civil, and soon thereafter in Family and Appellate. I have mediated approximately 175 cases in all three areas, most while certified; the majority have been in Circuit Civil. I had also mediated prior to going on the Bench.

Currently, I am working toward re-certification, and regardless of whether the proposed rule change is adopted, I shall proceed toward full certification. I have completed a Circuit Civil Certification course, and have two Observations scheduled for this month. They are difficult to schedule, and progress in that regard is slow. Should the proposed rule be adopted, I respectfully suggest the following amendments or inclusions:

1. At least a year should be provided following adoption of the rule change, during which uncertified mediators would be permitted to mediate Circuit Civil Court cases.

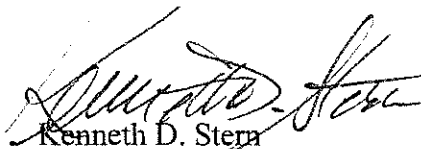
2. (a) A person who had successfully gained certification and mediated at least 50 cases while certified should be "grandfathered" from the requirement that s/he again become certified before mediating another court case; s/he would be excused from again taking a basic Certification course and going through observations with mentors far less experienced than that person.

- (b) Such a person could be barred, however, from mediating in areas wherein s/he had not previously been certified, unless s/he first achieves certification in that area. Anyone grandfathered in could be required to complete a number of CME hours each year to remain eligible to mediate. For as long as this requirement is met, the person should be deemed Certified.

3. Anyone required to attain certification before mediating, any mediations previously conducted should be credited with far more than one point toward certification for any year in which s/he has mediated at least 15 cases of any type, which is the current rule (10.105(b)). The figure should be five points for any year in which the mediator has mediated at least 20 cases.

Thank you for considering the foregoing.

Respectfully submitted,



Kenneth D. Stern
Circuit Judge (Retired)

Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 15, 2017 6:59 AM
To: Kimberly Kosch
Subject: Fw: Certified Mediators

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From: Kevin C. Schumacher <Kevin.Schumacher@csklegal.com>
Sent: Wednesday, June 14, 2017 4:05 PM
To: DRC Mail
Subject: Certified Mediators

To Whom It May Concern:

Please note that I oppose the anticompetitive effort to limit our ability to select a mediator of our choosing.

Thanks,
Kevin



www.csklegal.com

Kevin C. Schumacher, Esq.

Kevin.Schumacher@csklegal.com
Tel: 786-268-6746
Fax: 305-373-2294
Cole, Scott & Kissane Building
9150 South Dadeland Boulevard, Suite 1400
Miami, Florida 33156



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Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 27, 2017 10:39 AM
To: Kimberly Kosch
Subject: Fw: Comments on proposed amendment to Rule 1.720

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From: Lennie Burke <hlburke@cfl.rr.com>
Sent: Tuesday, June 27, 2017 10:31 AM
To: DRC Mail
Subject: Comments on proposed amendment to Rule 1.720

To the Committee on Alternative Dispute Resolution Rules and Policy

This is to recommend a change to the proposed amendment to Florida Rules of Civil Procedure -Rule 1.720 Mediation Procedures and particularly paragraph (j)(1) Assignment of the Mediator

The proposed amendment requires that a mediator selected by the parties be a Florida Supreme Court certified circuit mediator (emphasis added.) The limitation to a mediator certified for circuit civil is unnecessary and imposes a limitation not in the interest of the parties at dispute. The parties should be able to exercise self-determination to the extent that is compatible with the objectives of Florida's regulation of mediation. The parties may desire to choose a mediator who has skill and experience relevant to their particular dispute. This amendment as written would prohibit them from doing so. The reference to certification only in circuit civil should be removed.

I support the requirement for a mediator who is certified by the Supreme Court. Invoking the ethical rules, training requirements and other provisions of our system is important. I do not object to the reference to circuit certified mediators in paragraphs (2) and (3).

Of course, I have an interest in the impact of this amendment. I offer particular expertise to parties that they would not be able to access under this amendment as written. I offer elder mediation or guardianship mediation. Guardianship cases are under the purview of the probate divisions. I also offer Christian Conciliation for those parties who want that foundation. Here's why I offer a specific advantage to parties in these areas of specialty.

- Certified by the Supreme Court of Florida for County and Family mediation
- Trained in elder mediation and circuit civil with an emphasis on guardianship (but not certified for circuit civil).
- Professional guardian with 14 years' experience.
- Registered with the Florida Department of Elder Affairs as a professional guardian for 14 years.
- Certified by the national Center for Guardianship Certification.
- Regularly provide training to professional guardians approved for continuing education credit.
- Have been approved for offering CLE regarding guardianship.

- Candidate for Certified Christian Conciliator by the Institute for Christian Conciliation

I believe parties specifically seek me for my subject area expertise. Under this amendment they would be prohibited from doing so.

H. Leonard Burke

Phone 321-251-8133

Kimberly Kosch

From: DRC Mail
Sent: Friday, July 7, 2017 12:14 PM
To: Kimberly Kosch
Subject: Fw: Opposition to Exclusion of Non Florida Certified Mediators

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From: Leslie J. Lott <ljlott@lottfischer.com>
Sent: Friday, July 7, 2017 11:32 AM
To: DRC Mail
Subject: Opposition to Exclusion of Non Florida Certified Mediators

Dear Committee Members

My practice is exclusively intellectual property law.

As with many specialties, when we mediate intellectual property law cases, it is very important for us to have mediators with a knowledge of the substantive law. It is far more important than "certification" or training, or where the mediator got his/her training, for a number of reasons:

- First, when we have opposing counsel who are not familiar with IP law, it is crucial that the mediator be someone they can trust, who can explain some of the basics to them;
- When we have had mediators who are not familiar with the substantive law, they have been misled by opposing counsel who have misunderstood some aspect of the law, with the result that there is no chance of resolution;
- When neither party has IP counsel, it is particularly critical to have a mediator who can actively assist with IP law principles and experience, if asked by the parties to do so;
- There are common approaches to resolution that are specific to IP law, such as an assignment and license back of IP rights, among many others;
- Mediators who have experience in negotiating IP agreements have been valuable in suggesting ways to overcome obstacles or ways to compromise based on provisions that we commonly see within the specialty, or provisions that they have negotiated in their own practices;
- IP settlements almost always involve terms other than money. No amount of mediation training can overcome a lack of substantive knowledge of these terms;
- It is also critical that the mediator recognize terms that might result in loss of trademark or patent rights, or invalidity of the negotiated settlement itself, based on substantive issues of IP law;
- Mediation is a negotiation between parties. Someone who is not familiar with IP contract negotiations cannot assist the parties.

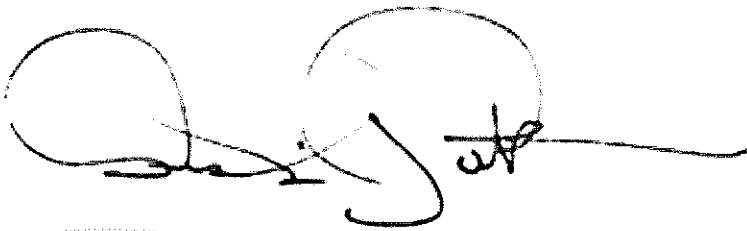
For my own cases, I far prefer a skilled, experienced practitioner to someone "certified." However, if certification were to be a qualification, there are a number of different organizations that train and "certify" mediators, and require that they maintain credentials. Some are far more exacting than the Florida rules would require. What objective would be served by denying litigants' the right to work with mediators of their own choosing, whom they believe are best suited to assist them in reaching a resolution. That would totally undermine the purpose of mediation.

