

THE COMMON GROUND

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ANA CRISTINA MALDONADO & NATALIE PASKIEWICZ, CO-EDITORS



MESSAGE FROM THE 2022-2023 CHAIR

Kathleen S. McLeroy, Esq.



It has been my honor to serve as the ADR Section Chair this year. Our Section has had a busy and successful year. During the year, I have had the pleasure of serving with hard-working and committed Section Officers, a talented Executive Council, and

Committee Chairs who have gone above and beyond to fulfill the mission of our Section and serve its members. Many people contributed in many ways, both big and small, to making this year a success for our Section, including the Section's Program Administrator, **Calbrail Banner**, who joined us this year and hit the ground running. To everyone who contributed to making this year a success for our Section, I thank you. We could not have achieved

the success we did this year without the efforts of each and every one of you who contributed. And now, with fear that I omit someone, I will attempt to recognize some of those whose efforts demonstrate the year we have had as a Section.

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Probably the headline of the year for our Section is renewed emphasis on arbitration. Arbitration Committee Chair **Patricia Thompson** did a fabulous job of reinvigorating our Arbitration Committee. Throughout the year, Patricia and the Arbitration Committee have met regularly to forge a path. The Arbitration Committee produced CLE programs and created a regular, informal monthly event to share ideas and best practices, the Arbitrator's Forum. The Arbitrator's Forum is a free, one-hour Zoom discussion on various topics of interest to those involved in arbitration. [Click here](#) if you would like further information about this free Section benefit. The Arbitration Committee also formed a subcommittee to focus on issues of interest to those who participate in nonbinding arbitration. The Nonbinding Arbitration Subcommittee hit the ground running under the leadership of its Chair, **Anne Kevlin**, and drafted a comment to proposed rule changes pending before the Supreme Court of Florida that impacts the nonbinding arbitration process.

We started the year with our Section Retreat in West Palm Beach. Our Chair-Elect, **Christy Foley**, planned a flawless event that consisted of CLE, Section business, and social events. The only thing that was missing from the Retreat was Christy—who was home with newborn Baby Andrew. We missed Christy at the Retreat but somehow, even the draw of Drive Shack golf did not lure Christy away from quality time with her newly-expanded family.

The Retreat was to be followed by the Section's heralded Mentorship Academy for Attorney-Mediators, but Hurricane Ian had other ideas. Although it seems that much time has passed since the storm ravaged Southwest Florida, the recovery process has been painfully slow and many of our colleagues in the impacted areas long for the normalcy that the rest of us take for granted. I encourage you all to reach out to our colleagues in Southwest Florida who were impacted by this horrific hurricane. They could use a kind word and an offer of help.

During October, the Section celebrated Mediation Week with events designed to friend-raise and draw

attention to the ADR Section and its mission of serving members of The Florida Bar who are interested in mediation and arbitration. The Outreach Committee, led by **Harold Oehler**, and the Membership Committee, led by **Christy Foley**, organized these social events around the state that were both fun and well-attended.

Continuing Legal Education is an important Section member benefit. Our Section provides our members a robust offering of quality CLE programs. Creating and maintaining quality CLE programming takes the personal commitment and creativity of a talented and hard-working CLE Committee. We are fortunate to have such a group. The ADR Section's CLE Committee Co-chaired by **Kim Torres** and **Hadas Stagman**, with help from **Chardean Hill**, **Patricia Dawson**, and the Section CLE Committee as a whole, again this year created a robust roster of educational programs. Many of the ADR Section's CLE offerings have a dual purpose, providing CLE credits to members of The Florida Bar, as well as providing CME credits to ADR Section members who are also certified mediators. It takes a village, and we have a talented CLE village. Check out our CLE programs [here](#).

Undeterred by both mother nature and pandemic, in February, the Mentoring Academy Committee, led by Co-chairs **Christina Magee** (the creator of the Academy) and **John Salmon** together with **Cristina Maldonado** and **Shari Elessar** held the Section's second biennial Mentorship Academy for Attorney-Mediators in Tampa. This was our fourth iteration of this event, having been a two-time casualty of Covid-19 and a casualty of Hurricane Ian in September. Thank you all for your perseverance in the planning and execution of this fantastic event. As [the photos](#) show, the room was full and the crowd was engaged. The Mentoring Academy Faculty included Co-chairs **Christina Magee** and **John Salmon**, along with **Shari Elessar**, **Christy Foley**, **Bob Hoyle**, **Michelle Jernigan**, **Kelly Overstreet Johnson**, **Leslie Langbein**, **Harold Oehler**, **Rosa Rodriguez**, **Patrick Russell**, **David Salmon**, **Chris Shulman** and **Kim Torres**. Presenters at the Academy included **Christina Magee**, **John Salmon**, **Patrick Russell**,

Message from The Chair

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Michelle Jernigan, Leslie Langbein, Harold Oehler, David Salmon, Christy Foley, Bob Hoyle, Kim Torres and me. A big thank you to all of you for your willingness to make this program the success that it was.

Thanks to the hard work of our Communications, Publications and Social Media Committee chaired by **Natalie Paskiewicz**, you received this issue of *The Common Ground*, issues of *News & Tips*, our social media feed and all other Section communications. In addition to leading our communications team, Natalie and **Cristina Maldonado** serve as Co-Editors of this publication, *The Common Ground*, the Section's signature publication. Natalie and Cristina's behind the scenes work serves to keep our members connected and informed.

Along the way, the Section also drafted and argued comments to various proposed changes to rules impacting the alternate dispute resolution world. An array of people participated in various ways, from drafting to communicating with other stakeholders to making oral argument. Everyone involved helped to enhance the visibility of the Section as an indispensable and authoritative voice in the substantive area of dispute resolution. My thanks to everyone who participated in these many efforts.

I am sure I have failed to recognize others who have contributed to our Section this year. That does not

diminish your work. For example, some of you, like **Jake Schickel** and other past chairs, have served as a sounding board and provided me wise counsel along the way. I remain grateful to you all for your friendship, patience and counsel. Only real friends will provide you honest feedback and listen to your ranting. It has been my privilege to build upon your work for the Section.

Everything described above resulted from the contributions of our volunteer Section members. It is through the collective efforts of our Section members that our Section thrives. If you are a member of The Florida Bar and are interested in alternative dispute resolution, I encourage you to join our Section. If you are a member of our Section who has not actively participated in our Section, I encourage you to become involved in our Section. Both you and the Section will benefit from your active involvement.

Thanks to you all, it has been a productive year for our Section. Thank you for the opportunity to lead our Section this year.

I look forward to continuing to participate in our vibrant Section. I cannot wait to see what comes next.

Kathleen S. McLeroy
2022-2023 ADR Section Chair
kmcleroy@carltonfields.com



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The Florida Bar ADR Section's Mediation Mentoring Academy Returns

By Shari Elessar, Back on Track Mediation, South Florida

Originally scheduled for 2021, The Florida Bar ADR Section's second Mediation Mentoring Academy for attorney-mediators weathered two cancellations due to Covid and one to avoid Hurricane Ian and finally arrived in 2023. Approximately 50 participants and faculty members gathered in Tampa on February 24-25, 2023, proving that mediators do not give up!

Less experienced participants left with ideas and more confidence, while more seasoned mediators left with a much sharper toolbox. Substantive topics presented included multiple approaches to mediator's opening statements with pros and cons of each type; mediator techniques such as "the cheerleader and the referee", and a myriad of other mediation options to approach obstacles to resolution, including solution-oriented pre-mediation conferences with parties, empathy, silver bullets, brackets (a/k/a contingent offers or reasonable ranges), the reverse godfather, visualization, the mediator's proposal and many more.

The Mentoring Academy was hosted by Carlton Fields at its Tampa offices thanks to the generosity of Kathy McLeroy, Esq., current Chair of the ADR section of The Florida Bar, with the assistance of Calbrail Banner, the ADR Section's Program Administrator. Promotion was handled by Lisa Tipton of PR Florida, Inc., public relations consultant to the ADR Section. The event included a faculty

with the equivalent of hundreds of years of mediation experience in one room. Speakers and attendees mingled over breakfast, lunch and cocktails and enjoyed every minute.

