Alternative ADR
Dispute Resolution Section
of The Florida Bar

THE COMMON GROUND

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ANA CRISTINA MALDONADO & MICHELLE BURKE, CO-EDITORS

MESSAGE FROM THE 2024-2025 CHAIR

Ana Cristina Maldonado, Esq.

Dear Section Members,

So much of what we do as professional neutrals went online during the Covid years. The consensus is that virtual appearance is more financially efficient and equivalent in terms of settlement outcomes. That said, attending the Section's 3rd Mediation Mentoring Academy was a welcome reminder of how refreshing it is to connect with colleagues in person. Read more about the Academy in the article by Christina Magee and John Salmon, our wonderful organizers.

Early this year, Florida's mediation rules experienced a major overhaul. The Section is committed to helping you understand the changes that are now in effect. This issue includes an article about the updates

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to Rule 10, which impact the process for becoming a Florida Supreme Court Certified Mediator as well as the ethical rules for certified and court appointed mediators. We also encourage you to view our recent CLE on the issue: "Navigating the New Mediation Rules: Yes, No, Maybe?" taught by Meah Tell and W. Jay Hunston, Jr. and moderated by Megan Moschell.

Other exciting news involves the creation of "The Voice of The Mediation Client," a video project supported by The Florida Bar ADR Section and developed by Harold Oehler and Jay Castle. Actual mediation parties are interviewed and share insightful comments about the mediation process. The video is designed to be used as a discussion tool between trial attorneys and neutrals. Save the date for a statewide virtual premiere on September 10 from 3:00–5:00 p.m. and join us!

Thanks to our authors for making this an interesting and entertaining issue. Those of you watching "Andor" on Netflix will enjoy Professor Sherrill W. Hayes' article on Jedi mediation. Mark Greenberg shares some wonderful insights about how to secure a settlement. Betsy Vazquez contributed an excellent article on Collaborative Family Law prenups.

Lastly, we want to extend our thanks and appreciation to Lisa Tipton, who after many years is transitioning out of her role as the Section's Communications Consultant and layout artist for The Common Ground. Thank you for your service to the Section, Lisa!

Enjoy this issue and I look forward to seeing you—online or in person—at our CLEs, forums, meetings and events. Join us in person for an open ADR Section meeting on June 26 from 3–5 p.m. during the Annual Florida Bar Convention in Boca Raton.

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2024-2025 ADR Section Chair

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THE ADR SECTION'S 3RD MEDIATION MENTORING ACADEMY

by John Salmon, Salmon & Dulberg
Dispute Resolution, Hollywood
and Christina Magee, Brevard
Mediation Services, Indian Harbour Beach

Nearly 60 new and veteran mediators gathered in Tampa on May 2–3, 2025, for the ADR Section's 3rd Mediation Mentoring Academy. The brainchild of Christina Magee and John Salmon, the Academy takes place every two years. This year's focus was on "closing the deal" and moving the parties forward to resolution.

Day one of the Academy began with a welcome from Cristina Maldonado, the current ADR Section Chair. The group expressed its gratitude to Kathy McLeroy and Carlton Fields for serving as gracious hosts. Alicia Perez shared the Section's appreciation for its Annual Sponsor, ADR Notable, as well as event sponsors, Fourth Party, Salmon and Dulberg and Upchurch Watson White & Max.

Diving right in, the first panel examined The Mediator's Opening, with panelists Leslie Langbein, Harold Oehler, Karen Putney-Evans and Oscar Sanchez sharing their opening statements. The Academy's participants also had the special opportunity to hear actual mediation clients sharing their impressions of opening statements given by mediators during their mediations, viewing a clip from the ADR Section of The Florida Bar's new film project, "The Voice of the Mediation Client." This video features actual mediation parties—both "Regular Joes" (attending their first-ever mediation) and "Pros" (who mediate regularly on behalf of their organizations).

Christina Magee and Christopher Shulman closed the afternoon with a presentation on Ethical and Practical Considerations Involved in Developing a Fully Neutral Practice.

That evening, participants gathered to enjoy drinks and hors d'oeuvres at a wonderful networking reception before heading out to dine-around events in the area.