In many years of practice, I have never worked with, nor seen a mediator who was not an attorney. All attorneys are, of course, subject to Bar Rules and to discipline. I have also, in 7 years on the Board of Governors, serving on the Disciplinary Review Committee and as Designated Reviewer for two Grievance Committees, dealt with a great many ethics complaints, none of which have involved mediator misconduct.

In several cases, parties have selected mediators who did not appear on a specific court's approved mediator list, and have had to jointly move the court for approval, citing to the mediator's training, expertise and experience. Based on the evidence, courts have issued orders recognizing the mediators' competence and qualification and confirming the appointment. Even these mediators, with court orders attesting to their capabilities, would not be permitted under the proposed rules.

I strongly oppose the proposed limitation on my ability and that of my clients to select and contract with the mediator of our choice – including highly skilled and successful mediators with whom we have worked for many years.

Thank you for your consideration,
Leslie Lott

A handwritten signature in black ink, appearing to read "Leslie J. Lott", with a long horizontal flourish extending to the right.

Leslie J. Lott, Esq.
Board Certified Intellectual Property Attorney

LOTT & FISCHER

255 Aragon Ave
3rd Floor
Coral Gables, FL 33134
Telephone: (305) 448-7089 x 110
Facsimile: (305) 446-6191

Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 7:16 PM
To: Kimberly Kosch
Subject: Fw: New mediation rule

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Website: www.flcourts.org click on Resources and Services _____

From: Lester Langer <l.langer@me.com>
Sent: Thursday, July 6, 2017 6:48 PM
To: DRC Mail
Subject: New mediation rule

I am firmly opposed to the new rule. Parties should be able to choose their mediator regardless if that person is certified or not. This new rule flies in the face of the concept of self determination.

Let the parties choose the best or most appropriate person for their case.

The DRC should not force certification on anyone. And I speak as a certified mediator. I am not afraid of the competition. Nor should any other certified mediator. If one is good, competent, neutral, honest, firm and civil, then the business will come.

Lawyers and the parties will not use bad mediators certified or not. And lawyers will put the bad mediators out of business within a short time.

This appears to me to be a rule looking for a problem. A problem that does not exist. Otherwise I am sure I would have heard about the problem long before this day.

Thank you for your consideration

Sincerely

Lester Langer

Certified civil and appellate mediator. .

Sent from my iPhone

Kimberly Kosch

From: DRC Mail
Sent: Monday, June 12, 2017 9:11 AM
To: Kimberly Kosch
Subject: Fw: Certified mediators proposal

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
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From: lgbach <lgbach@bellsouth.net>
Sent: Saturday, June 10, 2017 2:01 PM
To: DRC Mail
Subject: Fwd: Certified mediators proposal

Sent from my iPhone

Begin forwarded message:

From: lgbach <lgbach@bellsouth.net>
Date: June 10, 2017 at 1:57:52 PM EDT
To: DRC@flcourts.org
Subject: Certified mediators proposal

TWIMC: I write as a non mediator (though I took the course long ago) in order to voice my objection to the proposed new rule requiring certification. As a 40 plus year lawyer I have participated in many meditations . I have found that the mediator's EVALUATION fleshed out by his/ her reasons (especially when the mediator is a judge who has tried many civil jury trials) is a sine qua non of a useful mediation. I have been in mediations (usually of smaller cases) where the mediator was simply a relayer of offers and demands and have found those mediations a waste of time and fees and just pro forma compliance with a pretrial order. This proposed rule will handcuff many of us (at least in Miami Trade) where many of the most effective mediators are not (I have learned) blessed with the hollow (in my view) imprimatur of 'certified'. If there has been a Sturm und Drang re the incompetence or other frailties of non certified mediators I have not heard of it or experienced it. L. Gabriel Bach 178622

Sent from my iPhone

Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, May 31, 2017 4:44 PM
To: Kimberly Kosch
Subject: FW: Linda Smith/mediator appointment revisions

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Wednesday, May 31, 2017 1:45 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: Linda Smith/mediator appointment revisions

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Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Linda Smith <Lsmith@atipro.com>
Sent: Wednesday, May 31, 2017 1:36 PM
To: DRC Mail
Subject: Linda Smith/mediator appointment revisions

I have worked too hard for my certification, continuing education, e & o insurance and other business costs. I do NOT support non-certified mediators having the same access to mediations as certified mediators do.

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 13, 2017 2:36 PM
To: Kimberly Kosch
Subject: Fw: Committee for Rules Revision - circuit civil mediations

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Website: www.flcourts.org click on Resources and Services

From: Lisa Bell <lisabellesq@gmail.com>
Sent: Tuesday, June 13, 2017 2:13 PM
To: DRC Mail
Subject: Committee for Rules Revision - circuit civil mediations

Good Afternoon:

Full disclosure. I am a Florida Certified Family Mediator, not a civil mediator.

I do not agree with the proposed revision.

I believe that the prior rule is sufficient for the client and their legal counsel in any civil action to make an appropriate selection of the mediator best suited for their particular case. I further reject the assertion that only a State of Florida certification would appropriately protect the dispute resolution process and the rights of the two clients to resolve their suit short of protracted litigation.

I believe that if any revision is required that all that needs to be done is for clients to be made aware that the Mediator they are hiring is or is not a Florida Supreme Court Certified _____ (fill in the blank) Mediator. I would further simply require that the clients and lawyers involved (if any) simply retain an executed copy of an acknowledgment of the status of the Mediator's certification status. This would ensure that at a minimum the client is informed of the difference and of the training and education that those of us who choose to be certified hold.

While I appreciate the certification I hold, I do not believe that it must be mandated or used to exclude other relevant experienced professionals who should be able to continue to mediate or grow into a mediation practice. The more cases we resolve short of litigation the better.

Always,
~lisa

Lisa Bell, PA
-where your family matters-

Guardianship
Family Law & Family Mediator

Lisa Bell
435 12th Street West, Suite 216
Bradenton, Florida 34205
Phone: (941) 404-4625
Fax: (941) 404-4623
lisabellesq@gmail.com
Toll Free: 888-2060-LAW



on the web at: <http://lisabellesq.wix.com/justice>

Kimberly Kosch

From: DRC Mail
Sent: Tuesday, June 13, 2017 11:23 AM
To: Kimberly Kosch
Subject: Fw: Proposed Revisions to Rule 1.720, "Mediation Procedures."

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Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Loren Cohen <lcohen@mitrani.com>
Sent: Tuesday, June 13, 2017 10:53 AM
To: DRC Mail
Subject: Proposed Revisions to Rule 1.720, "Mediation Procedures."

My Florida Bar Number is 303879.

Please note my vehement opposition to the proposed revisions to Rule 1.720, "Mediation Procedures." The requirement permitting mediation only with a Florida Supreme Court certified mediator should be rejected.

The proposed Rule is akin to requiring parties to hire only board certified lawyers—in effect, imposing a super-practice requirement. Lawyers negotiate every day. Acting to resolve disputes is an attorney skill set. Some are very good and are asked to mediate cases even though they are not certified. Certification does not ensure the mediator's experience or ability to mediate.