The Academy was the brainchild of Christina Magee, Esq. of Brevard Mediation Services, former Chair of the ADR Section, and John Salmon, Esq. of Salmon & Dulberg, a recognized expert in conflict resolution, who acted as emcee.

Chris envisioned a program where certified mediators with less experience would have an opportunity to mediate with, and receive immediate feedback from, recognized experts from Florida's mediation ranks. Because mediators typically work alone, she also wanted to lay a foundation for mediators to create a network for sharing information and support as they tackle the ethical and substantive challenges that mediators face. Last, but not least, she wanted mediators to have a place to get information on business and marketing practices that are unique to attorney-mediators who may be transitioning their practices from client representation to a fully neutral practice. John was also thinking about how to convey knowledge and build expertise in the generation of upcoming mediators. A brainstorming discussion took place, and voila, the Mentoring Academy was born! With the help of the many contributions from the Mentoring Committee of the ADR Section, and joined by Cristina Maldonado, Esq. of Upchurch, Watson, White and Max Mediation Group and Shari Elessar, Esq. of Back on Track Mediation, the Mediation Mentoring Academy closed out another successful program.

Unique to the Mentoring Academy's program is its highly interactive approach. All participants were given an opportunity to mediate and caucus, while receiving feedback on techniques and approaches



Continued, next page

The Florida Bar ADR Section's Mediation Mentoring Academy Returns

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from the faculty. The faculty and participants took turns mediating a live "hypothetical" case which changes at every event (this year, age discrimination and retaliation), using role players and addressing hidden twists and turns that typically arise in certain types of cases. Role players were all played by actual attorney-mediators, including Patricia Sigman, Esq. and April Goodwin, Esq., who led the charge in the attorney roles, while guest mediators, Ret. Judge Greg Holder, Esq., Ret. Judge Ralph Stoddard, Esq., ADR Treasurer Natalie Paskiewicz, Esq. and Committee Member Shari Elessar, Esq. joined in for the role playing. The "mediation in the round" mediators, who starred in the interactive event, ranged from experienced faculty to audience members who bravely "took the chair."

Participants were also treated to top-tier panels addressing everything from Mindfulness in Mediation, by Patrick Russell, Esq. of Salmon & Dulberg to Technology in a Mediation Practice for Agreements, Marketing, Practice Administration and More, featuring David Salmon, Esq. of Salmon & Dulberg, and Christy Foley, Esq. of CPLS, P.A., President of MEAC and incoming Chair of the ADR Section of The Florida Bar.

The first panel, featuring Harold Oehler, Esq., Oehler Mediation, Leslie Langbein, Esq., Miami Lakes Mediation Center, and Michelle Jernigan, Esq. of Upchurch, Watson, White and Max Mediation Group., discussed strategies in opening a mediation, ranging from checklists every mediator should have when preparing their clients, to guiding them to solution-based approaches.

The second day was built around mock mediation. Select mediators were featured and role play was paused, permitting the audience to absorb what was presented, make observations and ask questions. Even the most seasoned mediators walked away with new tips and ideas to hone their practice, styles and skill sets.

The participants then spread out to different roundtables for a working session to discuss issues pertaining to the conduct of the business of mediation, including other faculty such as



*ADR Section Chair Kathy McLeroy, Carlton Fields,
during the Mentoring Academy*

Chris Shulman, Esq., of Shulman ADR Law, P.A., Ret. Judge Rosa Rodriguez, Esq., Salmon & Dulberg, and former Bar President Kelly Overstreet Johnson, Esq., of Overstreet Johnson Mediation and Arbitration. Attendees had the benefit of being able to brainstorm with multiple experienced mediators on almost every topic imaginable relating to the business and practice of mediation. War stories ranged from the mediation with a gun, to the resolution of a dog dispute by breeding puppies.

The reaction of participants was overwhelmingly positive. Faculty also reported that they picked up insights and approaches from all attendees to add to their repertoire.

Networking opportunities to allow the participants and faculty members to share experiences and get to know each other more informally were also a part of the two-day workshop and were also well-received.

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The Florida Bar ADR Section's Mediation Mentoring Academy Returns

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Former Chair of the ADR Section, Kim Torres, Esq., Torres Mediation, said, about the event, “There isn't any other program in the state that allows participants to figuratively be a fly-on-the wall as some of the most experienced and practicing mediation professionals exercise their craft. It's a rare and privileged opportunity.”

The event closed with a final panel discussion featuring no fewer than five current and former Chairs of the ADR Section of The Florida Bar, including Kathy McLeroy, Esq., Patrick Russell, Esq., Kim Torres, Esq., Christina Magee, Esq. and Bob Hoyle, Esq. (of D. Robert Hoyle, P.A.).

Testimonials from the participants show the Academy was on target with this event. Said Hadas Stagman of South Florida Divorce Mediations:

“The best hands-on education event I have ever attended! Excellent practical tips and strategies and a wonderful opportunity to get to know others who share the same passion for alternative dispute resolution.”

Steven Gard of Gard Mediation had similar praise:

“I enjoyed every minute of it and learned some valuable techniques which I am eager to try out in my mediations. I met with one of the faculty to critique my opening statement. I took a full page of notes and plan to revise my opening statement today. It was a great program.”

Anne Kevlin of Kevlin Mediation was also enthusiastic about the Mentoring Academy:

“This was an excellent seminar – truly outstanding! I learned so much and had a great time as well.”

The return of the Mediation Mentoring Academy of The Florida Bar ADR Section proved to be everything the Section hoped it would be and we look forward to another exciting event in two years. Stay tuned for 2025! In the meantime, get ready for the ADR Section's Arbitration Advocacy Institute, currently planned to take place in February 2024.



Photos from the 2023 Mentoring Academy for Attorney-Mediators



Virtual Mediation 2.0

By Roy S. Kobert, Esq.
GrayRobinson, Orlando



Despite the ever-constant popularity of in person mediations, virtual and double hybrid mediations will remain viable platforms. Though in its infancy, there may be a finite role for the use of meta-verse-based mediations. Regardless, the associated savings in third party costs (airfare and hotel) and the reduction of professional downtime provides real cost savings that cannot be ignored. Here are some practical tips to assist you in your continual mastery of these mediums.

Close captioning. With the continuing “Greying of America,” those who are hard of hearing may prefer in the settings option for the automated captions to be toggled “on.” From here, the mediation participants can see the “c.c.” button on the tray at the bottom of each screen. Zoom’s automated caption is also referred to as live transcription. Even in the absence of hearing loss, some mediation participants may process information better if they can read the spoken word.

Do you speak my language? Moreover, in Zoom settings with close captioning, you have an option to have your spoken language translated seamlessly into numerous other languages in real time (e.g., French, German, Spanish, Portuguese, Italian, Russian, Dutch or Ukrainian. Zoom is currently running beta tests on Japanese, Korean and Chinese (Mandarin).

Same is true in the other direction when the mediation participant is only conversant in a foreign language, all other parties will see the spoken words translated to English as part of the close captioning toggle. Unfortunately, this exciting feature is presently limited to the Business Plus and Enterprise accounts.¹

Double-Hybrid. Sometimes there will be a decision maker on one side who can only appear virtually while everyone else is in person. In my vernacular, “a double hybrid” is where some of the decision makers on both sides appear virtually while the lawyers and the balance of decision-makers participate in person. There are several ways to handle a double hybrid. I prefer to conduct a double hybrid by simply co-hosting the meeting with myself. Since the image of the host will be identical in both rooms, I rename each screen differently to align with the particular conference room I am hosting so you easily keep track of the room you are hosting at any particular time. The alternative method is to designate one laptop “the brains of the mediation” and simply carry it back and forth between caucus rooms and plug it in.

