Message from the Director

Keeping Your Mediator Skills Honed: Interpersonal Violence CME

Have you ever pondered the necessity of the requirements for domestic violence continuing mediator education (CME) due to conducting many mediations in which domestic violence was not a factor? Perhaps that is the very time at which the required CME can serve to keep us alert to the indicators of DV and enable us as mediators to have our sensitivity renewed so that we are more likely to recognize the signs of DV when they do occur. Keeping ourselves alert and trained regarding DV as mediators may be likened to the training and preparation of bailiffs who keep a courthouse secure. Despite the fact that there may be no security incidents in the courthouse for years, bailiffs keep up their active shooter, weapons, and other training and continue to be vigilant so as to be prepared in case a violent incident does arise. Domestic violence may not be an issue in circuit, county, small claims, and appellate mediations as often as it is in family and dependency mediations; however, there is no guarantee that DV issues will never arise in all types of mediations. The very fact that DV issues may not be as obvious or common in certain cases makes it all the more imperative that mediators know the subtle, less obvious indicators.

You may have noticed changes in the terminology being used and subject matters being studied and taught regarding violence in relationships in recent years. In order to move forward with the times, the definition of domestic violence education for CME has been expanded and the requirement will now be known as interpersonal violence education. Interpersonal violence education includes the following subject matter: domestic violence; stalking; repeat violence; dating violence; child abuse; child neglect; abuse of vulnerable adults; human trafficking; animal cruelty; workplace violence; physical and emotional safety and security; trauma informed responses; suicide prevention, awareness and risk factors; and self-harm (not suicidal). The overall CME requirements are not changing and for each two-year renewal certified county and circuit mediators are still required to report 2 hours of interpersonal violence education and family and dependency mediators are still required to report 4 hours of interpersonal violence education.
With the inclusion of expanded topics which qualify as interpersonal violence CME, mediators have more opportunities for obtaining the CME hours. Risette Posey’s article in this newsletter provides creative ideas for discovering CME resources we may not have thought of previously. Additionally, while sitting at home on the computer, we can all periodically check the Florida Supreme Court website under Resources & Services, Family Courts, domestic violence and choose from the following tabs: videos & webinars, virtual court, Links, or Training Modules to select free training on the topics that qualify for CME. The links to the training are: http://www.flcourts.org/resources-and-services/court-improvement/family-courts/domestic-violence/FIIVvideo.stml ;http://virtualcourt.flcourts.org/ (You will need to request a password to use this training.); http://www.flcourts.org/resources-and-services/court-improvement/family-courts/domestic-violence/FIIVadditional.stml; http://www.flcourts.org/resources-and-services/court-improvement/family-courts/domestic-violence/FIIVtraining.stml

Like court bailiffs who are ready, willing, and trained to ensure safety regardless of the frequency of violent incidents, mediator excellence includes being prepared for and sensitive to interpersonal violence issues that may arise in mediation so that we may continue to be the guardians of the process, honor all parties’ rights of self-determination, and instill public confidence in the process.

ADR News and Updates

DRC Conducts Two Continuing Mediator Education Programs in January

The DRC conducted two continuing mediator education programs in January. The first program was held on January 13, 2017, in Fort Lauderdale at the Broward County Courthouse. ADR Director Jeanne Potthoff served as local host and Chief of ADR Susan Marvin conducted the program. Over 40 court program mediators (volunteers, contractors and staff) were in attendance.

The second program was presented on January 20, 2017, in Panama City at the Bay County Courthouse. Chief of ADR Susan Marvin and Senior Court Operations Consultant Kimberly Kosch conducted the program. Over 40 mediators from the circuit participated in the training. Both training programs were 6 hours in length and covered mediator ethics, domestic violence education and an interactive exercise on cultural diversity.
The DRC’s commitment to offering free local mediator professionalism training for court mediators across Florida supports a professional, ethical and skilled judiciary and workforce, one of the issues highlighted in the Supreme Court’s 2016-2021 Long-Range Strategic Plan.

