Message From the Director

A message reminding mediators to not only look at the issues a party brings to a mediation, but to also try and identify the interests underlying their positions.

ADR News and Updates

New Florida Supreme Court Opinions, updates on the DRC Boards and Committees, highlights from the DRC Annual Conference, Mediation Week 2016 and more are featured.

Eldercaring Coordination (EC) Initiative

Our last issue featured information about the Eldercaring Coordination pilot projects underway in eight of Florida’s Judicial Circuits. This article provides a little more information as a way to continue highlighting this important and emerging program.

News From the Field

Links and other resources, notable achievements and upcoming training events are featured in this section.
Message From the Director

Sometimes when I look in my toolbox for ways to encourage and facilitate the resolution of a dispute, I forget to look at the parties’ interests. Judging by some of the complaints the DRC receives about mediators pressuring parties to settle and do so quickly, perhaps mediators forget to look at interests too! Usually it is easy for a mediator to determine the issues the parties bring to the table and their positions on the issues because they are stated by the parties and their attorneys. Interests are the things that motivate people to seek a desired outcome. An interest may be a concern, desire, need, limitation, fear, or something a party values. As mediators, we must actively observe and listen to parties in order to discern the interests underlying their positions. Once we identify an interest, we can brainstorm possible solutions which would satisfy it. We can also guide a party to think about what the other party’s interests may be, thereby creating an environment in which obstacles to communication are reduced and understanding and cooperation grows.

For example, in county mediator certification training we use the example of two people negotiating over an orange. If they both want the whole orange, that is their position. Looking at the interests underlying the positions, the mediator could discover that one party wants the orange peel in order to bake a cake and the other party wants to make orange juice out of the orange. Given these different interests, both parties could achieve their interests by sharing the one orange.

If the parents involved in a family law mediation both want to see their child be successful, educated, and emotionally secure, these are common interests. Each parent also brings their own parental interest in the child’s life to the mediation. It is the mediator’s role to discover and point out the common and individual interests and facilitate the discussion of interests in a way that increases the possibility of the parties reaching agreement. For instance, perhaps one parent is willing to sacrifice having exactly equal time with the child so that the child does not have to go back and forth between the parents’ residences frequently. Developing an understanding of interests takes time, perseverance, and patience on the part of the mediator and the parties, but it often yields a lasting, cooperative agreement that is based on more than only the compromise of positions.
If you have forgotten to use the tool of looking at interests when mediating, take out that tool and dust it off!

**ADR News and Updates**

**CME Documentation Study Ends**

The Supreme Court Committee on ADR Rules and Policy has rescinded the requirement that the reporting of all CME activities be accompanied by backup documentation for the hours claimed beginning with renewal applications due on February 1, 2017. The DRC is returning to the practice of random audits in which a select group of renewal applicants are notified in advance of their renewal submission date that documentation is needed. Therefore, unless you are notified that you are under audit when you receive your next renewal notice, you may submit just the one page CME Reporting Form to document your CME activities. We hope this is welcome news.

**Conflict Resolution Day and Florida Mediation Week**

Conflict Resolution Day was created by the United States Association for Conflict Resolution (ACR) to promote conflict resolution and is celebrated every year on the third Thursday of October which this year was October 20, 2016. Florida first recognized the day when Governor Lawton Chiles signed a proclamation declaring June 1, 1996, Mediation Day. In 1997, the celebration was expanded to Mediation Week. Over the years, the DRC has participated in and sponsored many Mediation Week activities. This year Florida Mediation Week was October 17 through 23 and the DRC celebrated by again hosting activities for students from Florida State University Schools at the Florida Supreme Court. Thirty-eight first through fifth grade and junior and senior level students attended with their teachers Ms. Eileen Lerner and Ms. Patricia Steed and several chaperones.