¹ For a deeper dive on this new functionality see: <https://support.zoom.us/hc/en-us/articles/6643133682957-Enabling-and-configuring-translated-captions>.

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Early surveys are enlightening. Over 70% of attorneys have now participated in either hybrid or double hybrid mediations since the onset of the pandemic.² However, when the lawyer is one of the virtual participants, she or he feels potentially disadvantaged/distanced, which is not an ideal starting point for eventual resolution (or perhaps, repeat business). This is one reason for mediators to be wary of hybrid mediations in which one or more of the attorneys would be appearing virtually with the remaining counsel appearing in person.

Metaverse. The metaverse is a wonderful place for pre-mediation role-play. You start by creating an avatar of your adversary and allowing a party, who is particularly nervous to create an avatar of themselves. In the author's opinion, other than for practice purposes, the use during actual mediation is extremely limited. Unlike other types of mediation, in the meta-verse you don't get an opportunity to actually see the participants and make a personal connection. Without a personal connection, the key aspect of nonverbal communication is lost.

² 2023 member poll results conducted by the National Academy of Distinguished Neutrals



Speed is everything. Consider hardwiring your home computer with an ethernet cable directly to the modem. There are online services which test your internet speed for free.³ A simple way for you to incrementally increase speed is to close unnecessary windows on your device. If participants are experiencing buffering, have them disable their video so at least the audio will come through without delay.

Make your bed! Studies have shown that if you make your bed each morning, the rest of your day will be more organized and productive.⁴ Making your bed will give you a sense of accomplishment and provide you momentum for the next task. Besides, an unmade bed in any background reflects poorly on your professional image.

The shoreline and the deep woods. Virtual backgrounds are distracting. Though we all would rather be at the beach or in the forest, the focus should be squarely on you. Most virtual backgrounds will frame you with a halo. If you move too quickly, you will disappear into the virtual background. Moreover, virtual backgrounds take up much-needed bandwidth.

Put your best foot forward. When using a non-virtual background make sure there isn't a mirror behind you.⁵ Find a background with bold and richly textured colors that pop such as pink, blue, taupe, or chocolate. A "zoomer" should also avoid a background with too much intricate detail. Avoid making "the hostage video" of your silhouette against a white wall. Add your favorite painting or a simple model depicting your hobby to break up the monotony of a boring wall. Consider including the latest issue of this ADR Section publication, *The Common Ground*, to show what an *astute neutral* you are as you keep up with cutting edge techniques in your field.

Lean in and use your hands. For emphasis, lean in and speak slowly and clearly. The best way to underscore a salient point is with your hands.

³ See www.speedtest.net.

⁴ *Make Your Bed: Five little things that can change your life and world.* By Adm. William H. McRaven, former Navy Seal. Tip #1: Start your day off by completing a task.

⁵ See "Zoom with a View" *The Wall Street Journal*, February 20-21, 2021, page D2.

If your camera is positioned so the viewer cannot see your hands, then this form of nonverbal communication is lost. Depending on the speed of your modem, there may be upwards of a quarter second delay. By speaking slower you're more likely to capture your listeners' attention and take command of your presentation.

Be the News Anchor and not the Weathercaster. If you stand during mediation, it is unlikely the camera will be trained on your facial features due to the distance between you and your screen. A podium could further obscure those ever-important hand gestures. Besides, it's an awfully long time to remain standing during a marathon mediation. Save the podium for oral argument.

Can you hear me now? Consider investing in AirPods or a pair of wired mic-enabled headphones. Being heard clearly is paramount. If your bandwidth is compromised, Zoom will automatically prioritize your audio over your video.

Lights! Camera! Action! Have a light aimed at you. Consider investing in a simple ring light⁶ which clips on the front of your computer with different light settings. "Zoomers" can also face a window that illuminates facial features with natural lighting – but this tactic is ineffective if the mediation session runs through the evening. If you are worried about how your facial features resonate on screen, join the mediation early to test it out and make any necessary adjustments.

Give the plaid jacket to the used car salesman. Solid patterned clothing works much better than stripes, plaids, or other busy patterns which are distracting with any movement on screen.⁷ Again, if in doubt, keep it simple.

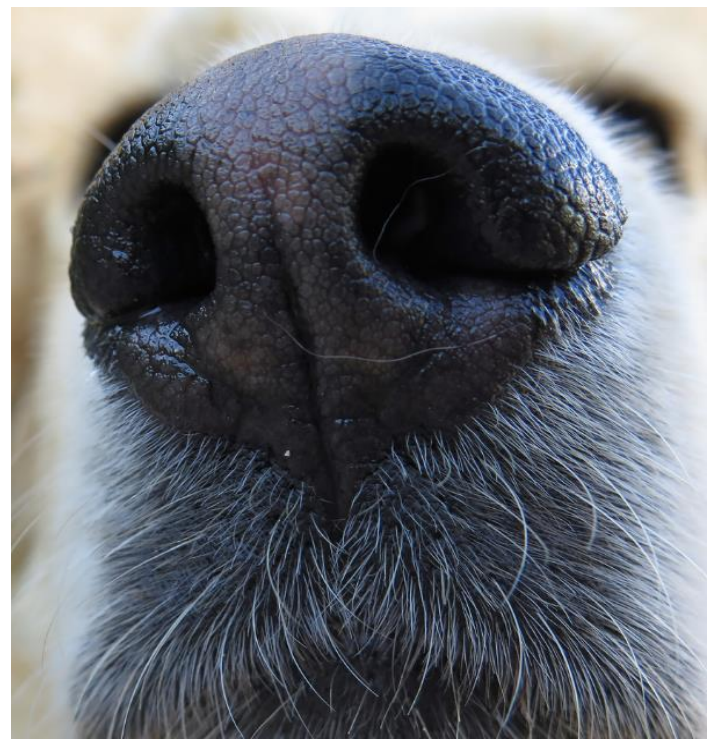
⁶ Radiance Selfie Ring Light priced at \$15.99 available on Amazon.com.

⁷ "Zoom In On Style" *The Wall Street Journal*, February 20-21, 2021, page D1.



The makeup chair. With Zoom settings, you can enable "Touch Up My Appearance" to reduce under-eye baggage and mild skin blemishes giving you a polished look.

Bats in the cave.⁸ Sometimes the camera angle forces the audience to look up someone's nose, at their chin, or worse, at the revolving ceiling fan. Have the camera oriented toward your face at eye level. You can purchase a monitor stand⁹ or utilize a stack of books to elevate your screen.



What's in a name? Verify how your name appears in the lower left portion of the screen. If your participants are on their child's laptop his/her name could be projected on the screen. If you are utilizing a cell phone feed, typically only the cell number will appear. To fix this, move your mouse to the upper right-hand portion of the screen and click on the series of ellipses (...). Thereafter, scroll down to the "rename" feature to correct their title. It is imperative that they are easily identifiable not only to you as the mediator but to the participants as well.

⁸ For those of you who have teenagers, you will understand the meaning of this lead-in. If not, just call me.

⁹ Monitor Stand Riser Adjustable Desktop Stand \$20.79 available at Atumtek.com.

Background theater. When not speaking, have others place themselves on mute to avoid distracting background noises or you place them on mute. There are numerous ways to unmute yourself, the easiest of which is to hold down the spacebar when speaking.

Prior to rising to stretch your legs or use the facilities, turn off your video. The less distractions the better for the process. When you disable your camera, you can establish settings for the screen to typically broadcast your name or your professional headshot.

“Private chat” may not mean “private chat.”

When you are placed in private caucus with your client, you may be tempted to utilize the private chat feature. Why? You can see your client in private caucus so elect to speak to them directly. Why would you ever want to potentially memorialize what you are saying in a private chat? If for any reason the session is being recorded (and it shouldn't be), then the private chat would be recorded as well. Just as the delete button for an email does not mean delete,¹⁰ in the general session everyone can see what you've submitted via the chat function, so don't use it.