The proposed Rule imposes on the judgment of lawyers and parties as to who can best serve assist resolving their cases. There are a myriad of reasons why mediators are chosen by parties. Certification should be one criteria in the selection process, not a necessary prerequisite to engagement.

Parties may want industry mediators who are not lawyers or are not certified. Parties may want a mediator who the parties' or their attorneys are familiar with for many reasons, including that the mediator may have practiced in the same field as the subject matter of the litigation or the parties or their counsel may simply have confidence in the mediator. One party may want to use a mediator who the other party believes might push the opposing party toward resolution. The parties may be based outside of Florida and select a mediator they are familiar with or who has a national reputation.

The rule is also anti-competitive.

Please recommend rejecting this proposed rule change.

Regards,

Loren H. Cohen



MITRANI RYNOR
ADAMSKY TOLAND
ATTORNEYS

Kimberly Kosch

From: RC Mail
Sent: Tuesday, June 27, 2017 7:59 AM
To: Kimberly Kosch
Subject: FW: Opposition to Mediator Certification Requirement

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Phone: (850) 921-2910 Fax: (850) 922-9290

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From: Marc Wites <mwites@wklawyers.com>
Sent: Monday, June 26, 2017 5:19 PM
To: DRC Mail
Subject: Opposition to Mediator Certification Requirement

I understand that your committee is considering filing a petition with The Florida Supreme Court to seek a requirement that only certified mediators can mediate cases filed in Florida's state courts. I write to voice my opposition to any such petition.

I was admitted to The Florida Bar in 1994. Since that time, I have participated in countless mediations in numerous practice areas, including but not necessarily limited to class actions, personal injury and wrongful death, securities, commodities, commercial litigation, equine matters, and employment disputes. The paramount issue to a successful mediation is not the certification of the mediator, but rather the mediator's knowledge of the practice area, ability to relate to the parties and the parties' counsel, and, of course, to assist the parties in reach a resolution of their case. In choosing a mediator, I consider these factors, along with the mediator's reputation; I have never once considered, let alone inquired about, whether the mediator is certified.

While training and certification certainly has its place, the result of the process is what matters most. So, just as lawyers have the option to seek and obtain board certification in certain areas, one's status as a lawyer in good standing should be and is the only requirement to the practice of law. The same should be true of mediators. If a lawyer mediator desires certification, and feels that such certification will benefit his or her mediation skills and/or make them a more desirable mediator, they should be free to seek certification. But the Bar should not preclude those without the certification from serving as mediators. Rather, the Bar should trust Florida's lawyers to choose the mediator that is best suited to help resolve their cases.

Finally, I note that no such requirement exists in Florida's federal courts. The proposed requirement is a solution without a problem. I respectfully suggest that we maintain the status quo.

Thank you for your consideration.

Marc A. Wites
Wites & Keptan, P.A.
www.wklawyers.com
From My iPad

Kimberly Kosch

From: DRC Mail
Sent: Friday, July 7, 2017 7:59 AM
To: Kimberly Kosch
Subject: Fw: Comment on proposed amendments
Attachments: image001.png; ATT00001.txt

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From: Pamela I. Perry <pam@rplawfirm.com>
Sent: Friday, July 7, 2017 2:06 AM
To: DRC Mail
Subject: Comment on proposed amendments

>> Ladies and gentlemen--

>>

>> I am a certified mediator and write to vigorously oppose the proposed amendments to prohibit non-certified mediators from mediating filed cases. Rather than repeat the many fine arguments made by my colleagues, I would respectfully adopt the excellent comments submitted by Brian Spector and Former Circuit Court Judge Scott Silverman, as well as the commentary published in today's Daily Business Review signed by several mediators (including myself) that I understand has already been submitted for your review.

>> In addition, I would respectfully note that the proposed rules unnecessarily undermine a core tenet of the mediation process, namely, self determination. I believe that if you speak with the lawyers that regularly retain mediators, they will tell you that certification is of no moment to them, and that what they want is the freedom to exercise their professional judgment and choose the mediator that they believe has the skill, substantive knowledge, personality, and style to resolve the matter being mediated. The proposed rules unnecessarily deprive lawyers --and their clients--of this important choice, and in so doing deprive them of a critical part of the self determination that animates the mediation process.

>> For this reason, and for all of the reasons articulated in the submissions adopted above, I would urge that you decline to approve this anticompetitive and counterproductive proposal, and thank you for considering my input.

>

>> Respectfully submitted,

>

>> Pam Perry

Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 7:33 AM
To: Kimberly Kosch
Subject: Fw: Objection to New Proposed Mediation Rules
Attachments: 17-06.26 Spector Comments and Objections.pdf

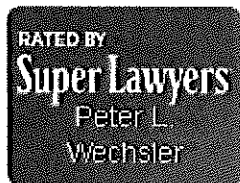
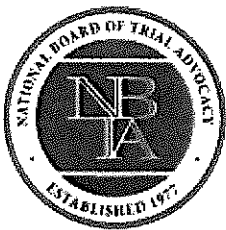
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From: Peter Wechsler <peterlwechsler@gmail.com>
Sent: Wednesday, July 5, 2017 5:16 PM
To: DRC Mail
Subject: Objection to New Proposed Mediation Rules

I oppose the new proposals to the mediation rules and adopt the comments of Brian Spector. Thank you.

--
Peter L. Wechsler, Esq.
Attorney / Mediator / Arbitrator / eDiscovery
7345 SW 131 Street
Pinecrest (Miami), Florida 33156
T (305) 213-1222 / F (786) 242-2062
Florida Supreme Court Certified Circuit Civil Mediator
Florida Supreme Court Qualified Arbitrator
Fellow of the American College of e-Neutrals
Peter@WechslerLawGroup.com
www.WechslerLawGroup.com



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Peter L. Wechsler

Kimberly Kosch

From: DRC Mail
Sent: Monday, June 12, 2017 3:59 PM
To: Kimberly Kosch
Subject: Fw: required certification for mediators

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From: Philip Freidin <pf@fblawyers.net>
Sent: Monday, June 12, 2017 2:32 PM
To: DRC Mail
Subject: required certification for mediators

We oppose required certification of mediators.

Many excellent mediators are not certified and certification does not always mean competence. It would preclude evaluative mediations.

An unnecessary rule that solves nothing since all mediators are chosen by agreement.

Thanks for listening.

Philip Freidin, Esq.
Board Certified Civil Trial Attorney
Freidin Brown, P.A.
FREIDIN BROWN
FLORIDA TRIAL LAWYERS
One Biscayne Tower, 2 South Biscayne Boulevard
Suite 3100 | Miami, FL 33131
Tel (305) 371-3666 | Fax (305) 371-6725
pf@fblawyers.net | www.YourFloridaTrialTeam.com
Trial Lawyers with offices in Miami and Ft. Myers



Kimberly Kosch

From: DRC Mail
Sent: Monday, July 10, 2017 7:29 AM
To: Kimberly Kosch
Subject: Fw: Proposed Mediation Changes

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Website: www.flcourts.org click on Resources and Services

From: ramona esquibel <pinkandpurpledaisy@gmail.com>

Sent: Friday, July 7, 2017 6:43 PM

To: DRC Mail

Subject: Proposed Mediation Changes

Dear Florida Dispute Resolution Committee,

I am a certified circuit court mediator. I am not a lawyer, and I have had the pleasure of watching both certified and non-certified mediators. This experience has been invaluable to me, and I have received good advice from both certified and non-certified mediators. I feel the proposed change would only serve to place an added expense and CME requirement to those who are not certified. I believe it is the quality of the person, their work ethic and moral fiber which determines who will be a good mediator. Unfortunately, I do not believe these qualities can be instilled by proposed changes, and therefore I oppose the revision of the mediation rules.