As part of the educational event, Susan Marvin presented about the court system, Florida court-connected mediation, and the difference between the positions and interests of parties who attend mediation. Several student groups conducted mock mediations either based upon scenarios they created or upon fairy tales such as *The Three Little Pigs*. DRC staff Stephanie McHardy, Kimberly Kosch and Kristina Svec also conducted a mock mediation with a theme of student peer relationship problems and the effect of rumors. The students presented the DRC with a paper “peace quilt” of their artwork created with the theme “Peaceful Schools Build Peaceful Communities!” Dawn Burlison created the certificates of attendance the students were given, and Ramon Waters and Jessica Baker assisted in giving the students the certificates and mementos. The Florida Supreme Court library staff of Billie Blaine, Teresa Farley and Erik Robinson shared their historical knowledge of the Florida Supreme Court, the library, and the Court building, as well as Erik’s photography talents. It is always encouraging and a privilege to celebrate with young people who are interested in promoting the peaceful resolution of disputes!
Florida State University Schools students pose in front of the Peace Quilt on display in the Florida Supreme Court Library for Mediation Week 2016.

Please feel free to share your Mediation Week experiences and photographs with the DRC by e-mailing them to us at: DRCmail@flcourts.org.
Senator Darren Soto issued a Florida Senator’s Proclamation recognizing the dedicated mediators of the Florida Court System. On October 21, Martin Rivera, Esquire, a staff member of Senator Soto’s delivered a video message and the proclamation to Donna Dorer and the Osceola County Mediation Program.

In Palm Beach, County Commissioner Priscilla Taylor presented the Palm Beach County Bar Association with a Proclamation from the Board of County Commissioners proclaiming October 17-23, Mediation Week and commending the members of the association for their efforts to promote alternative dispute resolution throughout the county. The Proclamation was received on behalf of the Association by John Whittles, President, and Theodore Deckert, Alternative Dispute Resolution Committee Chair.

Pictured (l to r): Donna Dorer and Martin Rivera

Pictured (l to r): Attorney Ted Deckert, Commissioner Priscilla Taylor and Attorney John Whittles.
The DRC completed its 24th Annual Conference in August where a wide variety of courses on mediation and other methods of alternative dispute resolution were attended by 956 people. Attendees were also offered several opportunities to network with their fellow ADR professionals, an evening reception on Friday and breaks including delicious snacks.

Justice Peggy A. Quince welcomed mediators and arbitrators by thanking them for assisting in the administration of justice in Florida. She also asked those in attendance to consider whether they are truly serving the public in the best way they can by providing services that are less expensive and less time-consuming than litigation.

The DRC greatly appreciates the information shared at the conference by the plenary speakers! Judge Scott Bernstein kept attendees involved with his informative and interactive opening plenary on Friday morning. He grabbed attendees’ attention with a video of Ellen DeGeneres humorously addressing male/female stereotypes and followed the video with a review of opinion survey responses regarding how courts treat people based on gender, ethnicity and the language they speak collected by the Florida Supreme Court Standing Committee on Fairness and Diversity.

Judge Bernstein also discussed procedural justice for people who attend court and had the audience break into small groups to discuss methods of conduct which promote the perception of fairness in mediation. He led conference attendees in completing Harvard University’s Implicit Association Test which can be found at ProjectImplicit. Judge Bernstein’s power point presentation can also be viewed online.

In her Friday afternoon plenary on the topic of domestic violence, Robin Hassler Thompson provided a wealth of information. She explored practical issues for mediators such as how to detect whether domestic violence is present, whether or not to mediate, and safe and effective mediation strategies. Ms. Hassler Thompson discussed trauma and how it impacts cases as well as how economic security is inextricably linked to victim safety and fair mediation outcomes. She provided several informative handouts which are also available including Mediation and Domestic Violence: A Quick Reference Guide for Mediators; Mediating When Domestic Violence/Control Exists; and 12 Questions About Mediation and Domestic Violence; and an article published by the American Bar Association Section of Dispute Resolution titled “Screening for Intimate Partner Violence in Mediation.”