The Academy's highlight—a mediation "role-play-in-the-round" exercise—started first thing on Day 2. Scenarios for previous academies included a slip-and-fall case and an employment discrimination case. This year's scenario, written by Jay Castle, was a business divorce between the two senior doctors of "Boomer Radiology" and their younger business partner, Dr. Miranda Gray (played by Chair Elect, Natalie Paskiewicz), who left the practice for "Up and Coming Radiology." Both new and veteran mediators gamely stepped into the mediator's chair. The role play characters put each mediator's skills to the test. The Academy's Master of Ceremonies, John Salmon, and the rest of the group offered coaching and support.

During lunch, Ido Alexander provided the participants with many different ideas as to how they might use AI in their practices in his presentation, "Modern Mediation: AI Tools and E-Signatures."

In the early afternoon, participants held small group discussions by table, facilitated by the Academy's faculty members, touching on a variety of challenges mediators commonly face in mediation settings.

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The day concluded with a panel on "Moving Through Impasse to Close the Deal," with panelists Rodney Max, Christina Magee, and Rosa Rodriguez, highlighting the ways mediators can get the parties on track to resolve, even when resolution seems remote.

A sampling of the program evaluations from the Mentoring Academy shows that the participants found it both inspiring and immensely helpful:

- "Liked how everyone was welcoming—enjoyed meeting people at all stages of practice."
- "Musical chairs in mediators let us see different styles."
- "Valuable insights on multi-faceted matters."
- "Great. Tons of issues and good discussions."
- "Wonderful experiences shared openly."
- "Best CLE for mediators ever."

We look forward to hosting our 4th Academy in 2027!

John W. Salmon, Esq., President of Salmon & Dulberg Dispute Resolution, a 25-year, statewide ADR firm in Florida, is a natural mediator with a broad-based educational, legal, and business background. He is a graduate of Penn State University and the University of Florida College of Law and holds a Master's Degree in Business Administration from Florida International University, where he was an adjunct faculty member in the College of Business and College of Law. John has mediated over 8,000 cases. He is a Diplomate member of the National Academy of Distinguished Neutrals and serves on its Executive Committee. As a Distinguished Fellow of the American College of Civil Trial Mediators, he is the Editor of the College's American Journal of Mediation. John is a Diplomate and past President of The Florida Academy of Professional Mediators and currently sits on the Executive Council of the ADR Section of The Florida Bar. John is committed to mentoring the next generation of mediators and litigators in Florida on "Appropriate Dispute Resolution."

Christina Magee, Esq., a Florida Supreme Court Certified Circuit Civil, Appellate and County Mediator, and Qualified Arbitrator, has decades of experience representing corporate and individual defendants, insurance companies and injured parties. That experience includes a decade-plus as inside claims counsel for a major insurance company, resolving numerous exposures, primarily via mediation and negotiated settlements. She is the founding principal for Brevard Mediation Services, LLC, established in 2011. A former Chair of The Florida Bar ADR Section, she was instrumental in establishing the Mentoring Academy. In addition to being active in the ADR Section, she is a Diplomate of the National Academy of Distinguished Neutrals, as well as a member of the American College of Civil Trial Mediators, where she serves on the editorial board of the American Journal of Mediation. She is on the mediation panel for U.S. District Courts in both the Middle District and Southern District of Florida.