Thank you for your consideration,

Ramona Esquibel

Kimberly Kosch

From: DRC Mail
Sent: Wednesday, June 14, 2017 10:55 AM
To: Kimberly Kosch
Subject: Fw: Comment on Proposed Revision of Mediator Rules

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Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: Richard Johnston, Jr. <richard@richardjohnstonlaw.com>

Sent: Wednesday, June 14, 2017 10:16 AM

To: DRC Mail

Subject: Comment on Proposed Revision of Mediator Rules

I write today to object to the proposed change in the mediator rules to limit mediators in filed cases to Florida Supreme Court Certified Mediators. I am a board certified business trial lawyer and have been so certified since 2001. My practice centers on bankruptcy. Recently a number of litigants or parties in bankruptcy cases or bankruptcy related litigation have hired me to mediate adversary proceedings, contested matters and other bankruptcy related issues. I am not a certified mediator but I have substantial experience in my field of expertise. Under the present rule I am free to act as a mediator without certification (and I do invoke Florida and Federal Mediation standards in my engagement letter). I believe I have had great success in my efforts. I object to this attempt at regulating me and those like me out of the mediation realm. I am not sure why this rule change is needed other than to foster economic benefits of current certified mediators, companies that train mediators, and the Dispute Resolution Center. I think that the statements of mediator Roger C. Benson in his letter appearing in the July 15, 2014 are spot on.

I oppose this proposed amendment.

rj

NOTE: COPY MY PARALEGAL AND ASSISTANT ON ALL E-MAIL COMMUNICATIONS AT:

cynthia@richardjohnstonlaw.com

emily@richardjohnstonlaw.com



Richard Johnston, Jr.

7370 College Parkway

Suite 207

Fort Myers, Florida 33907

Fort Myers Phone: 239-600-6200

Fax: 877-727-4513

richard@richardjohnstonlaw.com

Kimberly Kosch

From: DRC Mail
Sent: Monday, July 10, 2017 7:29 AM
To: Kimberly Kosch
Subject: Fw: Opposition to the Amendments by the Alternative Dispute Resolution Committee Re Mandatory Mediator Certification

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Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Robert Harvey <RHarvey@JenksHarveyLaw.com>

Sent: Friday, July 7, 2017 8:47 PM

To: DRC Mail

Subject: Opposition to the Amendments by the Alternative Dispute Resolution Committee Re Mandatory Mediator Certification

The proposed amendments are anti-competitive. The selection of a mediator should be made by the attorneys and parties involved in the litigation. As an attorney who routinely mediates highly complex securities regulation, to be limited to a pool of only "certified" mediators, who have no background in the subject area would be a disservice to my clients. The proposals of the ADR Committee should not be presented to the Florida Supreme Court.

Respectfully yours,

Jenks & Harvey

EXPERIENCE WITH STYLE

Robert J. Harvey, Esq.
rharvey@jenksharveylaw.com

Jenks & Harvey LLP
Office: 561-303-2918 / Cell: 917-865-7961 / Fax: 561-419-9828
1555 Palm Beach Lakes Blvd., 16th Floor
West Palm Beach, FL 33401
<http://www.jenksharveylaw.com>

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Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 1, 2017 8:37 AM
To: Kimberly Kosch
Subject: Fw: PROPOSED AMENDMENT

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Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: RAVLAW@aol.com <RAVLAW@aol.com>
Sent: Thursday, June 1, 2017 8:30 AM
To: DRC Mail
Subject: PROPOSED AMENDMENT

I agree with the proposed amendment to the rules allowing for only Supreme Court certified mediators to mediate court cases.

Rolando A. Vasallo, Esq.
Mediator
12193 CR

Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, May 31, 2017 4:15 PM
To: Kimberly Kosch
Subject: FW: Court appointed mediators

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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-----Original Message-----

From: DRC Mail
Sent: Wednesday, May 31, 2017 2:59 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: Court appointed mediators

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From: Ronald Anania <law1492@aol.com>
Sent: Wednesday, May 31, 2017 2:55 PM
To: DRC Mail
Subject: Court appointed mediators

Only Supreme Court Certified Mediators should be allowed to mediate any case assigned by the courts. Let's not follow in the footsteps of the Florida Bar when they agreed to allow non attorneys to become Circuit Civil Mediators. Even though Mediators do not make decisions or give legal advice, they still must be capable of understanding the legal implications of the parties allegations.

Ron Anania

Sent from my iPhone

Kimberly Kosch

From: Susan Marvin
Sent: Monday, July 3, 2017 2:56 PM
To: Kimberly Kosch
Subject: FW: Comment on Proposed Mediator Rules
Attachments: Proposed Mediator Rules Comment.pdf

Susan C. Marvin, J.D.

Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Friday, June 30, 2017 1:22 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: FW: Comment on Proposed Mediator Rules

From: RRavikoff@ravikoff.com [<mailto:rravikoff@ravikoff.com>]
Sent: Thursday, June 29, 2017 3:35 PM
To: DRC Mail <drcmail@flcourts.org>
Subject: Comment on Proposed Mediator Rules

Dear Committee:

Attached is a comment on the proposed Mediator Rules for your consideration.

Thank you.

Ronald Ravikoff

Ronald Ravikoff
3 Grove Isle Drive
PH-5
Miami, FL 33133
RRavikoff@Ravikoff.com

Committee on Alternative Dispute Resolution Rules and Policy
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

RE: Comment on the Committee's Proposed Rules

Dear Committee:

I am writing to express my opposition to the proposed rules that would limit the mediation of matters pending before a Florida Court to "Certified" mediators.

By way of background, I am a forty-year member of the Florida Bar and my practice has largely been confined to commercial litigation. Over the past five years I have been engaged solely in an ADR practice and am a Florida Supreme Court Certified Mediator.

I am also a former adjunct professor at the University of Miami School of Law where I taught, among other subjects, mediation. I believe in Certification and was one of the original drafters of the Certification standards for both Business Litigation and Antitrust.

As discussed below, Mediator "certification" as currently mandated, is however a misnomer and misleading.

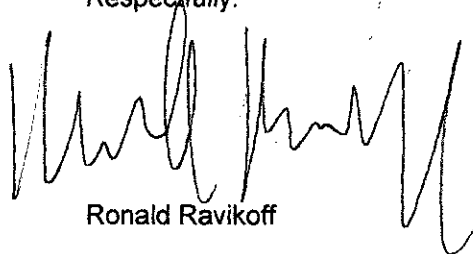
The reasons for my opposition to the proposed Rules are both philosophical and practical:

1. The proposed rule articulates no rationale for the change and why it is needed. If the issue is one of adherence to rules and ethical behavior by mediators, those who are members of the Florida Bar are already bound by the Bar rules and standards- even while acting as mediators. The need for mediators to meet the Standards of Professional Conduct in the Rules for Certified and Court-Appointed Mediators can be met by simply having a Court incorporate this standard in its Orders.
2. The proposed rule is anticompetitive by limiting access to mediators and appears to be designed to protect the mediation "training" industry rather than the public.
3. Most significantly, it limits self-determination by the parties in selecting a mediator. For example, how would the proposed Rules address (or exacerbate) the following very typical situations:
 - a. The parties engage in pre-suit mediation with a carefully chosen uncertified mediator. The mediation results in an impasse. Litigation ensues. New facts are developed. Mediation is ordered. The parties are now precluded from using the original mediator, thus wasting time and resources on a new mediator.
 - b. The matter before the Court has parties from several parts of the country. The parties conclude that it is much more economical to mediate in another state. Must they pay to send a Florida Certified mediator to the mediation location?