Passing notes. The mediator should have the cell number of each attorney/participant in case you need to reach them. Conversely, freely give out your cell number at the outset. Participants will greatly appreciate the ability to text you with any problems if the raising the hand feature does not capture your attention. Remind attorneys if they wish to privately have discussions with their client they can talk with the mute feature enabled. Alternatively, if appearing virtually in different locations, they can do so via text or by making a cell phone call from outside the mediation rooms.

Ask for help. When in caucus, there is a button on the bottom tray to ask for help. This lets the mediator know that you want her to return to your caucus room. If the mediator is not responsive, consider texting the mediator to rejoin your caucus session.

¹⁰ “Never email if you can call. Never speak if you can nod. Never nod if you could wink.” Author: unknown.

Steve Jobs vs. Bill Gates. For greater functionality, PC's typically work better than Macs, iPads, tablets, or cell phones. If you are participating in a virtual mediation through a tablet or smart phone, keep it plugged in. The Zoom application is an energy hog.

Gang mediation. There are pros and cons of the attorney having their client with them in the same physical conference room during a virtual mediation. The positive benefits are obvious. Conversely, if you don't have a set up with a large TV screen for all participants to be seen simultaneously, two or more laptops in close proximity generate feedback, making it difficult to decipher speech. An attorney-only conference with the mediator will require the client to physically step out into the reception area.

Audiovisual aids. If the attorneys will be using media to buttress their opening remarks (i.e., an excerpt of a document, spreadsheet, organizational chart, or PowerPoint) make sure the attorneys let you know in advance. Make sure in settings you allow third-party participants to access also the “Share Screen” feature. Be careful! Before you pull up your document, everyone will be able to see the open tabs on your laptop, so close any attorney-client items.

Pack a lunch. Momentum is a critical component of any mediation, live or virtual. There is nothing worse than the mediator returning to your caucus room but not everyone is present to make a decision and momentum is lost. Plan in advance to bring a lunch or secure delivery via Uber Eats or Door Dash.




Your autograph. If a settlement is achieved, we all know it is best practices to NEVER leave a successful mediation without an executed settlement as signatures can be obtained digitally via DocuSign or similar software programs. No scanners are necessary. No ability to collect counterparts? Modify the settlement to explicitly provide that the attorneys can execute and bind their respective clients as their agents. If all else fails, all parties can execute the settlement, followed by taking camera phone pictures of each page, initialed at the bottom and with all parties emailing/texting the finished product to be collated and verified prior to the conclusion of mediation.

[Roy S. Kobert](#) has mediated all facets of bankruptcy cases and commercial disputes, both in person, hybrid and virtually. He has been Board Certified in Business Bankruptcy Law for over 20 years.




[Disclaimer: Roy bought Zoom stock in March 2020.] © 2023.



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MED-ARB AND ARB-MED IN FLORIDA:¹ Ethical and Practical Considerations and Constraints

By Meah Tell, Esq., Meah Rothman Tell, P.A., Tamarac

In Florida, the Courts are seeking alternative means to reduce their dockets, caused in part by the Covid-19 crisis, and massive new case filings engendered by the 2023 legislation impacting civil litigation.² In Broward County alone, in the period from February 13, 2023 to March 24, 2023, there were 10,296 newly filed circuit civil cases and 18,503 newly filed county civil cases.³

In addition to orders of referral to mediation, some judges have been referring all or parts of their cases to mandatory non-binding arbitration pursuant to Fla. Stat. §44.103 (2023). Some judges have been using case management orders, a single order of referral to mediation and arbitration, or uniform trial orders, in which the same neutral is selected to serve as both mediator and arbitrator.

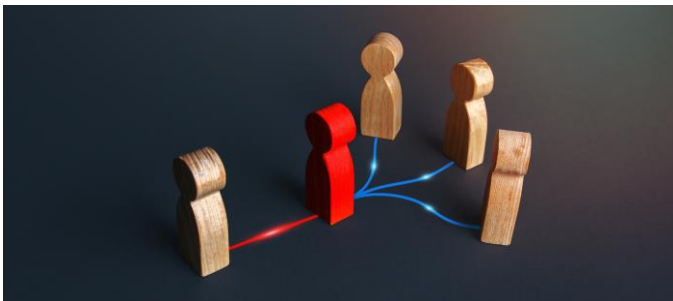
This article briefly will address what appears to be hot issues and MEAC's latest answers to these issues:

(1) Can mediator(s) in a case ordered to mediation that does not settle then ethically serve as the arbitrator in the same case if requested to do so by the parties? (Med/Arb)

¹ Sometimes referred to as HYBRID Alternative dispute resolution processes, the term HYBRID is frequently used today for processes in which the participants appear both in person and using electronic communication.

² Bill # CS/HB 837- Civil Remedies Legislation, was effective on March 24, 2023, the date it was signed by Governor DeSantis.

³ The Information was shared by Chief Judge Tuter with members of the Broward County Bar Association (BCBA) via email from Patricia Hernandez, Membership Coordinator, BCBA, dated April 12, 2023.



Answer: Yes. According to MEAC 2015-003, the mediator must proceed with caution, and should preferably in writing explain the change in his/her role, the waiver of mediation confidentiality and conflicts of interest, and impact on party self-determination. Preferably the parties should agree to these changes in writing. Additionally, the mediator must disclose (preferably in writing) that having agreed to serve as the arbitrator, (s)he cannot act as the mediator regarding the dispute or related matters.

(2) Can neutrals who act as arbitrator(s) in a case referred to mandatory non-binding arbitration later ethically provide mediation services related to the same case? (Arb/Med)

Answer: No. According to MEAC 2015-003, “If the parties voluntarily agree to have their previous mediator act as an arbitrator, ‘the mediator should clearly inform the parties, preferably in writing, that he or she will no longer be serving as mediator and would not be able to mediate the present or related matters for them in the future.’ MEAC 2009-002.” Additionally, once this change in role is effectuated, ‘the former mediator must no longer refer to himself or herself as mediator for the case.’”

Ethics Opinions and Ethics Rules

A. MEAC OPINION 2015-003.

The last Mediator Ethics Advisory Committee Opinion (MEAC) which addresses these issues is MEAC 2015-003. The scenario presented was that of a Florida Supreme Court Certified Mediator mediating a case which the parties did not settle, and then being asked by counsel for both parties to serve

Continued, next page

as the arbitrator in the non-binding arbitration which counsel for the parties anticipated would next be ordered by the presiding judge.

(1) Med/Arb: As to Med/Arb, the majority⁴ opined that **“while it is not expressly prohibited for a mediator to serve as an arbitrator in the scenario described, the MEAC believes that doing so is inherently laden with hazards and suggests great caution for any mediator that accepts this change in roles.”** The majority opined that the mediator can take on this dual role provided the mediator ensures the parties have a complete understanding of how the mediator’s role will change and they must waive the conflict of interest and confidentiality of the mediation. MEAC advised that the parties’ waiver of any possible conflicts of interest and agreement to the loss of confidentiality in mediation should preferably be in writing. The mediator must ensure that the parties are exercising self-determination and that they are voluntarily agreeing to select this mediator as the arbitrator.

(2) Arb/Med: Both the majority and minority opinions in MEAC 2015-003 agreed that based upon the principle set forth in MEAC 2009-002, which was reaffirmed, “it is not ethical for a mediator to mediate a dispute or matters related to the dispute when the mediator has previously arbitrated that dispute.”⁵

B. MEAC OPINION 2009-001. The Opinion stated: “it is not permissible to serve as a general magistrate and mediator for the same case, regardless of the order of service, and even if the parties were to agree.”

C. The Applicable Ethical Standards:

(1) The Florida Supreme Court Ethical Rules for Certified and Court-Appointed Mediators⁶ apply

⁴ There was a minority opinion by Teresa Musetto, and this author which dissented from the majority and opined that a certified or court appointed mediator cannot ethically adjudicate a case which (s)he has previously mediated, regardless of the agreement of the parties.

