

The Neutral

Newsletter of the Florida Dispute Resolution Center
Volume 4, Issue 2 – June 2019

DRC's Annual Conference August 2019

The DRC will be hosting its 27th Annual Conference *ADR: Options and Opportunities* on August 15-17, 2019, at the JW Marriott Orlando, Grande Lakes. Our goal, as always, is to offer

mediators an affordable opportunity to enhance their skills and knowledge while maintaining high standards of professionalism and ethical behavior.



This year's event begins with a pre-conference session titled *Trends in Interpersonal Violence in Florida*. The presentation features an overview of the seven different types of injunctions in Florida followed by an interactive activity that provides participants with insights into the experiences of those who have undergone interpersonal violence. Finally, the training will delve deeper into the issues surrounding trauma and how violence affects children.

Professor Nancy Welsh, Director of the Aggie Dispute Resolution Program at Texas A&M University School of Law will open with her keynote address that looks at *What We Do and Don't Know About Court Connected Mediation*.

Participants can choose from a wide variety of workshop selections and will also have the opportunity to complete an Arbitration Training track or the Elder Law Mediation and Shared Decision-Making Training track.

This year's always informative Ethics Plenary will focus on Online Dispute Resolution (ODR) Principles and the ODR methods being used in court systems and by private providers across the United States. A demonstration of a mediation conducted on live video conferencing will be followed by a panel discussion of mediator ethics issues arising from the use of ODR methods.

Please visit the [Conference Registration Webpage](#) for more information on registering.

Message from the Director

Update on the 2019 Legislative Session

Two pieces of legislation passed in 2019 affect the field of alternative dispute resolution. First, Governor DeSantis signed into law [HB 337- County Court Jurisdiction](#) (Chapter Law 2019-58). The legislation increases county court jurisdiction from \$15,000 to \$30,000 effective January 1, 2020, and then increases the jurisdictional amount to \$50,000 effective January 1, 2023. The revisions to section

44.108(2)(c), Florida Statutes, limit the \$60 fee for mediations in county cases above small claims which is charged by court ADR programs to cases in which the amount of the claim is not over \$15,000. Thus, the programs will not mediate more county cases above small claims than they currently do. In the first three quarters of fiscal year 2018/2019, the ADR programs of the twenty judicial circuits mediated 1,808 county cases above small claims, in fiscal year 2017/2018 they mediated 1,334. The programs of the 4th, 11th, 13th, 15th, and 17th circuits mediate the most county civil cases above small claims. Additional statistics may be found at the [Uniform Data Reporting Page](#).



The Florida Supreme Court will be changing the small claims threshold from \$5,000 to \$8,000 through a rules petition referral to The Florida Bar Small Claims Rule Committee. It is not anticipated that this increase will have a significant workload impact on court ADR programs; however, the impact remains to be seen. Additional provisions of HB 337 include 1) appeals of county court orders or judgments where the amount in controversy is greater than \$15,000 will go to the district courts of appeal until January 1, 2023, when the provision repeals, 2) the Office of the State Courts Administrator is required to submit a report making recommendations regarding the adjustment of county court jurisdiction, and 3) changes to the budgets of and fees remitted to the clerks of court which are not anticipated to affect revenues received by the court system.

Second, HB 7081 authorizes nationwide criminal background checks for applicants for mediator certification and court interpreter certification and includes enhanced provisions governing the regulation of parenting coordinators. The bill adds to section 61.125, Florida Statutes, exceptions to parenting coordination confidentiality like those for mediation confidentiality in section 44.405, Florida Statutes. The exceptions are for testimony or evidence offered to report, prove, or disprove a violation of professional malpractice or misconduct occurring during the parenting coordination process solely for the professional malpractice

proceeding or the internal use of the body conducting the investigation of the professional misconduct.

Additionally, HB 7081 provides that investigators, prosecutors and members of the Parenting Coordinator Review Board are not liable for civil damages “for any act or omission arising from the performance of his or her duties while acting within the scope of his or her appointed function or job description unless such person acted in bad faith or with malicious purpose.” The bill also provides the Florida Supreme Court with authority over the training, ethical conduct, and discipline of parenting coordinators. The bill was signed into law by Governor DeSantis on June 7, 2019.