DRC by the Numbers: 2016 Edition

A total of 72 certified mediation training programs were conducted in 2016. In those programs, a total of 828 persons completed training. Starting with the lowest: 23 people completed training in four appellate mediation programs; 25 people completed training in two dependency mediation programs; 193 people completed training in 15 family mediation programs; 221 people completed training in 16 circuit mediation programs; and 366 people completed training in 35 county mediation programs.

The DRC certified a total of 630 new mediators in 2016 with an average of 53 applications processed monthly. A total of 2,166 mediators were renewed with an average of 182 renewal applications processed each month. Interestingly, the highs and lows by month occurred in the same month with the fewest amount of applications and renewals processed during November and the highest amount of applications and renewals processed during the month of March. Looks like we might be extra busy this month!

A Few Reminders about Mediator Renewal

The requirement for Continuing Mediator Education (CME) documentation has ended. This means that unless you are notified that you have been randomly selected for audit at the time of renewal, you do not need to provide documentation of your CME activities. The documentation is the only change and all CME requirements must be met before a renewal will be processed. The DRC mentions this as there has been a slight, but notable, increase in renewals being received without any CME hours reported.

Another area regarding renewal that may not be clear is lapsed renewals. Specifically, your renewal date does not change when you have lapsed. While a mediator can renew for up to one full year with penalties, it does not change when your renewal date occurs. Mediators renew on a two-year schedule, so if you wait a full year to renew, your next renewal date will be in one year on your regularly scheduled renewal date.
Finally, please note that you will receive an official Renewal Approved notice via email the first week of your renewal month. You can check the Mediator Search function of our website if you would like to verify that your renewal has been updated before that.

The Florida Supreme Court Welcomes C. Alan Lawson

The newest Florida Supreme Court justice is C. Alan Lawson. Justice Lawson was most recently the Chief Judge at the Fifth District Court of Appeal. He has devoted the past 20 years of his life serving the State of Florida and has gained considerable experience on civil cases and appellate issues.

"I will bring to the bench the respect, integrity, and experience upon which I have built my career," he said in a statement. "I look forward to working with my fellow associates on the court to uphold the Constitution of the State of Florida and protect the future of our great state."

Justice Lawson was a contender for a Supreme Court seat in 2009 that ultimately went to Justice James E.C. Perry who retired in December 2016 and whose seat Lawson took.

A Lakeland native, Lawson grew up in Tallahassee, attending Tallahassee Community College before earning a bachelor’s degree at Clemson University. He returned to Tallahassee to attend law school and finished second in his graduating class at Florida State University College of Law in 1987. You may be familiar with another member of that graduating class, our current chief of ADR, Susan Marvin.

Justice Lawson, has been married to his wife, Julie Carlton Lawson, since 1987, and they have two grown children.

Court Interpreters at Mediation

On March 5, 2015, the Florida Supreme Court adopted amendments to court rules relating to court interpreting services in In re: Amendments to the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters, 159 So. 3d 804 (Fla. 2015). A definition of “court interpreter” was added to rule 14.100 in subsection (a) to include “any person providing spoken language court interpreting services during a court or court-related proceeding, except persons performing such services without remuneration on behalf of indigent persons in circumstances not requiring appointment of a court interpreter.” The word “indigent” was later removed from the definition, in amendments adopted in October, and replaced by the less specific term “persons demonstrating an inability to pay.” See In re: Amendments to Fla. Rules for Certification & Regulation of Spoken Language Court Interpreters, 176 So. 3d 256 (Fla. 2015). No guidance was provided regarding what constitutes an
“inability to pay” or who would determine that a person qualifies for that status. It can be argued that the definition is important because it exempts persons with an inability to pay for interpreter services from retaining an interpreter who meets the requirements of rule 2.565, Florida Rules of Judicial Administration, instead such persons could bring an interpreter who is not certified, language skilled or provisionally approved to mediation as long as the interpreter does not receive remuneration.

The March 2015 amendments to rule 10.400, in subsections (f) – (h), (q) and (r), also provided definitions of “court,” “court proceeding,” “court-related proceeding,” “transcription,” and “translation.” Importantly, the court expressed its intent that high-quality court interpreting services be provided “throughout the court system,” including in ancillary activities such as mediation and arbitration. 159 So. 3d at 805.