⁵ Minority opinion Concurrence.

⁶ Part II, Standards of Professional Conduct, Florida Rules for Certified and Court-Appointed Mediators, promulgated by the Florida Supreme Court (“Fla. R. Med.”).

to both certified and non-certified mediators who mediate a case that has been referred to mediation by the court—be it by case management order, uniform trial order, or specific orders referring all or part of a case to mediation. The Court can only select a Florida Supreme Court certified mediator in the initial orders of referral. The mediators who serve in court-referred mediations must tell the parties in their opening session that the mediator is “an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute.” Fla. R. Med. 10.420 (a). See also Fla. R. Med. 10.300 (mediation is not an adjudicatory procedure) and 10.310 (a mediator shall not make substantive decisions for any party).

(2) The Florida Supreme Court Ethical Rules for Arbitrators apply to all arbitrators who arbitrate mandatory non-binding arbitrations referred by court order pursuant to Fla. Stat. §44.103 (2023) or voluntary binding arbitrations pursuant to Fla. Stat. §44.104 (2023).⁷ The Court is only supposed to select a Florida Supreme Court Qualified Arbitrator in the order of referral to mandatory non-binding arbitration. Fla. R. A. 11.040 states that court-appointed arbitrators have to comply with concurrent standards not in conflict with the rules for Court-Appointed Arbitrators. A Florida Supreme Court Certified or Court-Appointed Mediator serving as a Court-Appointed Arbitrator also must comply with the Mediator’s ethics rules, which as explained above, prohibit Arb/Med. If the arbitrator has commenced the arbitration proceeding and then reverts to being a mediator in the middle of the arbitration proceeding, which some arbitrators are apparently doing, or mediates the case after (s)he has rendered an award which is not revealed to the parties, the effect of this combined process and switching of roles, is not only inherently confusing to the parties, but also makes the possibility of the arbitrator rendering an unfavorable award a coercive tool. Where

⁷ Part II, Florida Rules for Court-Appointed Arbitrators, promulgated by the Florida Supreme Court (Fla. R. A.”).

mediation confidentiality and privilege are revived in this combined process is also unclear.

D. Mediation and Arbitration Are Fundamentally Different Processes

It is important to understand that mediation and arbitration are fundamentally different ADR processes. Fla. Stat. 44.1011(1)(2023) defines arbitration as “a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided in this chapter.”⁸ That is, **the neutral is the decision maker for the resolution of the conflict.**

Mediation is defined in Fla. 44.1011 (2) (2023) as “a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. **In mediation, decision making authority rests with the parties.**” (emphasis added).

For this reason, arbitrators or adjudicators should act like judges, and should not mediate cases over which they are presiding or have presided in the past.

⁸ Fla. Stat. § 44.103 (2023) relates to mandatory non-binding arbitration, Fla. Stat. § 44.104 (2023) relates to voluntary binding arbitration pursuant to Chapter 44. In the latter process, the rules of evidence apply.

See *Evans v. State*, 603 So.2d 15 (Fla. 5th DCA 1992). Mediators in their orientation session have made a commitment to the parties before they begin their communications not to be decision makers, and have reassured them that it is the parties who will decide the outcome of the mediation process and not the mediator. Switching roles can be confusing, and there is no guarantee that what the mediator learns in mediation will not impact his/her future decision making when hearing argument and considering evidence in the arbitration process. As stated in MEAC 2015-003, before accepting the role of arbitrator, having already served as the mediator of a dispute, the mediator must “advise the parties that there may be other methods of alternative dispute resolution available to them.” Any Florida Supreme Court Certified Mediator or Court-Appointed Mediator should take great care in making sure that they have made the disclosures required by MEAC 2015-003 in writing before serving in a Med/Arb proceeding.

Meah Tell is a member of the Executive Council and a Former Chair of the ADR Section of the Florida Bar.



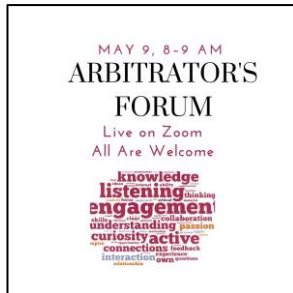
Meah formerly served on the Florida Supreme Court ADR Rules & Policy Committee, the Florida Supreme Court Mediator Ethics Advisory Committee, and the Florida Supreme Court Mediation Training Review Board.



Upcoming CLE and Networking Opportunities



May 9: Mediating Partnerships & Business Relationships A Commercial Divorce. 12–1 PM Live GoToWebinar by Florida Supreme Court Certified Circuit Court Mediator [Steven Gard](#) of Gard Mediation, LLC. Some businesses reach a point where the business owners can no longer work together as a team. Mediation can resolve many of these disputes before they reach the courtroom. Mediators and business lawyers should be aware of how these disputes arise and how they can best be resolved. Course number [6742](#) is approved for 1 CLE/CME; 1.0 Business Law certification credit. ADR Section members register for only \$50. Registrants have 90-day, on-demand access. [REGISTER](#)

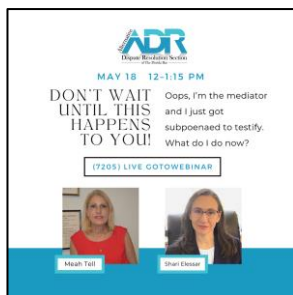


May 9: Arbitrator's Forum (networking opportunity; no CLE). Our next [Arbitrator's Forum](#) is Tuesday, May 9, from 8–9 AM on Zoom. It's free and it's open to all. This month's theme is "Motion practice: When should motions (dispositive or otherwise) be allowed in arbitration, and what to do when a party insists on filing them anyway?" We hope to see you online!

Join Zoom Meeting: <https://us02web.zoom.us/j/81710094208?pwd=V0NBLzhwdWtmYnNxMlZ5TW1Qb2pyUT09>
Meeting ID: 817 1009 4208, Passcode: 567343



May 11: Settling Cases Through Active Listening. 12–1:15 PM Live GoToWebinar by [Iris R. Cohen, LCSW, MSW](#), a social worker and Community Outreach Coordinator for the Comprehensive Center for Brain Health at the University of Miami Miller School of Medicine. Principles and stages of "active listening," barriers to active listening, exploring types of listeners, and active listening competencies in the practice of law. Joint program with the Family Law Section; registration is \$135. Registrants have 90-day, on-demand access. Course number [7436](#) is approved for 1 CLE; 1 Marital & Family Law credit. Registrants have 90-day, on-demand access. [REGISTER](#)



May 18 Ethics CLE: Don't wait until this happens to you! Oops, I'm the mediator and I just got subpoenaed to testify. What do I do now? 12–1:15 PM Live GoToWebinar by [Meah Tell](#), Meah Rothman Tell, P.A., and [Shari Eleassar](#), Back on Track Mediation. Rules, enumerated exceptions, MEAC opinions, and the practical aspects of issuing subpoenas to mediators. This course will explore the underpinnings, and limits, of confidentiality. Course number [7205](#) is approved for 1 CLE/CME, all of which may be applied toward **Ethics**. ADR Section members register for only \$50. Registrants have 90-day, on-demand access. [REGISTER](#)



May 26 Ethics CLE: How to Avoid a Fee Dispute—And Happily Get Paid! 12–1 PM Live GoToWebinar by [Mari J. Frank, JD](#). An analysis of Florida's attorney ethical rules as they relate to billing and collecting fees. Mari is a professional corporate leadership trainer, negotiations coach, privacy consultant, and radio/podcast host in private practice in Florida and California. She is a Florida Supreme Court Certified Circuit Court and Family Court Mediator. She also serves as a Mediation Fee Disputes mediator for the Orange County California Bar Association. Course number [7231](#) is approved for 1 CLE/CME credit; all of which may be applied toward **Ethics**. ADR and Solo & Small Firm Section members register for only \$50. Registrants have 90-day, on-demand access. [REGISTER](#)

June 22, 9:30 AM: 2023 ADR Section Annual, Executive Council, and All-Member Meetings. Please make plans to join your ADR Section friends and colleagues during [The Annual Florida Bar Convention](#) for section meetings, networking, and fun. All events take place at [The Boca Raton](#). We plan to gather for drinks on the evening of June 21 and likely will meet for lunch immediately following the meetings on June 22. We will share details as they become available.