THE ADR SECTION'S 3RD MEDIATION MENTORING ACADEMY

MORE PHOTOS FROM THE ADR SECTION'S 3RD MEDIATION MENTORING ACADEMY

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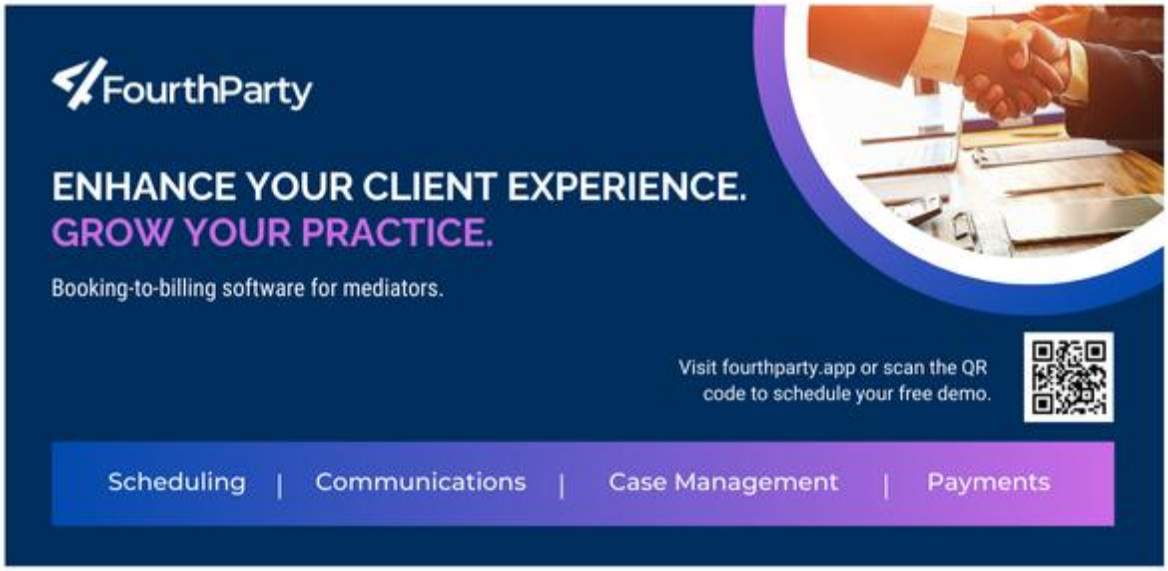

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COLLABORATIVE DIVORCE: HISPANO COLLABORATIVE PROFESSIONALS™ (HCP) PAVES THE WAY SERVING HISPANICS – PART 2: COLLABORATIVE PRENUPTIAL

by Betsy Vázquez
Vázquez Law, PLLC, Doral

Hispano Collaborative Professionals™ (HCP) – Part 2 continues to pave the way serving Hispanics with their first Collaborative Prenuptial Agreement.[1] When couples consider marriage, the topic of a prenuptial agreement often arises, prompting the question: Why is it necessary? Although prenuptial agreements are increasingly becoming a standard practice, they are still perceived by some as an unwelcome necessity. This article discusses the differences between a collaborative prenuptial and a traditional prenuptial agreement. In particular, it highlights a Spanish-speaking couple's decision to engage in the collaborative law process in their native language as they prepare for their "happily ever after" together.

HCP is a nationwide collaborative practice group based in Miami-Dade County, Florida, that provides legal services throughout the State of Florida and beyond in the areas of family law, estate planning, and is evolving into other areas of law.[2] What sets HCP apart is its unique team of bilingual professionals who are completely fluent in both Spanish and English, proficiently reading, writing, and speaking both languages. This diverse team is not only extensively trained in collaborative practices but is also passionately committed to promoting the transformative power of the collaborative law process and other alternative dispute resolution (ADR) methods. Their mission is to enhance awareness within the underserved Hispanic community and the general public, advocating for healthier, more efficient ways to resolve conflicts. HCP also supports the International Academy of Collaborative Professionals' (IACP) vision to foster a global network of Collaborative Practice and consensual dispute resolution professionals.[3]

Collaborative Prenuptial or Traditional Prenuptial Agreement: What's Different?

The collaborative prenuptial differs from the traditional prenuptial agreement primarily in its approach and intent. Pursuant to Florida Statute §61.079(3), commonly referred to as the "Uniform Premarital Agreement Act," and it applies only to proceedings under the Florida Family Law Rules of Procedure states, *"A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration other than the marriage itself."*[4]

A prenuptial agreement, also known as a premarital agreement or a "prenup," is a contract between two people that are planning to get married. The purpose of the documents is to predetermine the rights and responsibilities of both parties in the event of a divorce or death while the parties remain married. Unless a couple decides to get a divorce, the prenup is not triggered. The ultimate goal of this agreement is to ease the dissolution of the marriage process and end the relationship on the best terms possible.

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[1] Collaborative Divorce: Hispano Collaborative Professionals™ (HCP) Paves the Way Serving Hispanics
[2] *See* hispanocollaborativepros.com
[3] International Academy of Collaborative Professionals
[4] Florida Statute §61.079(3)

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Collaborative Prenuptial

In the collaborative prenuptial process, couples come together with their respective collaborative lawyers and may also include a neutral facilitator, financial advisor, affiliate/allied professional, and a note-taker, to craft an agreement aligned with their shared goals and interests. This process emphasizes open communication and transparency, striving to achieve a fair and equitable agreement that benefits both partners. The tone and intent are pivotal in nurturing trust and establishing a cooperative foundation for the marriage. The agreement should be framed as a partnership tool, aimed to plan for the future while constructively and positively addressing any potential concerns.