- c. The dispute is broader than just the matter before the Court. A successful mediation would require non-parties to participate. Are those non-parties deprived of their right of self-determination in selecting a mediator?
 - d. The matter before the Court involves a unique industry, matter or area of law and the "best" mediator for that matter is not located in Florida.
 - e. The parties are embroiled in multiple matters before various agencies and courts all involving the same underlying dispute. The issue before all of these tribunals must be mediated as one. The other courts or agencies have their own mediation preference which does not include a Florida Certified Mediator.
4. The fact that a mediator is "Certified" implies some level of expertise to the public. In my opinion that is not the case. Unlike the Florida Bar certifications which genuinely attempt to establish expertise (and which are voluntary and do not limit one's ability to practice in an area), the current Mediation certification in no way prepares one to actually mediate. The most important portion of the training is the review of the applicable rules and ethics. The takes a few hours – not forty. Nor does it require CMEs.
5. As lawyers, we are often instructed to avoid even the appearance of impropriety and that includes actual or imputed conflicts of interest. To the extent that a member of the Committee voting on this matter is a certified trainer – the Committee fails this obligation.
6. The propose rule interferes with the lawyer's obligation to represent his/her client zealously. Experienced litigators know that the selection of the "right" mediator for the matter at hand is a significant decision. The proposed Rule constrains this obligation.

I oppose the proposed Rules and respectfully suggest it would downgrade, not improve the mediation process in Florida.

Respectfully,

A handwritten signature in black ink, appearing to read "Ronald Ravikoff", written in a cursive, stylized script.

Ronald Ravikoff

Kimberly Kosch

From: Susan Marvin
Sent: Monday, July 3, 2017 2:56 PM
To: Kimberly Kosch
Subject: FW: Proposed Mediator Rules - Comment
Attachments: Certification.pdf

Susan C. Marvin, J.D.

Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Friday, June 30, 2017 1:22 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: FW: Proposed Mediator Rules - Comment

From: Sherman Humphrey [<mailto:shumphrey@jamsadr.com>]
Sent: Thursday, June 29, 2017 3:49 PM
To: DRC Mail <drcmail@flcourts.org>
Cc: judgesilverman@gmail.com
Subject: Proposed Mediator Rules - Comment

Dear Committee:

Attached is a comment on the proposed Mediator Rules for your consideration.

Thank you.

Sent on behalf of Hon. Scott J. Silverman (Ret.)

Scott J. Silverman

600 Brickell Avenue
Miami, Florida 33130
Telephone 305.542.0900
scott@the-beach.net

June 27, 2017

Committee on Alternative Dispute Resolution Rules and Policy
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

RE: Comment on the Committee's Proposed Rules

Dear Sir/Madam,

I read with great interest the Committee on Alternative Dispute Resolution Rules and Policy's (hereinafter "Committee") proposed rules to the Florida Supreme Court. Unfortunately, I am unable to support its proposal, in part, because the Committee's proposed rules, which seek to make certification for Florida lawyers mandatory, are radical and outside of the norm. Certification should remain aspirational and not mandatory for members of the Florida Bar

I am a retired circuit court judge having served nearly 22 years on the bench. While a judge, I served twice as Chair of the Florida Supreme Court's Judicial Ethics Advisory Committee and once as Chair of the Florida Bar's Committee on the Rules of Judicial Administration. At present, I work exclusively with JAMS, the largest private provider of mediation and arbitration services worldwide.

Since 1975, mediation has been an integral part of the fabric of Florida's legal system. Over 40 years have passed, and it is only *now* that the Committee deems it necessary to propose rules that would require all Florida Bar members, acting as mediators in litigated matters, to be certified.

The Committee has Not Presented Reasons or for its Proposal

The paradox of the Committee's proposal cannot be ignored. Florida lawyers are empowered to try complex cases before trial courts and argue matters of great significance before the appellate courts of our state. Everyday, Florida lawyers settle cases *without* the use of mediators - certified or non-certified. Yet, even with all of their immense responsibility, the Committee, in 2017, suggests they would be incompetent to mediate a case unless they receive a certification from the Court.¹ The Committee's proposed rules do not present compelling reasons for its proposal nor does it present an underlying rationale.

A Drastic Departure - Certification should be aspirational, but not mandatory

The Committee should refrain from creating additional bureaucracy and regulation where it is unnecessary. The proposed rules would require all attorneys who mediate litigated disputes to be certified. The Committee's proposal is a drastic departure from the way in which certification is currently viewed and treated by the Florida Supreme Court and the Florida Bar – which make certification optional. Certification is, and should continue to be, aspirational and not mandatory.

Having been engaged in the rule making process, my experience has taught me that new rules are suggested to the Court when there is a problem that needs to be solved. When that happens, it is common and expected that remedial measures will be taken. The present iteration of the proposed rules do not recite or allude to any problems or issues that the Committee is trying to remediate. Rather, the proposed rules appear to be a solution in search of a problem.

An Attempt at Mandatory Licensure, Lawyer Protectionism, & Denial of Choice

Certification by members of the Florida Bar is not mandatory. It is voluntary. While the Committee's proposal of these rules may be well intentioned, its proposal is misguided. The Committee's proposal is not comparable with any other Florida Bar Rule or Florida Supreme Court Rule, because it establishes mandatory certification where none presently exists within any area of law governed by these rules.

¹ The proposed rules would preclude a single family lawyer from mediating even a minor dispute between two divorcing spouses (assuming there are valid waivers), unless the lawyer is a certified mediator or the parties are compelled to hire a certified mediator. It is difficult to justify the additional expenses and burdens on the parties in the name of mandatory certification.

The Florida Bar's website provides, "...certification recognizes attorneys' **special knowledge, skills and proficiency** in various areas of law and **professionalism and ethics** in practice." If successful, the Committee's proposal would create a scheme of licensure that invades the province of the legislature, promotes in-state lawyer protectionism, and denies litigants and their counsel the fundamental selection of the person or people who will help them resolve their disputes.

Radically Out of Step with the Norm

Candidly, the proposed rules are radical. They would require every lawyer who mediates litigated disputes be certified. The proposal represents a drastic departure from optional certification, which has long been the accepted norm.

Florida Bar members are not currently mandated to obtain certification in any area of their practice. It is sufficient, however, to be just a member in good standing with the Florida Bar. At present,

1. The Florida Supreme Court does not require lawyers to be certified in Business Litigation in order to be commercial litigators.
2. The Florida Supreme Court does not require lawyers to be certified in Marital and Family Law in order to practice family law.
3. The Florida Supreme Court does not require prosecutors and criminal defense attorneys to be certified in Criminal Trials in order to prosecute and defend criminal matters.
4. This list can be expanded for the remaining 23 areas of certification

Yet for some unexplained reason, the Committee has decided to deviate from these long ago accepted norms and propose rules that would ask our Court to engage in extreme and unnecessary regulation.