Upon the court’s request, additional amendments to rule 2.560, and new rule 2.565, Florida Rules of Judicial Administration, were subsequently filed by the Court Interpreter Certification Board and the Rules of Judicial Administration Committee. See In re: Amendments to Florida Rules of Judicial Administration, 176 So. 3d 267 (Fla. 2015). The Court adopted the amendments and rule on October 1, 2015, effective immediately. The amendments to rule 2.560 include the expansion of the application of the rule to “limited-English-proficient” persons and a definition of that term in subsection (g)(1). Id. at 267 and 270. Under rule 2.560(a) & (b), the court shall appoint an interpreter in criminal and juvenile delinquency proceedings and in proceedings where a fundamental interest is involved, such as civil commitment, termination of parental rights, paternity, or dependency proceedings. “Proceeding” is defined in subsection (4)(h) as “any hearing or trial, excluding an administrative hearing or trial, presided over by a judge, general magistrate, special magistrate, or hearing officer within the state courts.”

Significantly, rule 2.565, regarding the retention of court interpreters by attorneys or self-represented litigants applies to “court-related proceedings” as defined in rule 14.100(h), Florida Rules for Certification and Regulation of Spoken Language Court Interpreters, to include mediation and arbitration. According to rule 2.565(a), if the court is not required to appoint a spoken language interpreter under rule 2.560, when one is needed for a litigant in a court-related proceeding, an attorney or self-represented litigant “shall whenever possible, retain a certified, language skilled or provisionally approved interpreter, as defined in the Rules for Certification and Regulation of Spoken Language Court Interpreters.” The requirement of rule 2.565 that a certified, language skilled or provisionally approved interpreter be retained by litigants or attorneys when such services are needed, should improve the quality of court interpreter services provided in mediation and arbitration and will have a financial impact on parties and attorneys.

Further amendments to rules 2.560(e)(3) & (5) and rule 2.565(f), Fla. R. Jud. Admin., which do not appear to directly impact mediation and arbitration, were adopted by the Court on December 8, 2016. See In re: Amendments to Florida Rules of Judicial Administration, 206 So. 3d 1 (Fla. 2016).

Additional information regarding court interpreters may be found in the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters which include definitions, provisions regarding the registration and designations of interpreters, a code of professional conduct, and a disciplinary process for court interpreters.
Parenting Coordinator Discipline Operating Procedures Adopted

On March 13, 2017, the Florida Supreme Court issued In re: Parenting Coordinator Operating Procedures, Fla. Admin. Order No. AOSC 17-18 (March 13, 2017), adopting Parenting Coordinator Discipline Operating Procedures which will be used to implement the disciplinary process provided for in rule 15.210, Florida Rules for Qualified and Court-Appointed Parenting Coordinators (the PC rules). The administrative order was followed by a letter from the Clerk of Court to Judge Rodney Smith, Chair of the Committee on ADR Rules and Policy, requesting, on behalf of the Court, that the committee review the operating procedures and develop new rules of discipline to be added to Part II of the PC rules and file a rules petition by December 1, 2017. Once the draft rules are created, the committee will publish them for comment prior to filing a petition.

Court Recommends Eliminating Six County Court Judge Positions

In a recent report to the Florida Legislature, the Florida Supreme Court wrote that after examining workloads, six county judge positions could be eliminated. The report recommends eliminating one position each in Brevard, Charlotte, Collier, Monroe, Pasco and Putnam counties.

The Court noted that it did not take this step lightly; rather, it did so recognizing that they must remain consistent in their application of the workload methodology and their obligations under the Florida Constitution.

The workload study has been a massive judicial branch undertaking and demonstrates commitment to full documentation and transparency in the evaluation of judicial workload, the recommendations said.

In relaying this information, the DRC notes how important county court mediators will continue to be to their local court programs.