Traditional Prenuptial Agreement

In the traditional prenuptial agreement process, one party typically begins by consulting with their attorney to create an initial draft of the document. This draft is then presented to the other party, who reviews it with their own legal counsel. This method can sometimes feel confrontational, as it often involves a series of negotiations where each individual is primarily focused on safeguarding their personal interests. Although the traditional approach effectively protects individual assets and clearly outlines financial arrangements, it can sometimes come across as more transactional, with a strong emphasis on securing one's financial security in the event of a divorce.

Getting Started Collaboratively

The collaborative prenuptial process, also called life planning, blossoms when couples are clear on what's important to them before getting married. It involves moving from the "romantic" stage of a relationship to the "reality" stage. During this time, partners set themselves up for future success. Professionals guide and educate the couple to create a fair and reasonable collaborative prenuptial agreement.

Pursuant to the Florida Collaborative Law Process Act, §§ 61.55-61.58, Florida Statutes, the collaborative process officially commences when the parties sign the collaborative law participation agreement.[5] This critical step fulfills the statutory requirement and allows the couple to move forward with the process.

In a collaborative prenuptial case involving a Spanish-speaking couple, the team included several professionals. Betsy Vázquez, Esquire, a collaborative lawyer[6], represented one spouse, while M. Cristina Morales, Esquire[7], also a collaborative lawyer, represented the other spouse. Additionally, Tania Ortega[8], participated as a realtor affiliate professional, and Claudia L. Pernudi, Esq.[9], assumed the role of note taker.

Each lawyer conducted individual meetings with their respective clients to gain a thorough understanding of their unique needs, interests, goals, and concerns. The lawyers also met separately, without the clients, to exchange information, ensuring that the participants had realistic expectations. These insights were later addressed during joint team meetings. The realtor affiliate professional addressed the couple's concerns related to property assets. Meanwhile, the note taker listened attentively and meticulously documented the discussions, ensuring that the minutes from the team meetings were prepared promptly in both Spanish and English. Throughout the process, there were preliminary discussions and comprehensive debriefing sessions by the team. The collaborative

[5] Florida Law Process Act, §§61.55 - 61.58, Florida Statutes
[6] Betsy Vázquez, Esq., Vázquez Law, PLLC, Doral (Miami-Dade County), Florida
[7] M. Cristina Morales, Esq., Gedeon & Morales Law Group, PLLC, Hollywood, Florida
[8] Tania Ortega, Realtor Affiliate, Global Vanguard International, Miami, Florida
[9] Claudia L. Pernudi, Esq., Pernudi Law, Coral Gables, Florida

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process culminated in the creation of a collaborative prenuptial agreement that was expertly drafted, accurately translated in Spanish, and finalized with a formal signing ceremony.

Betsy Vázquez, Esq. commented, *"The process from start to end was seamless because everyone was prepared, on point, and on the same page."* The team worked together effortlessly to support the couple, ensuring every need was met throughout the process. To facilitate a smooth experience for the clients, documents such as the participation agreement, meeting agendas, minutes, and agreements were drafted in English and Spanish. Attorney Morales added, *"Hispanics might find it hard to understand prenuptial agreements because they aren't common in their culture. It's important to have a lawyer who speaks their language and understands them, so they can express any concerns. This ensures both parties know and agree to what they are signing without any doubts."*

Five C's: Collaborative Prenuptial in Spanish

C - Consultation - Initiating the process with a consultation in Spanish fosters a deeper connection with clients. Offering intake forms and essential documents in Spanish further enhances understanding and sets clear expectations.

C - Communication - Effective communication is key. By facilitating interactions in Spanish - whether through emails, text messages, phone calls, Zoom meetings, or WhatsApp - clients and team members can ensure a successful process.

C - Collaborative Team Meetings - Conducting team meetings in Spanish encourages open discussion and negotiation by removing language barriers. This method builds trust and comfort, making the entire process smoother for clients who might struggle with English.