2022 Section Retreat and CLE



We had an excellent turnout for the ADR Section retreat last fall in West Palm Beach. Section members, officers, and EC members joined us for meetings, CLE, networking, and fun. These great photos are courtesy of EC members Ana Cristina Maldonado and Natalie Paskiewicz.

The weekend started with a Friday-night dinner and reception at the West Palm Beach Marriott. Saturday's events included breakfast, CLE, EC lunch and meeting, and an amazing dinner outing at Drive Shack.

Special thanks to Harold Oehler, Jason O'Steen, and Chris Shulman, who presented "Effective Mediation and Arbitration Strategies for Generating Resolutions," a three-hour CLE on Saturday. Thank you to everyone who attended!

Harness Collaborative Contract Power!

By Michael P. Sampson, Sampson Collaborative Law, PLLC, Orlando

Originally published in the ABA's February 2022 *Just Resolutions*



A Climate of Positive Energy. Valentine's Day 1990. The founder of the Collaborative movement,¹ Stuart G. Webb, writes to the Honorable A.M. "Sandy" Keith, Justice of the Minnesota Supreme Court.² Mr. Webb's love interest? A power source for creative settlement he'd conceived: the Collaborative process.

The "climate of positive energy" Stu had witnessed and wanted to sing about often occurred by accident. He found it happened when lawyers used their "analytical, reasoned ability to solve problems and generate creative alternatives and create a positive context for settlement."³

In the climate that captivated Webb and other like-minded contemporaries, who deliberately sought to replicate it, people could harness their power to sign binding settlement contracts. They could express creative alternatives to advance their respective and mutual goals... they could stay out of court.

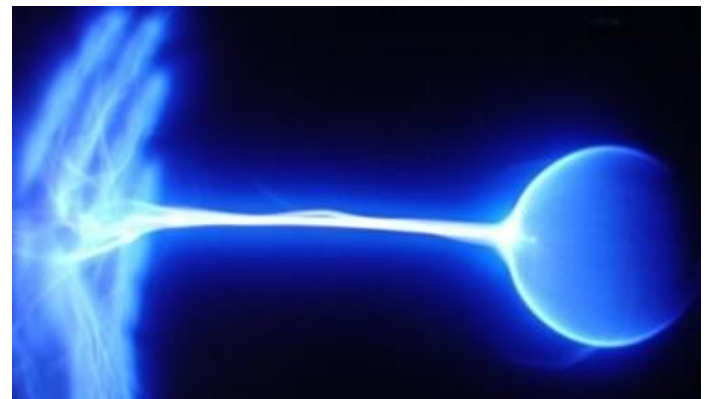


Contract Power in the Collaborative Process. Alternative dispute resolution (ADR) processes are more intimate than going to the mat with an adversary in court.⁴

Negotiating participants in ADR control the processes more than they can in adversarial models. They may make graduated choices to achieve goals after considering options, including options unavailable to

a judge.⁵

Collaborators working in a confidential, intimate, encouraging environment may achieve—by contract—person-oriented” remedies, like “an apology, a handshake, and invitation.”⁶



Collaborators may express choices by contract commitments that advance goals, which may include maintaining personal relationships (for example, so they may coparent effectively), preserving bonds in an interdependent group (for example, a family, a neighborhood, or a social circle), or moving past the dispute in harmony (for example, so they may resume business together). A judge typically couldn't impose these remedies unrelated to the claims for adjudication.⁷

Litigation is not intimate; it's polarizing. A dominant neutral stranger controls the process.⁸ The stranger, typically faced with binary choices, imposes a resolution on the combatants.⁹ That happens after they present evidence, under constraints rules of evidence and procedure impose, and argue positions, based on statutes and case precedent.

Contract Freedom and An ADR Process That Encourages Its Exercise. The collaborative environment Stu Webb imagined, which collaborating professionals have expanded globally, invites exercising contract freedom.

Continued, next page



Fundamental federal law, state law, and case law have protected freedom to contract as a liberty and property right.¹⁰

States cannot take away the right to contract without due process. The Federal Constitution's Contract Clause¹¹ and state constitutions¹² restrict state impairment of contract obligations.

A state impairs a contract when it makes the contract worse or diminishes its quantity, value, excellence, or strength, lessens its effective enforcement, or delays its enforcement.¹³ Freedom from impairing contracts applies to any contract.¹⁴

The law circumscribes judicial power, too, to impair freely negotiated private contracts by stopping judges from rewriting them. Unless there's fraud, involuntariness, overreaching, incapacity, violating public policy, or other sufficient grounds, a judge can't rewrite parties' contracts to make them fit a "post contractual conception more suitable to the situation of the parties."¹⁵

Settlement Agreements Are Highly Favored. Settlement agreements are binding, enforceable contracts.¹⁶ Basic contract principles govern them.¹⁷ Marital settlement agreements, likewise, are binding contracts, interpreted and enforced under contract law.¹⁸

Public policy and the [law in every state highly favors settling disputes with binding settlement agreements](#).¹⁹ Courts will uphold them, when possible, because, through them, parties amicably resolve doubts and uncertainties and avoid lawsuits.²⁰

Settlement agreements help:

- produce peace, harmony, goodwill;
- preserve family ties;
- avoid or discourage potentially divisive litigation;
- adjust equities;
- recognize parties' autonomy to shape their own future rather than having a court impose an outcome on them;
- effectuate the parties' intent and needs;
- avoid wasting assets;
- amicably resolve doubts;
- prevent lawsuits;
- preserve scarce judicial resources; and
- protect confidentiality.

This policy favoring parties' reaching settlement agreements to provide for stable arrangements extends to matrimonial and other family law disputes²¹ and to probate disputes.²²

The UCLA Promotes Settlement. The [Uniform Collaborative Law Act](#) (UCLA) further promotes highly favored settlement, particularly in family matters. As of this writing, seven of the ten most populous states—Texas, Florida, Pennsylvania, Illinois, Ohio, North Carolina, and Michigan (and fourteen other states plus the District of Columbia)—have adopted the Uniform Collaborative Law Act.²³ Some adopting states have expressed this public policy encouraging peacefully achieved settlement contracts.



For example, Florida's "purpose" section of its enactment of the UCLA provides:

Continued, next page

It is the policy of this state to encourage the peaceful resolution of disputes and the early resolution of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.²⁴

Similarly, Texas's "policy" section of the UCLA provides:

It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including disputes involving the conservatorship of, possession of or access to, and support of a child, and the early settlement of pending litigation through voluntary settlement procedures.²⁵

Freedom to Contract in the Collaborative Environment Fosters Expanded Choices and Creative Contract Solutions. States, public policy, and the UCLA encourage people to exercise their freedom of contract and harness their power to contract to settle disputes. For collaborators, the intimate climate Stu Webb conceived and was smitten with (a love affair grown deeper in the last 30 years) is inviting. The collaborative environment allows them and their professional team to harness and direct contract power constructively.



This freedom to contract empowers collaborative participants to exercise it. By doing so, they expand their choices. Collaborative teams invite and encourage every member to imagine solutions beyond outcomes courts could order, and to commit to them in contracts.

By selecting among imagined solutions and expressing them in contracts, participants can achieve resolutions a judge, constrained by statutes, case precedent, and rules of procedure and evidence, couldn't otherwise impose. Family law cases illustrate such expanded contractually achieved choices.

Family Law Settlement Agreements to Obligations A Judge Could Not Otherwise Order. Consider the power of contract in the family context. Obligations parties took on contractually that a judge couldn't have ordered otherwise include:

- Paying for adult disabled child's support.

Bounds of Contract Freedom in Family Law: Respecting Contracts but Safeguarding Children.