ADR News and Updates

New Administrative Order Governing Certification of Mediators Issued

On May 28, 2019, a new [Administrative Order No. AOSC19-26](#) governing certification of mediators was issued. The order is effective immediately and can be viewed at the link above. There were several changes to the continuing mediator education (CME) requirements that we believe will be welcome news to mediators. The highlights include:

- ◆ Expands the methods by which live CME hours can be earned by making mentorship activities (up to four hours) and lecturing/teaching now counted as live hours;
- ◆ Elimination of the four-hour appellate specific CME requirement for certified appellate mediators;
- ◆ Includes attendance at court alternative dispute resolution (ADR) committee and board meetings for time spent on mediation topics;
- ◆ Inclusion of pre-suit home owner association (HOA) disputes, within the jurisdiction of the circuit court, mediated by a certified circuit mediator, to qualify for circuit mentorship; and
- ◆ Adoption of the expanded interpersonal violence (IPV) definition for CME activities.

DRC Training News

Kimberly Kosch and Susan Marvin conducted an advanced mediator ethics CME program for over 40 mediators hosted by the Sixth Circuit on February 18, 2019.



Photo: Sixth Circuit mediators pose for a group photo at CME training on February 18, 2019.

The DRC also conducted a Certified County Mediation Training for a small, but enthusiastic group, in Pensacola in March.



Photo: Participants at the DRCs County Mediation Training held in Pensacola in March 2019.

Hernando County Volunteer Mediators Receive Liberty Bell Award

On Wednesday, May 1, 2019, as a portion of the Law Day Banquet celebration held in Hernando County, the Mediation Services Department of Hernando County was presented with the Liberty Bell Award by the Hernando Bar Association in recognition of their Small Claims/County Court Volunteer Mediation Program. Fourteen of the 17 volunteer program mediators were able to attend as guests of the Hernando County Bar Association.

The Liberty Bell Award was established more than 40 years ago to acknowledge outstanding community service. Many groups present it to someone who has promoted better understanding of the rule of law, encouraged greater respect for law and the courts, stimulated a sense of civic responsibility, or contributed to good government in the community. It is often presented to an individual lawyer or judge or to an entire community organization. This is the first time the award has been bestowed on a Court Program.



Photo (l to r): Kay Busch, Susan Starrett, Jo Dell Coning, Valerie Elder, Debbie Clark, Joyce Denilen, Todd Tuzzolino, James Morrison, Sam Easley, Mike Belkin, Diane Hagert, Chris Faulhaber and Peter Spanos.

Mediator Ethics Advisory Committee (MEAC)

The Mediator Ethics Advisory Committee provides ethical guidance to certified or court-appointed mediators by interpreting and applying the Florida Rules for Certified and Court-Appointed Mediators and the state court procedural rules applicable to 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.

All Opinions are posted on the [MEAC Opinion Page](#).

Mediator Q & A: Donald J. Weidner

Donald J. Weidner served as Dean of the FSU College of Law for almost 25 years, until 2016.

What attracted you to alternative dispute resolution?

After having served as Dean of Florida State Law School for almost 25 years, I realized that a significant part of my time had been managing conflict and resolving disputes. I decided to develop those skills and study to become certified as a mediator and qualified as an arbitrator.



Photo: Donald J. Weidner

What attracted you to teaching an ADR class at the FSU College of Law?

As I began to mediate and arbitrate, I also began to realize how much I had to learn. In addition to observing and co-mediating with more experienced mediators and attending training programs, I decided that teaching an ADR course would be the best way to force myself to learn more, particularly about the statutes, ethical rules and case law. In addition, no one on the full-time faculty was teaching mediation or arbitration, so there was an institutional need for it. Fortunately, Justice Ricky Polston teaches Florida ADR at the law school, and is a tremendous asset to the students and to me.

Have you had any memorable experiences teaching the class on ADR?

Two come to mind. First, I loved some of the mediation role plays. The students had an incredible range in how assertive they were as parties and how creative they were as mediators. Some did what you (*referring to Susan Marvin*) suggested when you were a guest lecturer—they looked beyond the parties “positions” to their “interests” to try to build a bigger pie and help them reach common ground. Second, I was extremely impressed by some of the student papers. For example, one, which discussed when hard bargaining in mediation can amount to criminal extortion, was echoed in national headlines. Another terrific paper was one on the impact of the *#Me Too* era on the enforcement of mandatory arbitration clauses in employment agreements.

What types of mediations or arbitrations have you conducted?

I have served as a mediator or an arbitrator in matters involving business acquisitions, business breakups, property damage, intellectual property, hospitals, medical malpractice and

robocalls.