George Knox closed the conference with the ethics plenary. With humor and wisdom, he discussed the meaning and application of self-determination as well as conflicts of interest and mediator integrity. He noted that the Long Range Strategic Plan for the Florida Judicial Branch, which was provided to conference attendees, invites the world to find peaceful resolutions to disputes. Mr. Knox examined the deeper meanings of “coercion,” “persuasion,” and “integrity.” The power point for the Ethics Plenary is available online.
Annual DRC Awards Announced

The Florida Dispute Resolution Center proudly announces the award recipients recognized at our 24th Annual Conference in August. Kathleen O. Reuter received the *Sharon Press Excellence in Alternative Dispute Resolution Award* for her visionary leadership, professional integrity and unwavering devotion to the field of alternative dispute resolution. Ms. Reuter was honored for having been one of two mediators selected to serve in a Supreme Court workgroup established to develop recommendations for an operational plan for ADR programs in Florida’s trial courts, and for having led the effort to base mediator certification on points rather than strictly on educational degrees or Florida Bar membership. Beth Greenfield-Mandler, Esquire, received the *DRC’s Award of Appreciation* for her eight years of service to the Mediation Ethics Advisory Committee; in addition, Ms. Greenfield-Mandler was recognized for having been one the three chairpersons the committee has had in its 22-year existence. Also, Mike Nichols, a county mediator from the Northern Division, received the *DRC’s Award of Appreciation* for his eight years of service to the Mediation Ethics Advisory Committee and for his continued commitment to the tenets of alternative dispute resolution.

More information on each award recipient can be found on the website:

Kathleen Reuter, recipient of the Sharon Press Excellence in ADR Award
Florida Academy of Professional Mediators (FAPM) Annual Award of Merit

Stanley Zamor, FAPM Board CEO, addressed attendees at the 2016 DRC Conference during the opening plenary session by speaking about the history of FAPM as a mediator resource and announcing the inaugural Mel Rubin Award of Merit.

George Knox was named as the first recipient of the Mel Rubin Award of Merit, presented to him because he embodies everything that made Mel Rubin a great mediator, teacher, mentor and friend to mediation.

The Award of Merit was renamed in honor of Mel Rubin who passed away in August 2015. Susan Marvin had the honor of co-presenting the award with Mr. Zamor.

Mediator Ethics Advisory Committee

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.

There have been two Opinions issued so far in 2016. MEAC Opinion 2016-001 and MEAC Opinion 2016-002 as well as all issued Opinions are available on our website.
Mediator Qualifications Board Update

The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. To date, 238 grievances have been filed and fall into the following categories:

<table>
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<tr>
<th>Cases by Division</th>
<th>Who Filed Case</th>
<th>Mediator Certification / Case Type</th>
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</thead>
<tbody>
<tr>
<td>Northern – 37 (15%)</td>
<td>Party – 173 (73%)</td>
<td>County Mediator / County Case – 33</td>
</tr>
<tr>
<td>Central – 108 (45%)</td>
<td>Attorney – 22 (9%)</td>
<td>County Mediator / CDS Case – 2</td>
</tr>
<tr>
<td>Southern – 93 (39%)</td>
<td>Other – 43 (18%)</td>
<td>County Mediator / Circuit Case – 1</td>
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<th>Cases by Division</th>
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<tbody>
<tr>
<td>Northern – 2</td>
<td>Party – 10</td>
<td>Circuit Mediator / Circuit Case – 5</td>
</tr>
<tr>
<td>Central – 3</td>
<td>Attorney – 3</td>
<td>Family Mediator / Family Case – 5</td>
</tr>
<tr>
<td>Southern – 10</td>
<td>Other – 2</td>
<td>County Mediator / County Case – 1</td>
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For a more recent look at grievances filed, here are tables that show the case breakdown for 2015 and 2016 to date.

**2015 – Total of 15 Cases**

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<th>Cases by Division</th>
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<tbody>
<tr>
<td>Northern – 2</td>
<td>Party – 10</td>
<td>Circuit Mediator / Circuit Case – 5</td>
</tr>
<tr>
<td>Central – 3</td>
<td>Attorney – 3</td>
<td>Family Mediator / Family Case – 5</td>
</tr>
<tr>
<td>Southern – 10</td>
<td>Other – 2</td>
<td>County Mediator / County Case – 1</td>
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**2016 – Total of 16 Cases (to date)**

<table>
<thead>
<tr>
<th>Cases by Division</th>
<th>Who Filed Case</th>
<th>Mediator Certification / Case Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern – 3</td>
<td>Party – 14</td>
<td>Circuit Mediator / Circuit Case – 3</td>
</tr>
<tr>
<td>Central – 12</td>
<td>Attorney – 0</td>
<td>Family Mediator / Family Case – 8</td>
</tr>
<tr>
<td>Southern – 1</td>
<td>Other – 2</td>
<td>Certified Mediator / Non-court Case – 3</td>
</tr>
</tbody>
</table>

Certified Mediator / No Case – 2
More information on mediator rules, discipline and sanctions is located on our website.