The First Casualties: Self Determination, the Needs and Interests of the Parties, Fairness, and Procedural Flexibility

The adoption of the proposed rules would immediately defeat several core principles of mediation – self determination, the needs and interests of the parties, fairness, and procedural flexibility. See, *Rules for Certified and Court-Appointed Mediators Rule 10.230*. Ironically, these fundamental concepts would be the first victims of the rules, since they would prohibit litigants and their counsel from exercising their fundamental freedom of choice in the selection of the person who would assist them in the resolution of their dispute.

Lawyer Protectionism – Less Competition Typically Means Higher Prices for the Citizenry

The adoption of the proposed rules would impede the ability of mediators from other states from coming into Florida to help resolve state court disputes, since the rules would require they be certified. For example, at JAMS, we frequently see mediators, including retired judges, in our office from other states serving the courts by assisting parties' in the resolution of Florida cases. The decision to bring in an outside mediator is not uncommon in the world of mediation. The reasons for bringing in a mediator from another state can be due to the mediator's qualifications, experience in a particular area of the law, language, nationality, or other factors. Regardless, the most important factor for doing so is the parties and their attorneys trust the mediator they've selected. The proposed rules would end this practice and possibly send the mediation out of the state.

By eliminating uncertified attorney mediators, who may be less expensive, the proposed rules, if adopted, could increase the costs of mediation and stymie competition, since each new certified mediator will have to spend funds (about \$1,000) to be certified and experience lost time in order to meet the certification requirements.² This will likely be passed on to the consumer in the form of higher prices.

Adding to the Costs of the Bureaucracy

According to the Florida Bar website, there are 1,163 attorneys who list "Mediation" as a practice area. At the same time, the Court's ADR and Mediation web page lists, as of 2016, there are 5,784 certified mediators. There are now five standing ADR Committees/Board – all of which are staffed by the Florida Dispute Resolution Center.

Mandatory certification will most certainly drive up the cost of administering the center. Without a budget impact statement for the Court, the Committee should refrain from presenting its proposal.

Two Final Examples of Irony

The Committee wants the Court to require all lawyers to be certified in order to mediate litigated cases. At the same time, lawyers frequently sit as arbitrators in binding quasi-judicial proceedings, and they are not required to have any certification. Arbitrators can be lawyers or non-lawyers. While lawyers may sit as arbitrators making definitive

² As an aside, I am unable to locate any empirical evidence that uncertified lawyer mediators are less effective than their counterparts or that they are subject to more complaints than their certified brothers and sisters.

findings of fact and conclusions of law without any certification, the Committee seems to be of the opinion those same people would be inept at facilitating the resolution of the same disputes.

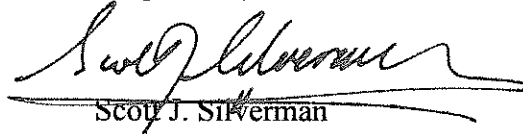
As a presiding trial court judge, the Code of Judicial Conduct authorized me to mediate cases. Canon 3B (7)(d), "A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge." The Code did not require my certification as a precondition to mediating the matter before me. Instead, the Code gave judges the option, if they desired, to become certified. Canon 5F (1).

While a judge, I was authorized and legally competent to mediate matters on the bench. However, the Committee's proposed rule suggests that I became inept or incompetent to do so the moment I retired from the bench. How very ironic.

In Closing

For the reasons expressed above, I cannot support the Committee's proposal. Their adoption will defeat the long-standing principle of self determination and serve as a radical departure from the norm of optional certification in favor of mandatory certification.

Respectfully submitted,



Scott J. Silverman

Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 8, 2017 4:29 PM
To: Kimberly Kosch
Subject: FW: Proposed changes to proposed Rules Modifications

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Thursday, June 8, 2017 4:24 PM
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: Proposed changes to proposed Rules Modifications

From: Simon M. Harrison [<mailto:simon@smharrison.com>]
Sent: Thursday, June 8, 2017 3:24 PM
To: DRC Mail <drcmail@flcourts.org>
Subject: Proposed changes to proposed Rules Modifications

Greetings!

Pursuant to the invitation of the Alternative Dispute Resolution Section of the Florida Bar to direct comments regarding proposed modifications to the Rules of Civil Procedure to the DRC, I would like to pass on the following observations relating to Rule 1.720.

- 1) Section 1.702 (j) (1) is ambiguous. I believe it is only intended to require that all Circuit Civil Mediations other than Family or Juvenile Proceedings be mediated by a certified circuit mediator, but the language "In all civil matters...the parties shall mediate with a Florida Supreme Court certified circuit mediator" could be construed not just as a directive of who can conduct the mediation, but a directive that all cases be mediated. As we know, some civil cases are excluded from Mediation (Rule 1.710 (b) (1-4)), may be properly subject to a Motion to Dispense (Rule 1.700 (b)), and in some instances the courts (at least in this circuit) are ordering nonbinding arbitration rather than mediation, so presumably the proposed change is only intended to limit who can conduct the session, rather than expand and mandate use of mediation to all cases..

I submit more language would be

"In the mediation of any pending civil actions, except those pending in county court and those governed by the Florid Family Law Rules of Procedure or the Florida Rules of Juvenile Procedure, the parties shall mediate with a Florid Supreme Court certified circuit mediator."

- 2) The proposed rule removes the entry of the order of referral as a beginning point to measure the time the parties have to select a mediator of their choosing. If that remains the triggering event than the reference should not be deleted. If the 10 days is to be measured from some event other than entry of the order of referral, it needs to be specified.
- 3) Proposed Rule 1.720 (j) (2) contemplates that if the parties cannot agree on a mediator, the plaintiff will file a Notice with the court at which point the court will make the appointment.

First, the filing of any such notice should be within 10 days of the order of referral, not within 10 days of the parties failing to reach an agreement. The parties may take several days (weeks) to realize they cannot reach agreement on this matter, and I don't believe the intent is for the time frame to remain open indefinitely.

More importantly, the suggestion that the filing of a Notice of lack of agreement will be the trigger for the court designating a mediator does not match aggressive case management procedures used in many circuits. Our case managers monitor the dockets to insure cases are moving forward and the ability for the court to designate a mediator if there is nothing in the file indicating how mediation is being handled is one of the tools they use, and any suggestion that the filing of a notice by plaintiff would be the trigger for court selection of a mediator is problematic (and probably not what was intended).

I suggest the following:

In the event the parties agree upon a Florida Supreme Court certified circuit mediator within 10 days after entry of an order of referral, the plaintiff or petitioner shall file a Notice of Designation of Mediator with the court. If the parties are unable to agree upon a Florida Supreme Court certified circuit mediator, the plaintiff or petitioner shall, within 10 days after entry of an order of referral, so notify the court. If no Notice of Designation of Mediator is filed within 10 days of the Order of Referral, the court may select a Florida Supreme Court certified circuit mediator to conduct the mediation. At the request of any party prior to appointment of a mediator by the court, the court shall select a Florida Supreme Court certified circuit mediator who is also licensed to practice law in any United States jurisdiction.

Please note that in case there are circuits in which the cases are not as aggressively monitored by case management such that notice from counsel is needed to trigger action on court appointment of a mediator, the filing requirement as to failure to agree on a mediator remains. However, it is now clear that after 10 days the court can proceed regardless of whether the notice has been filed.