Collaborative Law Update

Collaborative Law (CL) is a voluntary settlement process in which parties sign an agreement to participate. The process is intended to resolve dissolution of marriage and paternity matters without the intervention of a person or body acting in an adjudicative capacity. An essential element of CL is that the communications made during the process are confidential, not subject to discovery, and not admissible into evidence in the event the parties do not agree to a resolution of the issues and then seek a judicial decision. During the CL process, each party has an attorney who is barred from representing them in litigation if no agreement is reached. Mental health and financial professionals often are part of the CL team.
On September 16, 2016, The Florida Bar and the Florida Family Law Rules Committee filed a petition to adopt proposed Rule 4-1.19 Regulating The Florida Bar and proposed Florida Family Law Rule of Procedure 12.745 in response to the Collaborative Law Process Act, sections 61.55-61.58, Florida Statutes. The act provides that is does not take effect until 30 days after the court adopts rules of procedure and professional responsibility consistent with it. Rule 4-1.19 addresses the professional conduct portion of the act and rule 12.745 provides the court procedures for CL.

After hearing oral argument on the rules, the Supreme Court of Florida released In re: Amendments to Rule Regulating The Florida Bar 4-1.19 and Florida Family Law Rule of Procedure 12.745 (Collaborative Law Process), SC16-1685 (Fla. Feb. 15, 2017). The Court requested that The Florida Bar and the Family Law Rules Committee file an amended proposal for Rule Regulating The Florida Bar 4-1.19 to include “provisions requiring collaborative lawyers to inform clients as to the fees or costs the client can reasonably expect to incur in the process, including the lawyer’s fees and reasonable fees for mental health and financial professionals.” The amended proposal must be filed with the Court on or before May 16, 2017.

Oral Arguments can be viewed at Gavel to Gavel, the Florida Supreme Court’s Online Video Portal.

Mediator Ethics Advisory Committee (MEAC)

The Mediator Ethics Advisory Committee provides ethical guidance to certified or court-appointed mediators. If you have an ethical question for the Committee, you may address your question to the Committee c/o Dispute Resolution Center, 500 S. Duval Street, Tallahassee, FL 32399.

The MEAC Opinion page on our website was recently updated to make it easier to navigate. Three opinions have been issued in recent months and have been posted on the MEAC Opinion Page.

Mediator Qualifications Dispute Resolution Board (MQDRB)

The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. To date, 245 grievances have been filed. A table showing the breakdown of cases filed in 2016 is below:

<table>
<thead>
<tr>
<th>2016 – Total of 23 Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cases by Division</strong></td>
</tr>
<tr>
<td>Northern – 3</td>
</tr>
<tr>
<td>Central – 15</td>
</tr>
<tr>
<td>Southern – 5</td>
</tr>
</tbody>
</table>

Certified Mediator / No Case – 2
Non-Certified Mediator / Family Case – 1
Non-Certified Mediator / Circuit Case – 1

Gavel to Gavel
The MQDRB welcomes several new and returning members, appointed in January 2017, to serve four-year terms.

**Northern Division Members**

Edward Birk  
Carolyn Davis Cummings  
Robin Davis  
Carol Dunaway  
Laura Beth Faragasso  
Alyce Flournoy-Jones  
Julie Hilton  
Kate Marshman  
The Honorable June McKinney  
Mike Nichols  
C. Len Rutherford  
Jana Sullivan

**Central Division Members**

Michelle Artman-Smith  
Heather Blanton  
Michael Carter  
Kim Joyner Diaz  
Eric Dunlap  
Eileen Griffin  
Louise Halvey  
Nancy Mag  
Kimberly Mann  
Bonnie Marmor  
Raymond McNeal  
Yolanda Romagnolo  
Omaemo Shobola  
Carol Williams  
J. Forrest Young

**Southern Division Members**

Sanaz Sonya Dabiri-Nasser  
Salvatore Gardino  
Michael Kamen  
Valerie Kiffin-Lewis  
Steven Leigh  
Joan Levy
More information on mediator rules, discipline and sanctions is located on our website.

