Mediation: Part II: Mediation in Florida

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Abstract

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KEYWORDS: mediation, Florida, process
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In Mediation: Part I: Background and Overview1 mediation as a process was discussed. This article expands both on the philosophy of mediation and on the mediation process itself, especially as it has evolved in Florida.

I. THE ESSENCE OF MEDIATION

The mediation process starts when the parties have tentatively decided to explore mediation as an option to resolve a dispute. In the first session, it is the mediator's responsibility to explore the various forms of dispute resolution with the parties. Litigation, negotiation, and arbitration are all discussed. Once mediation is agreed upon as the best alternative, the procedure begins.

A. What Mediation is Not

Mediation is neither the practice of law nor the practice of therapy. This is so regardless of the background of the mediator. Thus, although the mediator may explore the legal issues facing the parties and may provide the parties with legal information, the mediator is prohibited from imparting legal advice to the parties. An example of this would be a mediator's ability to discuss what spousal support is but not whether or not a party is entitled to spousal support in their particular circumstance. Succinctly, the mediator's job is not to interpret the law, only to provide information about the law.

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B. Mediator Neutrality

Mediator neutrality is crucial to the effectiveness of mediation. However, arriving at a clear definition has been the topic of frequent debate. There are two basic standards defining mediator neutrality. Neutrality is defined by the ethical standards for non-attorneys; neutrality contemplates the mediator as a non-judgmental, strict facilitator. Thus, if the parties are in accord, the mediator should be satisfied with their agreement. However, ethical standards promulgated by the American Bar Association for its attorney mediators recommend mediator accordance with the agreement only insofar as that agreement is “fair.”

The mediator who subscribes to the ABA’s interventionist method of mediator neutrality must ultimately decide whether or not the agreement is “fair.” This model may well place the burden for a successful agreement on the mediator since the mediator must explore his or her own biases, life experiences and experience as a mediator in defining “fair.”

C. Necessity of Party Presence

A mainstay of mediation as an approach to dispute resolution is the physical presence of the parties. Other dispute forms may or may not require the presence of the principals. However, in mediation it is essential for the parties to be present since “all decisions are to be made voluntarily by the parties themselves.” An exception to direct involvement by the principals in mediation involves mediation of non-family civil disputes where a representative of the parties may empower the principals to participate in mediation. Such representatives have the ability to agree to settlement.


5. Id. at D3. But see Fla. R. Civ. P. 1.720(b)(1), 1.750(c).
D. Informal Yet Structured

Compared to litigation, mediation is a relatively informal process. Generally, the parties control the speed with which they move through the system. Thus, parties may wish to take several months, several weeks or several hours to complete the mediation. As long as no outside time constraints have been placed on the parties, the parties decide on how much time they need to work out an agreement. Additionally, parties who have voluntarily entered mediation may do away with much of the legal paperwork normally generated by a dispute.

The informality of mediation should not suggest, however, that mediation is without structure. Structure lies at the core of mediation. Once issues have been defined and discussed, and after a priority rating has been given to each, the mediator focuses the parties on specific areas to be addressed. Each issue, newly defined, becomes a building block toward the final agreement. Thus, the manner in which the mediator structures the issues to be discussed becomes central to the resolution of the dispute between the parties. The resolved issues are compiled until there is complete agreement regarding all issues.

E. Confidentiality

Mediation is an open process between parties that encourages problem solving. In order for the parties to be comfortable in their environment, they must be assured that they may explore all factors surrounding their disagreement, without fear of this exploration becoming detrimental at some subsequent point in time. "Being able to assure confidentiality of disclosure is crucial to reaching an agreement and may determine the success of the proceeding." 

F. Trust in the Mediator

Finally, the parties need to trust the mediator. They must be able to trust the mediator to understand the problems of the parties and to assist them toward building an agreement, one step at a time. It has

7. A. Davis & R. Salem, Dealing with Power Imbalances in the Mediation of Interpersonal Disputes, 6 MEDIATION Q. 17 (1984); see also Fla. STAT. § 44.301 (1987).
been suggested⁹ that the parties only begin to trust the mediator when the mediator has been able to hear two opposing views, recognize that they are different, and yet work with both as if they were compatible.¹⁰

II. THE MEDIATION PROCESS

While the mediator may occasionally be called upon to set limits for the parties, the burden of reaching agreement rests with the parties themselves. The mediation process is composed of many elements. Basic areas include (A) gathering relevant and pertinent information, including when necessary, the use of experts; (B) reframing the issues and focusing on interests of the parties; (C) exploring and providing options for the parties; and (D) conducting private caucuses when necessary.