Thank you for this opportunity to voice my concerns.

Simon

Simon M. Harrison, Esq.

P.O. Box 07372

Fort Myers, FL 33919

(239) 433-4505

Simon@SMHarrison.com

www.smharrison.com

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Kimberly Kosch

From: DRC Mail
Sent: Friday, July 7, 2017 7:58 AM
To: Kimberly Kosch
Subject: Fw: New Nightmare: Proposed Mediation Rules

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Phone: (850) 921-2910 Fax: (850) 922-9290

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From: Stephanie Seligman <sseligman@pti.insure>
Sent: Thursday, July 6, 2017 10:21 PM
To: DRC Mail
Cc: Peter Abrahan email
Subject: New Nightmare: Proposed Mediation Rules

This is the worst idea, ever. Anyone who thought this was a good idea has never actually practiced law. Seriously, people! Why take this choice away from us???

Stephanie Seligman ☞

Sent from my iPhone



**KATZMAN WASSERMAN
BENNARDINI & RUBINSTEIN**

(561) 477-7774

Boca Raton
REPLY TO: *Via E-mail Only*

June 28, 2017

Florida Dispute Resolution Center
Supreme Court Building
500 S. Duval Street
Tallahassee, FL 32399
DRCmail@flcourts.org

**RE: Proposed revision of Court procedural rules regarding the
appointment and selection of Florida Supreme Court Certified
Mediators in court cases**

Dear Sir/Madam:

I understand that your committee is considering filing a petition with The Florida Supreme Court to seek a requirement that only certified mediators can mediate cases filed in Florida's state courts. I strongly oppose any such petition.

I was admitted to The Florida Bar in 1983. Since that time, I have participated in countless meditations in numerous practice areas, primarily involving commercial litigation, legal malpractice, securities, and partnership and employment disputes. The critical factor to a successful mediation is not the certification of the mediator, but rather the mediator's knowledge of the practice area, ability to relate to the parties and the parties' counsel, and, of course, to assist the parties in reaching a resolution of their case. In choosing a mediator, I consider these factors, along with the mediator's reputation. My choice of mediator has never been based upon whether the mediator is certified.

While training and certification certainly has value, mediation experience and the result of the process is what matters most. So, just as lawyers have the option to seek and obtain board certification in certain areas, one's status as a lawyer in good standing should be and is the only requirement to the practice of law. The same should be true of mediators. If a lawyer mediator desires certification, and feels that such certification will benefit his or her mediation skills and/or make them a more desirable mediator, they should be free to seek certification. But, the Bar should not preclude those without the certification from serving

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BOCA CORPORATE PLAZA, SUITE 140
7900 GLADES ROAD
BOCA RATON, FLORIDA 33434
TELEPHONE 561/477-7774
FACSIMILE 561/477-7447

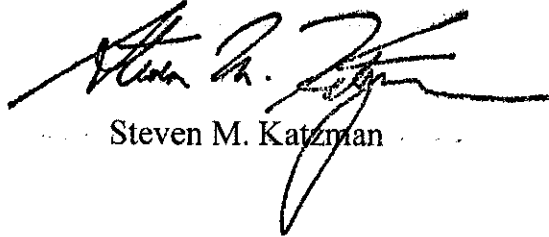
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as mediators. Rather, the Bar should trust Florida's lawyers to choose the mediator that is best suited to help resolve their cases.

Finally, I note that no such requirement exists in Florida's federal courts. The proposed requirement is a solution without a problem. I respectfully suggest that we maintain the status quo.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven M. Katzman", with a large, stylized flourish extending from the end of the signature.

Steven M. Katzman

SMK/mm

Kimberly Kosch

From: DRC Mail
Sent: Thursday, June 29, 2017 7:37 AM
To: Kimberly Kosch
Subject: Fw: Proposed Revision of Court Procedural Rules Re: Mediators
Attachments: DRC. Mediators 6.28.17.pdf

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From: Michelle Mize <mrm@kwblaw.com>
Sent: Wednesday, June 28, 2017 3:45 PM
To: DRC Mail
Cc: Steven Katzman
Subject: Proposed Revision of Court Procedural Rules Re: Mediators

Please see attached correspondence from Steven M. Katzman, Esq. regarding the above-referenced matter.

Thank you.

Michelle R. Mize
Legal Assistant to Steven M. Katzman, Esq.
and Craig A. Rubinstein, Esq.
Katzman Wasserman Bennardini
& Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
Tel: (561) 477-7774
Fax: (561) 477-7447
mrm@kwblaw.com

Kimberly Kosch

From: DRC Mail
Sent: Monday, June 26, 2017 8:08 AM
To: Kimberly Kosch
Subject: Fw: Proposed Change in Parties' Freedom to Select Mediators

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Phone: (850) 921-2910 Fax: (850) 922-9290

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From: Meeks, Thomas J. <tmeeeks@carltonfields.com>

Sent: Sunday, June 25, 2017 7:39 PM

To: DRC Mail

Cc: William J. Schifino, Jr.; M. Higer; michelle@suskauerfeuer.com; john@alpizarlaw.com; deborah.baker@gmlaw.com; TBopp@bankerlopez.com; lornab@lebburtonlaw.com; burgoon@burgoonlaw.com; josh@jpfirm.com; jcohen@jaycohenlaw.com; icomisky@foxrothschild.com; sdavis@bsfllp.com; sdiamond@wdclaw.com; sechsner@awkolaw.com; dori@fostermorales.com; ffranklin@rtlaw.com; whelsby@anblaw.com; hickey@hickeylawfirm.com; michael.hooker@phelps.com; dkainen@wkm-law.com; jay@manuelthompson.com; jkim@kvllaw.com; glessner@lesserlawfirm.com; llile@lile-hayes.com; sam@sammasterslegal.com; margaret.mathews@akerman.com; emeeks@meekslawfirm.com; sharonbmiddle10@gmail.com; kmiller@surfcoastlaw.com; maryann@billingslawfirm.com; edmyrtetus@goodmanallen.com; richard.nail@gray-robinson.com; rponzoli@richmangreer.com; arabin@mccaberabin.com; arabinowitz@broadandcassel.com; bwr@rkkattorneys.com; roland@smgqlaw.com; psangi@forthepeople.com; Diana Santa Maria; cschwait@gmail.com; lscriven@trenam.com; larry.sellers@hklaw.com; marcy@mlshawlaw.com; wsmith@thesmithlawfirm.com; John Stewart; mtanner@tannerbishoplaw.com; rthompson@uww-adr.com; lwttyree@gmail.com; mvsansickle@broadandcassel.com; swestheimer@smrl.com; Persante Law

Subject: Proposed Change in Parties' Freedom to Select Mediators

I would like to register my opposition, as a member of the Bar who litigates and often engages in mediation, to the proposal to prohibit non-certified mediators in Florida cases.

In my view, the first and most important decision for mediation is selection of the mediator who is most qualified to help the parties achieve a settlement. For virtually my entire professional life, parties have had the right to select whomever they, with the advice of their lawyers, decided was best suited to mediate their cases. I know of no reason why the citizens of Florida who find themselves in a lawsuit should be deprived of this right when both sides of the litigation agree to a particular mediator.