Without revealing any confidential information, are there any uniquely interesting mediations you have observed or conducted?

One I thought was particularly difficult involved a party whose insurance carrier was quite ready to reach a settlement that would have been satisfactory to a worthy and needy claimant. However, an impasse was reached because of the respondent's fear of adverse regulatory consequences. A policy designed to provide disclosure frustrated a speedy and low-cost recovery in the case at hand. Of course, this is a huge national issue, particularly in the context of sexual harassment, where many people insist that claims of sexual harassment be brought to light and not swept under a rug of dollars and confidentiality agreements.

Have you faced any ethical dilemmas as a mediator?

One situation involved an individual who was not represented by counsel who made a claim against his employer, which was a large institution. I thought the claimant was rigidly holding to an extreme and uncompromising position that was in the process of causing himself and others significant and unnecessary damage. The claimant did not even want to meet with the institution's key person, even by telephone. He said he knew him and would not meet with him unless he first agreed to the claimant's position. It is hard to remain neutral in such a situation. It is also hard to avoid inappropriate arm-twisting. Rule 10.310(b), on self-determination says: "A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation." In addition, rule 10.370(c) says: "A mediator shall not offer a personal or professional opinion intended to coerce the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination, however, a mediator may point out possible outcomes of the case and the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute." There can be a fine line between discussion of possible outcomes and coercion. I know that in family law mediation, which I do not do, the biggest complaint of members of the public is that mediators have coerced them into agreements.

Have you used any of the skills and knowledge you have learned through mediation in other parts of your life?

I hope I better identify interests around positions. To some extent, mediation is at bottom how to improve behavior toward other people.

Do you have any ideas for ways the court system could use ADR differently?

I wish the court system could be more involved in colleges and universities and not just in law schools. I think there is a great need for more training in the wide range of techniques to prevent and resolve disputes. I also think the court system should be more involved in law schools. I also wonder if ADR is a topic that might be included on the Bar Exam. More narrowly, I wish some piece of the DRC's Annual Conference would focus on the nuts and bolts of statutes, rules and case developments—but that may just be the professor in me.

Do you think ADR professionals have a role to play in teaching our communities how to have civil discourse and resolve disputes peacefully without the use of the court system?

Yes, without a doubt, mediators in particular should train people to be better individuals to their family, friends, partners, co-workers and other members of the community.

News From the Field

In Memoriam

The Dispute Resolution Center remembers **Talbot "Sandy" D'Alemberte**. When Sandy D'Alemberte passed away in May 2019, there were numerous tributes to his lasting legacy in Florida, and we note specifically his contributions in establishing the DRC in 1986 as the first statewide center for education, training and research in the field of alternative dispute resolution. Mr. D'Alemberte was, among many things, a leading voice in the early days of dispute resolution and served as the first chair of the ABA Special Committee on Resolution of Minor Disputes from 1976-1979. He helped establish the DRC, along with then Chief Justice Joseph Boyd, while serving as the dean of the FSU College of Law from 1984-1989.

Free CME Opportunities

The **National Association for Court Management (NACM)** has recorded sessions from their annual conferences and made them available for free online. Please visit the [NACM website](#) for available sessions.

The **National Center on Substance Abuse and Child Welfare (NCSACW)** has a free 4.5 hour training on substance and child abuse via a self-study internet format.

Step One: Go to the [NCSACW website](#) and register with an email address.

Step Two: An access code will be sent to your email for you to gain access to the training modules. Select Tutorial for Legal Professionals.

Step Three: When you have completed all five modules, print your Certificate of Completion and maintain it for your records.

Step Four: Report 4.5 IPV hours completed by self-study method on your CME Reporting Form.

Free Parenting Coordination Seminar

The **Fifth Judicial Circuit** will be hosting a free Parenting Coordination continuing education seminar on October 4, 2019, at Freedom Pointe, The Villages. Lunch is provided at no charge and registration will be limited to 80 persons. The seminar will include CME opportunities including interpersonal violence education. For more information please contact Lynn Cummings at (352) 394-4960.

Mediator Retirements

The DRC would like to acknowledge and send best wishes to the following mediators who have announced their retirement since our last issue.

Raymond O. Holton, Fort Lauderdale

Robert C. Maland, Miami

Save the Date

The [Association for Conflict Resolution's](#) Annual Conference will be held September 18-21, 2019, in Tucson, Arizona.