Statistics Regarding Court-Connected Mediation Referrals

Statistics regarding Florida court-connected mediation referrals and sessions for small claims, county, family, and dependency cases as collected by the Uniform Data Reporting may be found on the Florida Courts website.

Florida Supreme Court Opinions on Mediation and Arbitration Issues

Amendments to the Florida Small Claims rules were issued in Opinion SC16-166 on September 8, 2016. Amendments include corrections to a mistaken cross-reference in rule 7.050. E-mail service for parties not represented by an attorney is addressed in amendments to rule 7.080 while rule 7.090 address concerns regarding “non-served” parties (rule 7.090 is required reading for attendees of certified county mediation training programs). Rule 7.160 was amended to make it clear that a non-served party is entitled to have a pretrial conference rescheduled if the return of service showing non-service is filed 5 days before the pretrial conference. The amended rules are effective January 1, 2017 at 12:01 a.m.

On September 22, 2016, the Florida Supreme Court released Opinion SC14-1349 Juan Mendez, Jr. v. Hampton Court Nursing Center, LLC. The issue in this case was whether a nursing home resident is bound by an arbitration clause in a nursing home contract when the resident neither signed nor otherwise agreed to the contract. The Third District found “that the father is bound by the arbitration provision contained in the agreement for care executed by his son...” The Court rejected that view and held that the third-party beneficiary doctrine does not bind the father to the arbitration agreement to which he never agreed. Accordingly, the Court quashed the Third District’s decision and remanded to that court for further proceedings not inconsistent with the opinion.

On October 27, 2016, the Florida Supreme Court adopted proposed amendments to the Florida Rules for Certified and Court-Appointed Mediators in re: Amendments to the Florida Rules for Certified and Court-Appointed Mediators, SC15-875 (Fla. 2016). The amendments to the rules change the title of Part III to “Mediation Certification Applications and Discipline” to clarify that this part of the rules pertains to the qualification of applicants as well as discipline. The amended rules have separate tracks for grievances alleging issues of good moral character in applicants and grievances alleging violations of the rules by certified and court-appointed mediators. The Mediator Qualifications Board is renamed the Mediator Qualifications and Discipline Review Board. A fourth division is added to the Board and the divisions are reorganized. Among the amendments are new rule 10.850 Suspension, Decertification, Denial of Application, and Removal which includes instances requiring the automatic decertification of a mediator or denial of an application without the need for a hearing. Notably, in rule 10.890, there are now limitations on the time in which a complaint against a mediator can be filed.
The Court revised proposed rule 10.810(d)(1) to allow the complainant only one opportunity to refile a complaint to establish the facial sufficiency of the complaint, and rule 10.840(b)(7) to limit the suspension of a mediator for a period of up to one year.

The amended rules are effective January 1, 2017 at 12:01 a.m. The guide below shows which rules are new and which rules were relocated or amended.

FLORIDA RULES FOR CERTIFIED AND COURT-APPOINTED MEDIATORS

PART I. MEDIATOR QUALIFICATIONS [NO CHANGE]