The Committee's proposal does not take into account the realities of modern mediation, in which it is often best to select a mediator who, by virtue of having practiced extensively in an area as a lawyer, is well versed in a particular field. Many such subject matter experts, while ideal in particular cases, are not certified. The proposed rule will do more harm than good in such cases with special needs.

Beyond that, the strictures on certified mediators are sometimes counterproductive. My understanding is there are two major schools of mediation – facilitative and evaluative. In my experience, facilitative mediators more often than not are merely messengers communicating demands and offers. Mediations conducted by such “bumblebee” mediators, even if they are certified by the Supreme Court of Florida, are rarely successful.

The best mediators in my experience are at least somewhat evaluative. It can be immensely valuable to have clients hear about the weakness in their cases directly from a mediator; an impartial but focused analysis by a mediator is sometimes a more palatable way to accept problems inherent in a case, if it goes to trial, than hearing it from one's lawyer. I am not talking about browbeating clients; in my experience, the most talented evaluative mediators are courteous and respectful. They know when and how to be evaluative.

The importance of evaluative mediation should not be dismissed. Cases which I believed would never settle at mediation have settled when evaluative mediators have given straightforward opinions about them. My understanding is statements of that sort—to the effect that there are problems with the case that the client should take into account—are prohibited by Rule 10.370(c) of the Florida rules for certified mediators. I know at least one very fine, experienced mediator who has chosen not to be certified so that he is not subject to Rule 10.370(c). In my opinion, the parties and their counsel must have the freedom to choose a mediator who can freely discuss the pros and cons of a case, and give his or her opinion on those issues free from the constraints of this rule. The Committee's proposed rule would eliminate this freedom of choice and impede the settlement of complex cases where sophisticated parties are represented by competent counsel.

For these reasons, I urge that the Committee on Alternative Dispute Resolution Rules and Policy not propose this rule. Mediation has become an extremely valuable means of concluding cases quickly and economically, and the lawyers of this state—and their clients—should not be deprived of the ability to choose the mediators they think are best qualified in particular cases.



Thomas J. Meeks
Attorney at Law

Miami Tower
100 S.E. Second St., Ste. 4200
Miami, Florida 33131-2113
Direct: 305.530.4063 | Fax: 305.530.0055

tmeeks@carltonfields.com | www.carltonfields.com
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Kimberly Kosch

From: DRC Mail
Sent: Thursday, July 6, 2017 9:20 AM
To: Kimberly Kosch
Subject: Fw: Mediator Proposal

FLORIDA DISPUTE RESOLUTION CENTER
Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: tspencer@spencerpa.com <tspencer@spencerpa.com>
Sent: Thursday, July 6, 2017 8:12 AM
To: DRC Mail
Subject: Mediator Proposal

A rule that unnecessarily limits self-determination undermines the mediation process and threatens to undermine public confidence in this key component of our civil justice system. We urge the bar leadership and all lawyers to speak up to preserve your right to select the mediator of your choice



Thomas R. Spencer
Thomas R. Spencer, PA
(305) 648-0940 ofc
(305) 790-4715 mobile
2655 LeJeune Road
Fifth Floor
Coral Gables, Florida 33134
tspencer@spencerpa.com
www.spencerpa.com

Kimberly Kosch

From: DRC Mail
Sent: Monday, June 12, 2017 8:13 AM
To: Kimberly Kosch
Subject: Fw: Response to Proposed Changes

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Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1900
Phone: (850) 921-2910 Fax: (850) 922-9290
Website: www.flcourts.org click on Resources and Services

From: Tom Caprio <go2mediation@aol.com>
Sent: Sunday, June 11, 2017 5:10 PM
To: DRC Mail
Subject: Response to Proposed Changes

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

In commenting on the proposed changes, I feel that the they only serves to reduce the freedom of the parties to choose who they believe can best assist them and they give more control to the D.R.C. and the training organizations. The legal system and the public sector can do a fine job of weeding out people who are not skilled or capable of providing adequate mediation services. Word spreads fast in those circles.

I truly don't think imposing more restrictions, which only create more hoops for people to go through, is going to accomplish anything other than creating more income for Mediation training groups and the D.R.C.

I would much rather see stricter standards for the training organizations regarding truth in advertising. They make false promises of significant income after taking a 40 hour training to people who are often struggling to keep their financial heads above water or are hoping to significantly increase their incomes. Once the course is completed, many trainees are given no assistance in getting their observations and are left to flounder as they seek to make good on the dream they recently bought and paid for. In reality, I have found the vast majority of non-lawyers who take their training don't get a mediation within a year after finishing their training and many never earn as a mediator more than they paid for their training. I see them all the time; coming to me for observations. It is no different that the get rich quick scams we all get in our emails. (How about them giving a little honesty here? Well, they wouldn't have full classes then.) Where is the ethical oversight for this area of mediation?

Thomas Caprio
Certification #: 238 F
(561)-310-2141
go2mediation@aol.com
www.capriomediacion.com

Kimberly Kosch

From: Susan Marvin
Sent: Wednesday, May 31, 2017 4:45 PM
To: Kimberly Kosch
Subject: FW: Comments Requested: Proposed Revision of Court Procedural Rules

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Wednesday, May 31, 2017 1:44 PM
To: Susan Marvin <marvins@flcourts.org>; Juan Collins <collinsj@flcourts.org>
Subject: Fw: Comments Requested: Proposed Revision of Court Procedural Rules

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Phone: (850) 921-2910 Fax: (850) 922-9290

Website: www.flcourts.org click on Resources and Services

From: tom lewis <atty32301@gmail.com>
Sent: Wednesday, May 31, 2017 1:22 PM
To: DRC Mail
Subject: Fwd: Comments Requested: Proposed Revision of Court Procedural Rules

I strongly support the Rule changes recommended by the ADR Committee. One of the major challenges I have faced as a New Mediator (Dec 2014) is breaking into Mediation Assignments. I attend the ADR Conference, aware of all requirements, especially Ethics.... We need the ground rules to be level...the same for all. ONLY CERTIFIED MEDIATORS SHOULD BE ALLOWED TO PERFORM THESE MEDIATIONS..

Thank you for opportunity to comment.

Tom

Kimberly Kosch

From: Susan Marvin
Sent: Thursday, June 8, 2017 9:39 AM
To: Kimberly Kosch
Subject: FW: Rules change

Susan C. Marvin, J.D.
Chief of Alternative Dispute Resolution
Florida Dispute Resolution Center
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1905
Phone: 850-921-2910
Fax: 850-922-9290
E-mail: marvins@flcourts.org

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From: DRC Mail
Sent: Thursday, June 8, 2017 9:35 AM
To: Susan Marvin <marvins@flcourts.org>
Cc: Juan Collins <collinsj@flcourts.org>
Subject: FW: Rules change

From: Victoria Platzer [<mailto:vp@vplatzer.com>]
Sent: Wednesday, June 7, 2017 6:26 PM
To: DRC Mail <drcmail@flcourts.org>
Subject: Rules change

This rule change is a bad idea. Attorneys often want evaluative mediations which are not permitted by the mediation rules. Additionally as a retired judge I am precluded from using my 18 years of judicial service as part of my qualifications if I am certified. So what, I have to suggest an 18 year gap in my legal career to comply? This is a really bad idea created to help line the pockets of a select few involved in its proposal.

Victoria Platzer
Former Circuit Court Judge
Mediator/Arbitrator/Litigation Consultant

201 Alhambra Circle | Suite 1205 Coral Gables, Florida