A. Gathering Information and Objective Criteria

Inherent in any binding contract is the mutual disclosure of information and open exchange of that information between the parties. The exchange and disclosure must be sufficient enough to enable the parties to the contract to make an informed choice when consenting to it. Thus, the gathering of information is a necessary prerequisite, permitting the parties to ultimately agree. Sometimes the parties are unsure of what information is necessary or disagree as to what information should be involved in assisting them to make an informed choice. Essentially, all relevant, pertinent information must be brought to the table.

Because each of the parties is frequently at odds with each other regarding the accuracy of each other’s claims, the mediator may discuss the use of an expert, agreed to by the parties, to resolve the dilemma of accuracy. The use of objective criteria and the utilization of an outside and neutral expert often resolve the issue between the parties. For example, the parties’ disagreement about the value of a painting may be resolved with the use of an art appraiser. Of course, the parties must be in accord with the individual expert and the method used by him or her.

¹⁰. See G. ORWELL, 1984 (1949). Orwell’s famous “double think” used by the bureaucrats is noteworthy for its similarity to the mediator’s role in understanding divergent viewpoints without negating either.
B. *Reframing the Issues and Focusing on Interests*

When negotiators bargain over positions, they tend to lock themselves into those positions. The more you clarify your position and defend it against attack, the more committed you become to it.

As more attention is paid to positions, less attention is devoted to meeting the underlying concerns of the parties. Agreement becomes less likely. Any agreement reached may reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties. The result is frequently an agreement less satisfactory to each side than it could have been.\(^\text{11}\)

When parties move away from their position and look to what their interests are, their differences narrow. The mediator’s ability to reframe and rephrase one party’s position to the other party is essential. For instance, one party’s “I want the house,” after exploring the interest of that party may become “I need to stay in the house until I find another house” or “I am concerned that I will not have any money or a place to live.” The true interest of the party, once uncovered and discussed between the parties, may be readily resolved.

C. *Exploring and Providing Options for the Parties*

The mediator must overcome several obstacles before the parties can begin to explore and provide each other with options that may lead to agreement. First, each party initially thinks only of his or her own self-interest, a common factor at the commencement of any disagreement; second, the parties tend to think that many ideas muddy the waters and often only advance one idea; third, the parties desire to immediately judge and concomitantly dismiss any new idea; and fourth, the parties believe that the sum of the whole is greater than its parts.

(1) Self interest: When each party is interested only in their own gain, agreement is limited. The parties must be made aware that only when both or all of them have something to gain will an agreement become viable. Thus, it is imperative for the mediator to explore and assist the parties in identifying shared interests. Once shared interests

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have been identified mutual benefits may be broached. For example, a husband and wife both want custody. This may be translated into the shared interest of both wanting time with the children. Rather than focusing on a self-interest, custody, the parties have identified the shared interest, time with the children. From this shared interest the parties may explore and agree upon shared time and a specific method to accomplish this mutual interest.

(2) Issues versus options: Because parties seem to think only one idea is valid they limit themselves when making an attempt at problem solving. But no single answer is “the” answer. The more choices that are available to the parties, the more they have to review as possible solutions. Thus, the parties are more likely to come to an agreement. In short, the more there is on the menu, the less likely it is that anyone will be stuck with something they cannot digest.

(3) Judging too soon: Parties tend to look at new ideas and dismiss them immediately. One of the mediator’s functions is to inform the parties that creating a new option is not necessarily agreeing to that option. The creation of options is merely an attempt at exploring “possibilities.”

(4) The sum of the whole: One of the best examples of redefining the whole is exemplified in Fisher and Ury’s famous story about an orange. Two parties insist on owning an orange. Eventually the orange is divided in half. Neither party has their needs met: yet, one party needed the peel for an orange cake and the other party needed the pulp for orange juice. Had they both explored their needs differently each would have received not half but one hundred percent of the pie — or orange!  