Contract freedom has bounds. The State retains authority "to safeguard the vital interests of its people"²⁶ and appropriately and reasonably to "advance a significant and legitimate public purpose."²⁷

Family judges have an independent duty to consider parents' contracts affecting children. Judges must determine independently if agreements specifying child support amounts, custody and visitation arrangements, or responsibility for making decisions are in the children's best interests.²⁸ Children's best interests supersede any agreement between their parents.

Some states limit a family judge from engaging in improper "prospective based" analysis of a child's

best interests.²⁸ Instead, unless events are reasonably certain to occur, judges must determine the child's present best interests when the judge is making custody and child support decisions.²⁹

Parental rights collaborating parents may consider exercising by provisions in settlement agreements they ask the judge to approve as in their child's best interests may include rights to:

- (a) direct the education and care of their child.
- (b) direct the upbringing and the moral or religious training of their child.
- (c) apply to enroll their child in school.
- (d) access and review their child's school records and mental records.
- (e) make health care decisions for their child.

Even though parents' settlement agreements regarding children's issues aren't binding on courts, courts often consider them and enter orders as the parents have agreed.

Even though parents' settlement agreements regarding children's issues aren't binding on courts, courts often consider them and enter orders as the parents have agreed.³⁰

Courts have no free hand to disregard parents' wishes, but should respect and uphold parents' agreements,

unless there's a valid reason not to related to the child's best interests or a finding the agreements were involuntary or came by fraud, overreaching, or concealment.³¹

Harnessing Contract Power: Expanding Choices Among Solutions. Collaborators may take control of their future relationships, expand their thinking beyond binary legal positions, and create contract solutions for themselves, their families, and their businesses.



Freedom to contract creates opportunity to do things by contract. Collaborating participants can harness this power and drive towards agreements the law highly favors that express their interests, goals, and commitments.

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[Michael P Sampson](#) of [Sampson Collaborative Law](#) is a Florida collaborative family law attorney. He accepts collaborative matters only. His clients resolve their family law issues out-of-court and respectfully. For each client, Michael works with fellow collaborative lawyers, neutral mental health professionals, financial neutral professionals, and allied experts. He helps couples identify their interests and resolve issues for themselves and their family. Michael is a member of the [American Bar Association Dispute Resolution Section](#)—Collaborative Law Subcommittee, [International Academy of Collaborative Professionals \(IACP\)](#), [Florida Academy of Collaborative Professionals \(FACP\)](#), and the [Collaborative Family Law Group of Central Florida](#).



Endnotes

¹ International Academy of Collaborative Professionals, *IACP History* (2022) available at <https://www.collaborativepractice.com/sites/default/files/IACP%20%20History.pdf>.

² Webb, S., February 14, 1990. *Letter to Honorable A.M. “Sandy” Keith, Justice of the Minnesota Supreme Court*. [online] available at <https://www.sampsoncollaborativelaw.com/wp-content/uploads/2021/11/1990.02.14-Stuart-Webb-Letter-to-AM-Sandy-Keith-MN-re-collaborative-process.pdf>.

³ *Id.*

⁴ Melvin Aron Eisenberg, *Private Ordering Through Negotiation: Dispute-Settlement and Rulemaking*, Vol. 89 Harv. L. Rev. 637, 654-655 (1976).

⁵ *Id.* at 654.

⁶ *Id.* at 658

⁷ *Id.* at 658

⁸ *Id.* at 655

⁹ *Id.* at 654

¹⁰ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Muller v. Oregon*, 208 U.S. 412, 421 (1908). See also *Washington v. Glucksberg*, 521 U.S. 702, 760 (1997) (Souter, J., concurring), quoting *Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897); *Shields Ltd. P’ship v. Bradberry*, 526 S.W.3d 471, 482 (Tex. 2017); *St. Louis Sw. Ry. Co. of Tex. v. Griffin*, 106 Tex. 477, 171 S.W. 703, 704 (1914); *Chiles v. United Faculty of Florida*, 615 So. 2d 671, 673 (Fla. 1993); Michael Pillow, *Liberty over Death: Seeking Due Process Dimensions for Freedom of Contract*, 8 Fla. A&M U. L. Rev. 39, 39 n. 2, 48 (2012) available at: <http://commons.law.famu.edu/famulawreview/vol8/iss1/5>.

¹¹ U.S. Const., art. I, §10, cl. 1. (“[n]o state shall ... pass any ... Law impairing the Obligation of Contracts.”)

¹² See, e.g., Fla. Const. art. I, § 10 (“No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”). See also James W. Jr. Ely, *Still in Exile? The Current Status of the Contract Clause*, 8 Brigham-Kanner Prop. Rts. Conf. J. 93, 104 n. 70 (2019), available at: <https://scholarship.law.vanderbilt.edu/faculty-publications/1142>.

¹³ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 781 n. 41 (Fla. 1979) (citing *State ex rel. Women’s Benefit Ass’n v. Port of Palm Beach Dist.*, 121 Fla. 746, 759, 164 So. 851, 856 (1935)).

¹⁴ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-245, n. 16 (1978).

¹⁵ See *Beach Resort Hotel Corp. v. Wieder*, 79 So. 2d 659, 663 (Fla. 1955) (citing *Camden v. S. Jersey Port Comm’n*, 2 N.J. Super. 278, 63 A. 2d 552, 566 (1948)).

¹⁶ *Pacifico v. Pacifico*, 190 N.J. 258, 265, 920 A. 2d 73 (2007); *Quinn v. Quinn*, 225 N.J. 34, 137 A. 3d 423 (2016).

¹⁷ *Id.*

¹⁸ *Sachau v. Sachau*, 206 N.J. 1, 5-6, 17 A. 3d 793, 795-96 (2011).