Featured Articles

Craft Your Own Continuing Mediator Education
by Risette Posey, ADR Rules and Policy Committee Member

One of the best things about the Florida Continuing Mediator Education (CME) training requirements is their inherent versatility. When the Committee on ADR Rules and Policy created the CME requirements, they focused on making sure training was accessible to every mediator, regardless of their location or livelihood. They considered the requirement to stay abreast of changes in the field, and paired that with the needs of a state where people live and practice in widely varying locations with different access to and resources for training. They thought seriously about the differences in context for practicing mediation [making a living as opposed to volunteering as a retiree] then created guidelines that allow any mediator to use a range of resources to enhance their individual mediation skills.

According to In re: Procedures Governing Certification of Mediators, No. AOSC11-1 (Fla. Jan 10, 2011), CME hours fall into two categories – live or non-live. Only half of continuing education hours must be live, and it’s the mediator’s choice as to which venues and methods to use for obtaining CME hours. As an example, appellate mediators must have four hours of CME specific to appellate mediation. Those four hours need not be live – they certainly can be – but it’s not required. As long as half of all continuing mediation education training is live, the requirement has been met.

By using locally available resources, CME training can be easy to obtain, low cost, available anywhere, substantive, and individual to a particular mediator’s needs. A mediator who wants to learn more about a specific topic that is relevant to her practice doesn’t have to wait for a conference or workshop. She can put together the resources she needs to create a training and meet that need.

Mediators can go hear visiting lecturers at a local university or community college as continuing education. They might visit local churches to hear invited guests. They could attend community workshops. They can obtain CME hours in their individual court programs when it’s available. They may watch relevant DVDs available in local libraries for their training. As long as the information presented is
“significant, current, intellectual or practical content that constitutes an organized program of learning directly related to the practice of mediation,” it can be counted as training.

If you want to get all your training from conferences and workshops, you can certainly do that, but any CME requirement can be met by independent study. Thanks to the foresight of the Florida courts, you can craft or build your own training as long as it meets the requirements.

*Note by the DRC: For mediators who are employed by the circuit court ADR programs, CME fulfills Goals 5.1 and 5.3, Long-Range Strategic Plan for the Florida Judicial Branch 2016-2021.

Evolution of the Mediation Profession – Cultural Diversity
by Rodney Romano

This is part one of a series that will address the potential for the evolution of the Alternate Dispute Resolution/Mediation practice (hereinafter collectively referred to as “DR[^2]”). The writer begins with the premise that certified mediators should reflect the cultural diversity of the population they serve.

The writer’s hypothesis is that in Florida, minorities are underrepresented among certified mediators[^3] in general and are dramatically underrepresented among those who earn a full time living in the DR practice.[^4]

According to DRC statistical data:

caucasians comprise approximately
67% of county mediators,
68% of family mediators,
73% of circuit court mediators, and

[^1]: A full time mediator since 2000, Mr. Romano has conducted more than 7,000 circuit civil mediations over more than 22,000 hours. He is the co-founder of Matrix Mediation, LLC, which has offices in Palm Beach, Martin and Broward counties. He is a member of The Florida Bar and is a former Florida Bar Board Certified Civil Trial Lawyer.
[^2]: The writer posits that mediation and arbitration are no longer the alternatives to resolution by verdict; rather they have become the primary method for resolving disputes, and judicial determinations, such as verdicts, have become the alternative. Therefore, the term should be “DR” rather than “ADR.” DR is integral to the judicial system; Florida enjoys a judiciary that appreciates and supports the value of DR as an important tool.
[^3]: To make the article more readable, the term “mediator” is used generically to refer to mediators, arbitrators, private judges, and private special magistrates.
[^4]: The writer defines “full time income” as the amount of money that a particular person needs to earn to meet his/her financial needs without supplementation from another source. It is hoped that a future survey of actual Florida certified mediators can be accomplished to learn whether they evaluate their incomes as “full-time.” In the meantime, according to the United States Bureau of Labor Statistics, [https://www.bls.gov/ooh/legal/arbitrators-mediators-and-conciliators.htm#tab-5](https://www.bls.gov/ooh/legal/arbitrators-mediators-and-conciliators.htm#tab-5), the median income for mediators in America is $58,020, meaning half earn less and half earn more than that amount. The lowest 10% earned less than $32,440 and the top 10% earned more than $118,090.
78% of dependency mediators.