D. Caucus

Another key element to the process of mediation is the use of the caucus. At one or several points during the mediation process, it may be necessary to separate the principals and have private time with each one. The caucus allows the mediator to (1) probe the separate interests of a party; (2) permit a party to vent anger without escalating hostility; (3) reinform a party on a point without dis-empowering that party; (4) request more information from a party; or (5) discuss matters on an individual basis. When all the parties have been informed at the outset that caucusing is sometimes used and why, the caucus can become an

effective tool in the arsenal of the mediator and, when used properly, can move the parties quickly and smoothly to agreement. When used improperly or overused, it can create conflict and mistrust where there was none. Parties subjected to continual caucus often feel betrayed by the process because of their lack of control of that process. As a procedural tool, the mediator must be very cautious in using separate and private time with each party taking care not to alienate the other party.

III. HISTORY OF MEDIATION IN FLORIDA

Florida's first formal entry into the field of mediation began in May of 1975 when Dade County opened a CDS (Citizen Dispute Settlement) Center. This corresponded to a similar occurrence in several other states. The early success of this program led to expansion to other counties, many of the programs being affiliated with the State Attorney's offices. As of 1990, twelve judicial circuits established CDS programs and another two circuits are in the process of establishing these programs.

Also in 1975, the first juvenile arbitration/mediation program opened in Duval County (Jacksonville). These programs, designed to deal with children in need of supervision, have been established in different ways — some through the courts and some through HRS. Furthermore, the methods used to resolve the conflicts vary from straight mediation (where the neutral does not make any decisions for the parties) to straight arbitration (where the neutral makes of finding for the parties) to mixed mediation/arbitration process.

15. Bridenback, supra note 14, at 571.
16. J. Mason & S. Press, Florida Mediation and Arbitration Programs: A Compendium (July 1990) (available at the Florida Dispute Resolution Center) (the following circuits report the use of a CDS program: 4th, 5th, 6th, 7th, 9th, 10th, 11th, 12th, 13th, 17th, 18th and 20th; the 3rd and 19th circuits are in the development stage).
17. See generally R. St. Onge Kadlec, Florida Juvenile Arbitration/Mediation Programs (March 1, 1984); J. Kassack, Outcome Evaluation Report: A First Step Toward Accountability 155-66 (Dec. 31, 1989) (Both articles are HRS reports and are available at the Florida Dispute Resolution Center).
18. The Florida Dispute Resolution Center will be publishing an updated study of juvenile arbitration/mediation programs by 1992.
The following year, 1976, legislation was introduced for both CDS and Juvenile Mediation/Arbitration programs. Neither effort was successful during this first attempt; however, juvenile arbitration legislation was adopted effective July 1, 1977.\(^1\)\(^9\) In January 1978, Chief Justice Benjamin Overton appointed the first Supreme Court Committee on Dispute Resolution Alternatives. Justice Hatchet served as chair to this committee which met eighteen times over the next two years.\(^2\)\(^0\)

That same year, Florida's first family mediation program was established in Broward County (Fort Lauderdale). The first attempt at state-wide legislation for family mediation, in 1978, was not successful, although the 1982 legislative session saw the passage of a family mediation statute with an immediate effective date.\(^2\)\(^1\) As of 1990, nineteen counties representing twelve judicial circuits established family mediation programs.\(^2\)\(^2\) These programs continue to be a popular alternative to the traditional court system. The use of mediation in divorce settings where children are involved has been strongly encouraged by the Family Courts Commission\(^2\)\(^3\) and the recent amendments to the mediation statute which require courts to send cases to family mediation under certain circumstances.\(^2\)\(^4\)

In 1984, the Florida Legislature created a study commission on Alternative Dispute Resolution chaired by David Strawn.\(^2\)\(^5\) The follow-

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23. See SENATE JUDICIARY COMMITTEE ON CHILDREN & YOUTH, S.B. 3006, 11th Leg. § 10 (1990) (creating a Commission on Family courts to develop specific guidelines for the implementation of a family law division within each judicial circuit; see their final report to be published mid 1991, for specific recommendations relating to mediation).

24. See FLA. STAT. § 44.102 (2)(b) (Supp. 1990) ("[i]n circuits in which a family mediation program has been established and upon a court finding of a dispute, [the court] shall refer to mediation all or part of custody, visitation or other parental responsibility issues as defined in s. 61.13"). However, note that the court is expressly forbidden from sending a case to mediation "if it finds there has been a significant history of domestic abuse which would compromise the mediation process." § 44.102(2)(b).