¹⁹ See, e.g., cases from the 10 most populous states, **California**: *McClure v. McClure*, 100 Cal. 339, 343, 34 P. 822, 407 P. 2d 857 (1893) quoted in *Neary v. Regents of Univ. of California*, 3 Cal.4th 273, 277, 10 Cal. Rptr. 859, 834 P. 2d 119 (1992); *Estate of Schuster*, 163 Cal. App. 3d 337, 342, 209 Cal. Rptr. 289 (Ct. App. 1984); *Kaufman v. Goldman*, 195 Cal. App. 4th 734, 745, 124 Cal. Rptr. 3d 555 (Ct. App. 2011); *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359, 60 Cal. Rptr. 3d 693 (Ct. App. 2007); *Zhou v. Unisource Worldwide, Inc.*, 157 Cal. App. 4th 1471, 1475, 69 Cal. Rptr. 3d 273 (Ct. App. 2007); *Brown v. Guarantee Ins. Co.*, 155 Cal. App. 2d 679, 696, 319 P.2d 69 (Ct. App. 1957); **Texas**: *Schlumberger Technology Corp. v. Swanson*, 959 S.W.2d 171, 178 (Tex. 1997); *Elbaor v. Smith*, 845 S. W. 2d 240, 250 (Tex. 1992); *Ranger Ins. Co. v. Ward*, 107 S.W.3d 820, 827 (Tex. App. 2003); *Cadle Co. v. Castle*, 913 S. W. 2d 627, 638 (Tex. App. 1995) (quoting *Hernandez v. Telles*, 663 S. W. 2d 91, 93 (Tex.App. 1983)); *Miller v. Republic Nat. Life Ins. Co.*, 559 F. 2d 426, 428 (5th Cir.1977); **Florida**: *Robbie v. City of Miami*, 469 So. 2d 1384 (Fla. 1985); *Dorson v. Dorson*, 393 So. 2d 632 (Fla. 4th DCA 1981); *Pearson v. Ecological Science Corp.*, 522 F. 2d 171 (5th Cir.1975), *cert. denied*, 425 U.S. 912 (1976); *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003); *Chovan v. Chovan*, 90 So. 3d 898, 900-01 (Fla. 4th DCA 2012); *Pierce v. Pierce*, 128 So. 3d 204 (Fla. 1st DCA 2013); *Smith v. Costa Del Mar Inc.*, Case No. 3:18-cv-1011-TJC-JRK (M.D. Fla. September 21, 2021); **New York**: *Appleyard v. Tigges*, 114 N.Y.S. 3d 627, 66 Misc.3d 390, 114 N.Y.S. 3d 627, 2019 N.Y. Slip. Op. 29373 (Sup. Ct. 2019); *Hallock v. State of New York*, 64 N.Y. 2d 224, 485 N.Y.S.2d 510, 474 N.E.2d 1178 (1984); *Denburg v. Parker Chapin*, 82 N.Y.2d 375, 604 N.Y.S.2d 900, 624 N. E. 2d 995 (1993); **Pennsylvania**: *In re Estate of Brojack*, 321 Pa. Super. Ct. 154, 467 A. 2d 1175 (1983); *Greentree Cinemas Inc. v. Hakim*, 289 Pa. Super. 39, 432 A. 2d 1039, 1041 (Super. Ct. 1981); **Illinois**: *Zamowski v. Gerrard*, 1 Ill. App. 3d 890, 895, 275 N.E. 2d 429 (Ill. App. Ct. 2d Dist. 1971); *In re Marriage of Wilder*, 122 Ill. App. 3d 338, 461 N. E. 2d 447 (Ill. App. Ct. 1st Dist. 1983); *Blaylock v. Toledo, Peoria & Western R.R.*, 43 Ill. App. 3d 35, 356 N. E. 2d 639 (Ill. App. Ct. 3d Dist. 1976); **Ohio**: *Infinite Security Solutions, L.L.C. v. Karam Props. II, Ltd.*, 143 Ohio St. 3d 346, 37 N. E. 3d 1211 (2015); *Federle v. Federle*, 2019 Ohio 2565 (Ct. App. 1st Dist. 2019); *Walther v. Walther*, 102 Ohio App. 3d 378, 383, 657 N. E. 2d 332 (Ct. App. 1st Dist.1995); *Holland v. Holland*, 25 Ohio App. 2d 98, 101, 266 N. E. 2d 580 (Ct. App. Dist. 1970); **Georgia**: *Leary v. Julian*, 225 Ga. App. 472, 474, 484 S. E. 2d 75 (Ct. App. 1997); *Sanders v. Graves*, 297 Ga. App. 779, 779, 678 S. E. 2d 220 (Ct. App. 2009); *Schafer Properties v. Tara State Bank*, 220 Ga. App. 378, 380-381, 469 S. E. 2d 743 (Ct. App. 1996); **North Carolina**: *Hardin v. KCS Intern., Inc.*, 199 N.C. App. 687, 682 S. E. 2d 726, (Ct. App. 2009); *Bohannon v. Trotman*, 214 N. C. 706, 720, 200 S. E. 852 (1939); *Armstrong v. Polakavetz*, 191 N. C. 731, 734-35, 133 S. E. 16 (1926); **Michigan**: *Lentz v. Lentz*, 271 Mich. App. 465, 721 N. W. 2d 861 (Ct. App. 2006); *Putney v. Haskins*, 414 Mich. 181, 189; 324 N. W. 2d 729 (1982). *Bers v. Bers*, 161 Mich. App. 457, 464, 411 N. W. 2d 732 (Ct. App. 1987).

²⁰ *DH Overmyer Co. v. Loflin*, 440 F. 2d 1213, 1215 (5th Cir. 1971).

²¹ *Konzelman v. Konzelman*, 158 N. J. 185, 729 A. 2d 7, 11 (1999).

²² See Unif. Probate Code § 3-912 (amended 2006) (Private Agreements Among Successors to Decedent Binding on Personal Representative); Fla. Stat. § 733.815 (2021) (interested persons may agree among themselves to alter interests, shares, or amounts to which they are entitled in a written contract they sign); Mich. Comp. Laws § 700.3914 (2021) (same).

Endnotes, continued

²³ See Uniform Law Commission, Collaborative Law Act Enactment Map available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=fdd1de2f-baea-42d3-bc16-a33d74438eaf> and Sampson Collaborative Law¹, Statewide Chart of Enactment available at <https://www.sampsoncollaborativelaw.com/uniform-collaborative-law-act-ucla-statewide-chart>.

²⁴ Fla. Stat. § 61.55 (2021).

²⁵ Tex. Fam. Code § 15.001 (2021).

²⁶ *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934); *Sveen v. Melin*, 584 U.S. ___, 138 S. Ct. 1815, 201 L. Ed.2d 180 (2018); *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); *Apartment Ass'n of Los Angeles Cty. v. City of Los Angeles*, 10 F. 4th 905 (9th Cir. 2021).

²⁷ *Sveen v. Melin*, 584 U.S. ___, 138 S. Ct. 1815, 1821-22, 201 L. Ed. 2d 180 (2018).

²⁸ *Feliciano v. Feliciano*, 674 So. 2d 937 (Fla. 4th DCA 1996). See also, *Puglisi v. Puglisi*, 135 So. 3d 1146, 1148 (Fla. 5th DCA 2014); *Jones v. Jones*, 674 So. 2d 770, 774 (Fla. 5th DCA 1996); *Dorsett v. Dorsett*, 902 So. 2d 947, 951 (Fla. 4th DCA 2005); *Martin v. Martin*, 798 P. 2d 321 (Wyo. 1990); *Jasper v. Jasper*, 351 N. W. 2d 114, 117 (S.D. 1984); *Napora v. Napora*, 159 Mich. App. 241, 406 N. W. 2d 197, 199 (Ct. App. 1986); *Hovater v. Hovater*, 577 So. 2d 461 (Ala. Civ. App. 1990); *In re Marriage of Thielges*, 623 N. W. 2d 232 (Iowa Ct. App. 2000); *In re Marriage of Witzenburg*, 489 N. W. 2d 34 (Iowa Ct. App. 1992); *In re Marriage of Hunt*, 476 N. W. 2d 99 (Iowa Ct. App. 1991); *Williams v. Pitney*, 409 Mass. 449, 567 N. E. 2d 894 (1991); *Masters v. Craddock*, 4 Mass. App. Ct. 426, 351 N. E. 2d 217 (App. Ct. 1976); *Phillips v. Jordan*, 241 Mich. App. 17, 614 N. W. 2d 183 (Ct. App. 2000); *Napora v. Napora*, 159 Mich. App. 241, 406 N. W. 2d 197 (Ct. App. 1986); *Bell v. Bell*, 572 So. 2d 841 (Miss. 1990); *Hill v. Robbins*, 859 S. W. 2d 355 (Tenn. Ct. App. 1993); *deBeaumont v. Goodrich*, 162 Vt. 91, 644 A. 2d 843 (1994); *Wilson v. Wilson*, 12 Va. App. 1251, 408 S. E. 2d 576 (Ct. App. 1991); *Watt v. Watt*, 971 P. 2d 608 (Wyo. 1999).

²⁹ *Arthur v. Arthur*, 54 So. 3d 454, 457 (Fla. 2011). See also [Sampson Collaborative Law, Florida Parenting Plans & Events Reasonably Certain to Occur](#).

³⁰ Sarah Abramowicz, *Contractualizing Custody*, 83 Fordham L. Rev. 67, 80 n. 58 available at: <https://digitalcommons.wayne.edu/lawfrp/258> (2014) (citations omitted).

³¹ *Sedell v. Sedell*, 100 So.2d 639, 642 (Fla. 1st DCA 1958); *Griffith v. Griffith*, 860 So. 2d 1069, 1072 (Fla. 1st DCA 2003); *Williams v. Sapp*, 255 So. 3d 912, 915 (Fla. 1st DCA 2018); Sarah Abramowicz, *Contractualizing Custody*, 83 Fordham L. Rev. 67, 80 n. 58 available at: <https://digitalcommons.wayne.edu/lawfrp/258> (2014) (citations omitted).

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