PART II. STANDARDS OF PROFESSIONAL CONDUCT

10.200 Scope and Purpose [AMENDED]
10.210 – 10.690 [NO CHANGE]

PART III. DISCIPLINE MEDIATION CERTIFICATION APPLICATIONS AND DISCIPLINE

10.700 Scope and Purpose [AMENDED]
10.710 Privilege to Mediate [AMENDED]
10.720 Definitions [AMENDED]
10.730 Mediator Qualifications and Discipline Review Board [AMENDED]
10.740 Jurisdiction and Powers [AMENDED]
10.750 Staff (to 10.770) [RELOCATED]
   Contempt Process (from 10.740) [NEW RULE]
10.760 Duty to Inform [NEW RULE]
10.770 Staff (from 10.750) [AMENDED]
10.800 Good Moral Character; Professional Discipline Inquiry Process [AMENDED]
10.810 Committee Rule Violations Complaint Process [AMENDED]
10.820 Hearing Panel Procedures [AMENDED]
10.830 Sanctions (to 10.840) [RELOCATED]
   Burden of Proof (from 10.820) [NEW RULE]
10.840 Subpoenas (to 10.860) [RELOCATED]
   Sanctions (from 10.830) [AMENDED]
10.850 Confidentiality (to 10.870) [RELOCATED]
   Suspension, Decertification, Denial of Application, and Removal [NEW RULE]
10.860 Interested Party Subpoenas (to 10.880) [RELOCATED] [AMENDED]
10.870 Disqualification of Members of a Panel or Committee Confidentiality (to 10.880) [RELOCATED] [AMENDED]
10.880 Supreme Court Chief Justice Review Disqualification and Removal of Members of a Committee Panel or the Board (to 10.900) [RELOCATED] [AMENDED]
10.890 Limitation on Time to Initiate a Complaint [NEW RULE]
10.900 Mediator Ethics Advisory Committee Supreme Court Chief Justice Review (to 10.910) [RELOCATED] [AMENDED]
10.910 Mediator Ethics Advisory Committee [RELOCATED]

**Eldercaring Coordination Initiative**

Judge Michelle Morley, Fifth Judicial Circuit, and Linda Fieldstone, Eleventh Judicial Circuit Supervisor of Family Court Services, presented a workshop at the DRC’s 24th Annual Conference on the difference between eldercaring coordination and other dispute resolution processes and the progress of the eight Florida circuit pilot programs. Attendees learned how to bring a pilot site to their circuits and how to assist current pilot sites and eldercaring coordinators. Their power point and handouts are available on the Conference website.

The Ohio Supreme Court is continuing its outreach of eldercaring coordination and other dispute resolution processes for elders and their families. The Stark County Probate Court was awarded a two year federal Elder Justice Innovation Project Grant in the amount of $312,550 annually. Sue Bronson, a mediator and former Elder Section Co-chair of the Association for Conflict Resolution and Linda Fieldstone led the second training for eldercaring coordination at the Ohio Supreme Court on October 24-26, 2016.

The Sub-Committee on Long Term Strategic Planning for the Washington State Courts is recommending a statewide rollout of eldercaring coordination and they are sending two representatives to take this training.

Eldercaring Coordinators are meeting monthly to talk about issues they are confronting and the support they are receiving. The FLAFCC Initiative on Eldercaring Coordination is excited that there is some interest to initiate pilot cites in the 10th and 19th circuits, thanks to the presentation at the DRC Conference, as well as with attorneys from the 6th circuit. All forms, procedures and processes will be made available to new pilot sites as well as continued support for developing programs.
News From the Field

Links and Other Resources

The Florida Supreme Court has added to its inventory of public outreach programs by placing its own Facebook Page on the web. “This addition to our outreach efforts is a product of the new statewide Court Communication Plan approved by the full Court in December,” said Florida Chief Justice Jorge Labarga. “It is yet another way we will tell our story to the public.” The Facebook page joins existing Supreme Court pages on Twitter, LinkedIn, Instagram and Google+.

The Court primarily will use its Facebook page to tell the public news about the Supreme Court family such as people winning awards, personnel recognized for length of service, and other soft news. This will contrast with the Court’s Twitter Page, which the Court has used since 2009 mainly to distribute hard news such as filings in high-profile cases.

Notable Achievements and Milestones

Joseph P. Farina, certified circuit civil mediator, was awarded the 2016 Dade County Bar Association Legal Luminary Mediation Award. Each year, the Miami Dade County Bar Association selects three finalists in each category based on nominations received and members in good standing with The Florida Bar are invited to vote for the nominees.

The Honorable James E. C. Perry has announced his retirement from the Florida Supreme Court effective December 30, 2016. Justice Perry has proudly served the citizens of Florida for over 16 years first as a circuit judge in Florida’s 18th Judicial Circuit and as the 85th Justice of the Florida Supreme Court. Justice Perry was appointed to the Court by former Governor Charlie Christ in March 2009.

Save the Date

The dates for the DRC’s 25th Annual Conference have been announced. The dates are August 10-12, 2017, and will once again be held at the JW Marriott Grande Lakes in Orlando, Florida.