25. Commission members included: Marsha B. Elser, the Honorable C. Welborn Daniel, the Honorable Harvey Ford, William O.E. Henry, the Honorable Gavin K.
Waxman and Press released its first report recommending a comprehensive mediation and arbitration program for Florida's courts. Over the next few years, mediation began to flourish in the State. In 1986, the first circuit civil mediation program opened in Lee County and the Florida Dispute Resolution Center was created by Chief Justice Parker Lee McDonald and Florida State University College of Law Dean Talbot "Sandy" D'Alemberte.

Shortly after the Center's creation, the legislative study commission released its final report which included proposed legislation on court-ordered mediation and arbitration. The legislation was introduced unsuccessfully in 1986, but was passed when introduced the following year. This was truly a watershed year in the development of court-annexed mediation, not only for Florida but for the nation. The statute authorized "a court, pursuant to rules adopted by the Supreme court, [to] refer to mediation all or part of a filed civil action . . . ." The supreme court adopted rules of procedure which established for the first time three different types of mediation with specific qualifications

Letts, Marshall McDonald, Alan Sundberg, and Thomas Testa.


27. B. Duane & M. Bridenback, Florida Mediation Programs: A Compendium (1988) (available at the Florida Dispute Resolution Center). The Lee County program was established through the court administrator's office and handled cases where the amount in dispute ranged from $5000 to $25,000. The program had one paid administrator and seven volunteer mediators. A total of 15 cases were handled during the initial year. Id.; see also J. Mason & S. Press, supra note 16, at 5-3 - 5-12. The program currently has a program director, a program specialist and a secretary as paid staff who handle all the mediation services for Lee and Charlotte Counties. One hundred part-time paid mediators handled the 61 cases mediated in 1989.

28. The Center was formed as joint program of the Florida Supreme Court and the Florida State University College of Law. Professor James J. Alfini was hired by FSU to be the Director of Education and Research for the Center and Mike Bridenback took on the role of Director of the Center.


31. Fla. R. Civ. P. 1.700-1.780. The three types of mediation are county, family (divorce) and circuit (civil, non-family). The Florida Legislature in 1990 created the following definitions for the three types of mediation:

(b) 'Circuit court mediation' . . . means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.
for each. The cornerstone of the qualifications for each was training, but threshold educational and experiential qualifications were also set for family and circuit court mediation.32

The 1987 legislation also authorized the establishment of a demon-

(c) ‘County court mediation’ . . . means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.

(d) ‘Family mediation’ . . . means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

32. See FLA. R. CIV. P. 1.760(a)(b)(c). The following qualifications were set: 1) County Court Mediators must complete a minimum of 20 hours in a training program certified by the Supreme court. FLA. R. CIV. P. 1.760(a); 2) Family Mediators must have a masters degree in social work, mental health, behavioral or social sciences; or be a physician licensed to practice adult or child psychiatry; or be an attorney or Certified Public Accountant licensed to practice in U.S. jurisdiction; and have at least four years practical experience in one of the above mentioned fields; and have completed a minimum of 40 hours in a mediation training course certified by the supreme court; or have a Masters degree in family mediation from an accredited college or university. FLA. R. CIV. P. 1.760(b); and 3) Circuit Court Mediators must be a former judge of a trial court who was a member of the bar of the state in which the judge presided; or be a member in good standing of the Florida Bar with at least five years Florida Practice; and complete a minimum of a 40 hour mediation training program certified by the supreme court. FLA. R. CIV. P. 1.760(c).

Individuals who were currently mediating prior to the adoption of the rule were allowed to continue to mediate under a grandfather clause. See FLA. R. CIV. P. 1.760(d). By 1990, all mediators must be of good moral character and must complete a “mentorship.” A “mentorship” for county mediators consists of the observation of four county mediations conducted by a certified county mediator and the conducting of four county mediations under the observation and supervision of a certified county mediator. FLA. R. CIV. P. 1.760(a)(2). A family mediator must observe two family mediations conducted by certified family mediator and conduct two family mediations under the observation and supervision of a family mediator. FLA. R. CIV. P. 1.760(b)(3). And a circuit mediator must observe two circuit mediations conducted by a certified mediator and conduct two circuit mediations under the observation and supervision of a certified circuit mediator. FLA. R. CIV. P. 1.760(c)(3).
stration site for the new statute. The 13th Circuit, Hillsborough County (Tampa), received state funds to implement the statute and rules, and an evaluation was conducted. While most observers thought that this would be the sole testing ground of the legislation, they were mistaken. Due to the interest of many skilled attorneys and former judges, private mediation companies and mediators fervently promoted the use of the large case mediation (small claims and family mediation programs were already fairly well established).