C - Collaborative Prenuptial Agreement - The prenuptial agreement is drafted in English, with a Spanish version available. Presenting both versions during the signing ceremony is considered best practice, ensuring clarity and mutual understanding.

C - Cost-Savings - By eliminating the need for an interpreter or translator, clients enjoy cost savings, resulting in satisfied and happy clients.

Collaborative and Beyond

As the collaborative law process continues to gain momentum, its benefits are likely to extend into a variety of different situations, such as:

- **Transitioning from single to married:** Helping couples work together to solve problems for an easier start to married life.
- **Planning for a second marriage:** Guiding couples through the complexities of entering a second marriage with transparency and mutual understanding.
- **Couples with children:** Supporting families in creating harmonious environments that prioritize the well-being of children.
- **Blended families:** Assisting in the integration of families, ensuring that each member feels valued and understood.
- **From married to empty nesters:** Helping couples redefine their relationship as they adjust to life without children at home.
- **Care for an aging parent:** Facilitating discussions and decisions around the care and support of elderly family members.
- **Death of a loved one:** Providing a structured approach to dealing with the emotional and practical aspects of loss.
- **Infertility:** Offering support and guidance through the emotional challenges associated with infertility.
- **Pregnancy:** Assisting expectant parents in preparing for the changes a new baby will bring to their lives.
- **Affairs:** Providing for a safe space for couples to address infidelity and work towards resolution or rebuilding trust.
- **Adult children leaving or returning home:** Helping families adapt to changes in living arrangements that can affect household dynamics.
- **Career/working to retirement:** Providing support and resources for individuals as they approach the end of their professional careers and prepare for the next chapter in their lives.

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- **End of career or loss of a job:** Assisting individuals in coping with the emotional and financial challenges that accompany the conclusion of a career or unexpected job loss, and helping them explore new opportunities.

In summary, a collaborative prenuptial agreement serves as a cornerstone for building a thriving and enduring marital partnership. While we, as legal advisors, may not possess a crystal ball to predict the future with absolute certainty, we certainly have the ability to empower our clients towards their "happily ever after."

Author: *"I wholeheartedly believe in the collaborative prenuptial process as the prevailing alternative dispute resolution (ADR) choice for couples seeking the protections that a premarital agreement can offer. Whether the journey leads to a lifelong partnership until death do they part or ends in separation, this thoughtful process in Spanish or in English ensures that both parties are protected and their intentions are respected."*

Betsy Vazquez, Esq. is a bilingual (Spanish and English) Collaborative Family Law Attorney, Personal Family Lawyer®, Florida Supreme Court Certified Family Mediator (2010), the Founder and President of the Hispano Collaborative Professionals™ (HCP) practice group, Vázquez Law, PLLC law firm, and Mediate4Peace, LLC mediation practice in Doral (Miami-Dade County), Florida. She works with clients throughout the state of Florida with divorce, estate planning before, during, and after divorce, pre-marital and post-nuptial agreements, parenting plans, and other matters impacting families. Ms. Vázquez also practices Elder Law, is a Qualified Parenting Coordinator, Florida Supreme Court Certified County Mediator, and is a member of the International Academy of Collaborative Professionals (IACP), Collaborative Family Law Institute (CFLI), and Florida Academy of Collaborative Professionals (FACP).

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UPDATES ON CHANGES TO RULE 10 (SO FAR!)

by Ana Cristina Maldonado, Assistant Professor of Law
and Director of Externships, NSU Shepard Broad College of Law
2024–2025 Chair, ADR Section of The Florida Bar

Florida's mediation rules have seen substantial changes. This article covers the highlights of changes to Part I (Certification) and Part II (Ethics) of Florida Supreme Court's Rule 10. Pending still is an overhaul of Part III (Mediator Discipline). All of the changes detailed in this article are currently in effect. Many changes incorporated previous MEAC opinions – most of which went from being advisory to required, with some adjustments.

This article is not intended to be comprehensive.

Changes to Rule 10, Part I: How To Become a Florida Supreme Court Certified Mediator (Revised as of March 2025)

Overall, the rule changes make it easier to get certified in a variety of ways.