The writer posits that the disproportion is significantly greater among the much smaller population of mediators who earn a full time living in the DR profession. Yet, among Florida residents, Hispanics make up about 23% and Black/African Americans make up more than 16% of Florida’s population.5

Currently, mediators mostly consist of white men and women. No judgment, I am one. Maybe the mediation profession – and the population it serves – would be better with the broader perspective that comes from diverse life experiences, which in turn come in part from cultural diversity.

If the statistics show that minorities are unrepresented in the DR profession then the question becomes: How can the DR profession cultivate culturally diverse professionals? Mediators – especially circuit civil mediators – come primarily from the professions of law. It appears that the highest demand is for mediators who have backgrounds as trial lawyers. If this is true, then it would seem that the cure begins in law school admissions.

Studies indicate that only a small percentage of certified mediators achieve their desired success levels;6 in my anecdotal experience, it’s about 10%. You can see the problem. If only 10% of all lawyers who take up mediation are successful, and if they all have trial backgrounds, then the cultural diversity pool is shallow. Thus, the pool must be deepened years in advance in order to achieve greater cultural diversity within the mediation profession.

Mediation is a great profession, and arguably has brought one of the most profound and impactful changes in the Florida litigation process in the last century. For those who possess the passion for, and dedication to, this craft, DR presents an opportunity to make a good living and achieve balance between professional and personal pursuits.

I’d like to be a part of the change that makes the profession more diverse, wouldn’t you? Helping to create a rich pool of culturally diverse certified mediators within the ADR profession is one way to do that.

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News From the Field

Save the Date

The DRC’s 25th Annual Conference, *Passion, Purpose & Peacemaking: 25 Years of Service*, will be held on August 10-12, 2017, and will once again be at the JW Marriott Grande Lakes in Orlando, Florida.

Links and Other Resources

Convention Recordings International has updated their website to have a specific section for mediators which should make it even easier locate CME audio recordings. Please note the new website address is [https://cmerecordings.com](https://cmerecordings.com).

The Disaster Resistant Community Group offers a [Just in Time Disaster Training Library](https://cmerecordings.com) of free online videos. Many disaster threats are featured in the Business/Workplace Section of the library that contains topics on security and workplace violence suitable for CME credit under the expanded interpersonal violence education definition.

Notable Achievements and Milestones

History Miami Museum and the 11th Judicial Circuit Historical Society honored Melvia B. Green as one of the 2016 recipients of the prestigious *Legal Legend Award* at a ceremony on November 3, 2016. The Legal Legends Award is bestowed on lawyers, judges, and community activists who have made substantial contributions to the law, legal system, and administration of justice in South Florida for at least 25 years.

The following was said about Ms. Green who is a Florida Supreme Court certified appellate and circuit mediator and member of the Committee on ADR Rules and Policy, “Melvia Green is the definition of a trailblazer. After serving as the first black woman Assistant US Attorney in the Southern District of Florida, she then served as a County Court Judge before her appointment as the first black woman Circuit Court Judge in the State of Florida. She has been the only black woman to serve in that capacity in the 100-year history of the Eleventh Judicial Circuit. She was then appointed as the first and only black woman to serve on the Third District Court of Appeal. Before her retirement in 2008, her distinguished judicial career spanned 22 years.” A video of Ms. Green expressing her gratitude for the award may be found at the [HistoryMiami](https://historymiami.org) website.

**Joseph C. Meux, Sr.,** a legal aid champion in Jacksonville, Florida, will be retiring from his pro bono work at age 88. Joe has been a volunteer attorney with Jacksonville Area Legal Aid since 1994 and has served more than 300 low-income clients. He has worked with Elder Source and also has served as a volunteer mediator. He has been certified as a County mediator since September 1995. Mr. Meux has been recognized for his pro bono work over the years including *The Florida Bar President’s Pro Bono Award* for the 4th Judicial Circuit, the *Equal Justice Pro Bono Award* and numerous outstanding service awards.