IV. RULES GOVERNING MEDIATION

Court-ordered mediation is governed by Chapter 44 of the Florida Statutes, Rules 1.700 - 1.760 Florida Rules of Civil Procedure, and several Florida Supreme Court Administrative Orders. The following is a review of the law and procedures which govern court-ordered mediation.

General rules of procedure were adopted to cover all types of mediation sessions, and specific rules of procedure were adopted for family and small claims mediation to cover the differences. In addition, qual-

35. See Fla. R. Civ. P. 1.740, 1.750. The rules for family mediation include the following:

Limitation on Referral to Mediation. Unless otherwise agreed by the parties, family mediation matters and issues may be referred to a mediator or mediation program which charges a fee only after the court has determined that the parties have the financial ability to pay a fee.

Appears. Unless otherwise stipulated by the parties, a party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present at the mediation conference.

Completion of Mediation. Mediation shall be completed within 75 days of the first mediation conference unless extended by order of the court.

Report on Agreement. If agreement is reached as to any matter or issue the agreement shall be reduced to writing, signed by the parties and their counsel, if present, and submitted to the court. If counsel for any party is not present when the agreement is reached and does not sign the agreement or object in writing to the agreement within 10 days after receipt, the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator.
ifications were established for each type of mediation. 36

The presiding judge is authorized to send all or any part of a civil case, filed in circuit or county court, to mediation, 37 subject to exceptions adopted by court rule. 38 Cases subject to these exceptions can only be sent upon written stipulation of the parties. In addition to these exceptions, cases which have been found to have "a significant history of domestic abuse which would compromise the mediation process" can not be referred to mediation. 39

The first mediation conference must be held within sixty days of the order of referral. 40 The court or its designee, who may be the medi-

36. See supra note 32.
37. FLA. STAT. § 44.102(2) (Supp. 1990).
38. FLA. R. Civ. P. 1.710(b) (listing the following exceptions: appeals from rulings of administrative agencies, bond estreatures, forfeitures of seized property, habeas corpus and extraordinary writs, bond validations, declaratory relief, any litigation expeditied by statute or rule, except issues of parental responsibility, and such other matters as may be specified by order of the Chief Judge of the Circuit).
39. FLA. STAT. § 44.102(2)(b) (Supp. 1990). This language was amended during the 1990 legislative session. The original language adopted in 1987 did not contain any restriction on referrals of domestic violence cases to mediation. The 1989 Legislature had enacted a broader restriction, effective January 1, 1990, which contained the following language: "A court may refer all issues relating to custody, visitation, or child support with the exception of those cases where there is a history of domestic violence, to mediation, if an appropriate mediation program has been established in the circuit or county over which the court has jurisdiction." FLA. STAT. § 44.302(1)(c) (1989) (repealed 1990). The courts reported that this language was overboard based on the high percentage of petitions for divorce which contain an allegation of domestic violence. If read strictly, mediation of family disputes would have been curtailed severely and cases which could have benefitted from the use of mediation would be prohibited from being referred.
40. FLA. R. Civ. P. 1.700(a)(1); but see FLA. R. Civ. P. 1.740(e) (described
ator, must notify the parties in writing within ten days after the order of referral of the date, time and place of the mediation conference. Sanctions, including the fees and costs of the mediator, may be assessed against any party who, absent good cause, fails to appear at a court-ordered mediation conference.43

Mediation is to be completed within forty five days of the first mediation conference, unless extended by court order or by stipulation of the parties.44 Either party may apply to the court for interim or emergency relief at any time.45 Mediation will continue while the motion is pending unless the court or the mediator determines otherwise.46 Discovery may continue throughout the mediation process or be delayed by agreement of the parties.47

supra note 35).

41. FLA. R. Civ. P. 1.700(a)(2). But see FLA. R. Civ. P. 1.750(b) (described supra note 35).

42. FLA. R. Civ. P. 1.700(b). Acceptable reasons to forego the mediation process include: the issue has previously been mediated or arbitrated between the same parties; the issue only presents a question of law; it is exempted from mediation pursuant to FLA. R. Civ. P. 1.710(b); or if other good cause is shown.

43. FLA. R. Civ. P. 1.720(b). This rule was specifically drafted to refer to appearance at the court-ordered mediation conference and not “good faith” participation or negotiation in the process. Such a requirement was deemed by the supreme court and their Committee on Mediation and Arbitration Rules to be unreasonable since mediation is by definition a consensual process. Appearance was defined in the 1990 Rule revisions to require that the following persons be physically present, unless stipulated to by the parties:

(1) the party or its representative having full authority to settle without further consultation; and (2) the parties counsel of record, if any; and (3) a representative of the insurance carrier for any insured party who is not such carrier’s outside counsel and who has full authority to settle without further consultation.


44. FLA. R. Civ. P. 1.710(a). In the original rules adopted by the court in 1988, mediation was to be completed within 30 days to ensure that mediation would be a speedy, low cost alternative. After two years of experience, the court was persuaded that parties and their attorneys were not abusing the process and that some cases legitimately needed more time to be resolved. Cf. FLA. R. Civ. P. 1.740(e) (described supra note 35) (allowing 75 days for the completion of family mediation).

45. FLA. R. Civ. P. 1.720(a).

46. Id.

47. FLA. R. Civ. P. 1.710(c).
The rules of civil procedure provide a great deal of discretion to the mediator. In the initial set of rules adopted by the court, effective from January 1988 to June 30, 1990, court-ordered mediation could only be handled by a certified mediator. In 1990, the rules were amended to provide the parties ten days from the order of referral to choose their own mediator by stipulation. This mediator can be a certified mediator, but if the parties agree otherwise, it need not be.

The supreme court has two standing committees on mediation and arbitration, one on rules and the other on training. The next phase for

48. See Fla. R. Civ. P. 1.720(c)(d)(e). The mediator is in control at all times of the mediation session and the procedures to be followed and has the liberty to reschedule or adjourn the mediation at any time it is deemed to be inappropriate to proceed. Mediation may proceed without the presence of counsel if the parties agree and the mediator determines that it is appropriate to continue. In addition, the mediator may meet and consult privately with the any party or their counsel. Id. The mediator, however, was not given the authority to provide recommendations to the court in the event no agreement was reached by the parties. Fla. R. Civ. P. 1.730(a). The mediator is to report the lack of agreement to the court without comment or recommendation. Id. The 1990 Rule revisions allow the mediator to identify pending motions or outstanding legal issues, discovery process or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement. Id.

49. Fla. R. Civ. P. 1.760 (mediators were certified by the chief judge of a circuit if they were deemed to have complied with the established qualifications); see supra note 32. Chapter 44 of the Florida Statutes was amended in 1990 (effective July 1, 1990) to remove certification from the local level and place it with the supreme court. Fla. Stat. § 44.102(4) (Supp. 1990).

50. Fla. R. Civ. P. 1.720(f). The rule provides:
Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating: (a) a certified mediator; or (b) a mediator who does not meet the certification requirements of these rules but who in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

Id.

51. See J. Mason & S. Press, supra note 16, at C-1 - C-10. The Florida Supreme Court Standing Committee on Mediation/Arbitration Training was appointed in February of 1988 by Chief Justice Parker Lee McDonald. The committee chaired by Judge Frank Orlando was charged with: 1) recommending policies and procedures concerning the certification of mediator and arbitrator training programs; and 2) reviewing applications for the certification of such training programs and making recommendations to the supreme court by making other recommendations relating to the implementation of the provisions of the new rules governing mediation and arbitration qualifications and training, as deemed necessary. Id.

The Supreme Court Standing Committee on Mediation and Arbitration Rules was created by Chief Justice Raymond Ehrlich on July 26, 1989. Chaired by Lawrence
court-ordered mediation is to establish a code of conduct for court mediators, a grievance procedure and discipline process. 52

V. CONCLUSION

This is an exciting time for dispute resolution. Mediation has made tremendous strides in Florida. In fact, Florida is becoming the "national showcase for court-ordered mediation." 53

Watson, Esq., this committee was charged with evaluating the rules of civil procedure and making recommendations reflecting proposed amendments, recommending a set of Standards of Conduct. See J. MASON & S. PRESS, supra note 16, at D-1 - D-8 (evaluating Chapter 44, advising the supreme court of the need for changes and making any other recommendations as would improve the use of mediation and arbitration). Both committees continue to meet on a regular basis to establish policies on their respective issues.

52. See generally FLA. STAT. § 44.307 (1990) (the 1989 amendments to chapter 44 provided immunity to the full extent of a judge to all mediators appointed pursuant to the chapter).