A. Becoming a County Mediator. Mediators who are currently certified Circuit Court, Family, or Dependency may apply to be County Court certified without attending an additional training program. Observations / co-mediation, fee and application still required. This change makes a lot of sense because many cases that are county today were circuit civil cases as recently as January 1, 2023, when County Court Subject Matter Jurisdiction increased from $30,000 to $50,000. You can find the application here.

B. Fewer Observations/Co-mediations are Required. It is now easier to get certified across all certifications because observations and co-mediations are now worth more points.

C. Restoration of Rights Required. In keeping with related state policies, an applicant who is a convicted felon requires full restoration of civil rights to be eligible for certification.

D. New Circuit Civil Observation Opportunities. Previously, only cases that were pre-suit or in the courts (federal or state) were valid for mentorship (observations/co-mediation). As of February 1, 2025, the DRC will accept observations of and co-mediations with Florida Supreme Court Certified Circuit Civil Mediators of executive agency mediation program cases, including:

- Insurance Florida Dept. of Financial Services (DFS)
- Workman's Comp mediations at the Office of the Judges of Compensation Claims
- Florida's Dept. of Education mediations
- Florida's Dept. of Agriculture mediations
- Florida statutory HOA pre-suit mediation

Historically, Circuit Civil mentoring was hard to get because unlike most other certification areas, there was no public entity where you could request observations. Trainees were stuck knocking on the doors of private mediators, many of whom did not accept observers. This change increases access to certification. Remember—the trainee still must stay for the entire mediation session for the mentorship to count.

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Changes to Rule 10, Part II: Florida Rules for Certified and Court Appointed Mediators (Revised as of January 1, 2025)

Many of the changes have to do with conflicts of interest and confidentiality.

A. No Mass Opening Statements.

"Mediators are precluded from making group opening statements with parties from multiple cases," per the Committee note to the 2024 Revision provided by the ADR Rules and Policy Committee under 10.420 Conduct of Mediation. This impacts county and small claims cases as well as "global" settlement conferences (one plaintiff, many defendants, set in a sequence on the same day). Treat each party's case individually. It will be experienced as an inconvenience by the repeat-player parties but supports the individual self-determination of one-time mediation parties.

B. Clear (Unwaivable) Conflicts of Interest Arising from Family Relationships.

Rule 10.340(d)(1) states that a clear conflict of interest applies if "the mediator (or mediator's spouse/domestic partner) is related by blood, adoption, or marriage to a person within the third degree of relationship to one of the mediation participants or a participant's spouse/domestic partner." If you are confused by what "third degree of relationship" means, here is a handy resource.

C. Clear (Unwaivable) Conflicts of Interest Arising from Representation or Service-Provision.

Rule 10.340(d)(2) and (3) state that a clear (unwaivable) conflict of interest still applies if the mediator previously provided services or represented one or more of the mediation participants in the current case or dispute at issue in the mediation.

Thus, PREVIOUS provision of mediation services for one or more of the mediation participants is NOT a clear conflict of interest.

Many mediators work repeatedly with individual attorneys or parties. Imagine mediating once for an insurance company and then being conflicted out forever. This clarification reflects the reality of private mediation practice.

D. Updating Mediation Confidentiality.

10.360(a) Scope of Confidentiality now reads: "Except where disclosure is required or permitted by law or is agreed to by all parties and counsel, a mediator must maintain confidentiality of all information revealed during mediation."

The new phrasing in the rule flips the order of the phrase and leads with the exceptions. In their opening statements, mediators often oversell confidentiality ("Everything is confidential.") or undersell confidentiality ("Here is a laundry list of all the exceptions to confidentiality."). Consider revising the language of your opening statement to reflect this change.

One caveat – the addition of "and counsel" creates some confusion as to who holds the statutory privilege of mediation confidentiality. Fla. Stat 44.405(2) states unequivocally "A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications."

E. Updating Caucus Confidentiality.

Rule 10's caucus language now incorporates the "reversal" of confidentiality in caucus ground rule from MEAC Opinion 2003-005. 10.360(a) Caucus now reads:

> "Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party. However, a mediator may establish as a policy for the mediation that information disclosed during caucus may be disclosed to the other mediation participants unless a party expressly tells the mediator to keep the information confidential."

Mediators are not required to implement this policy, but if you decide to do so, consider updating your opening statement. Whether you do "reverse"

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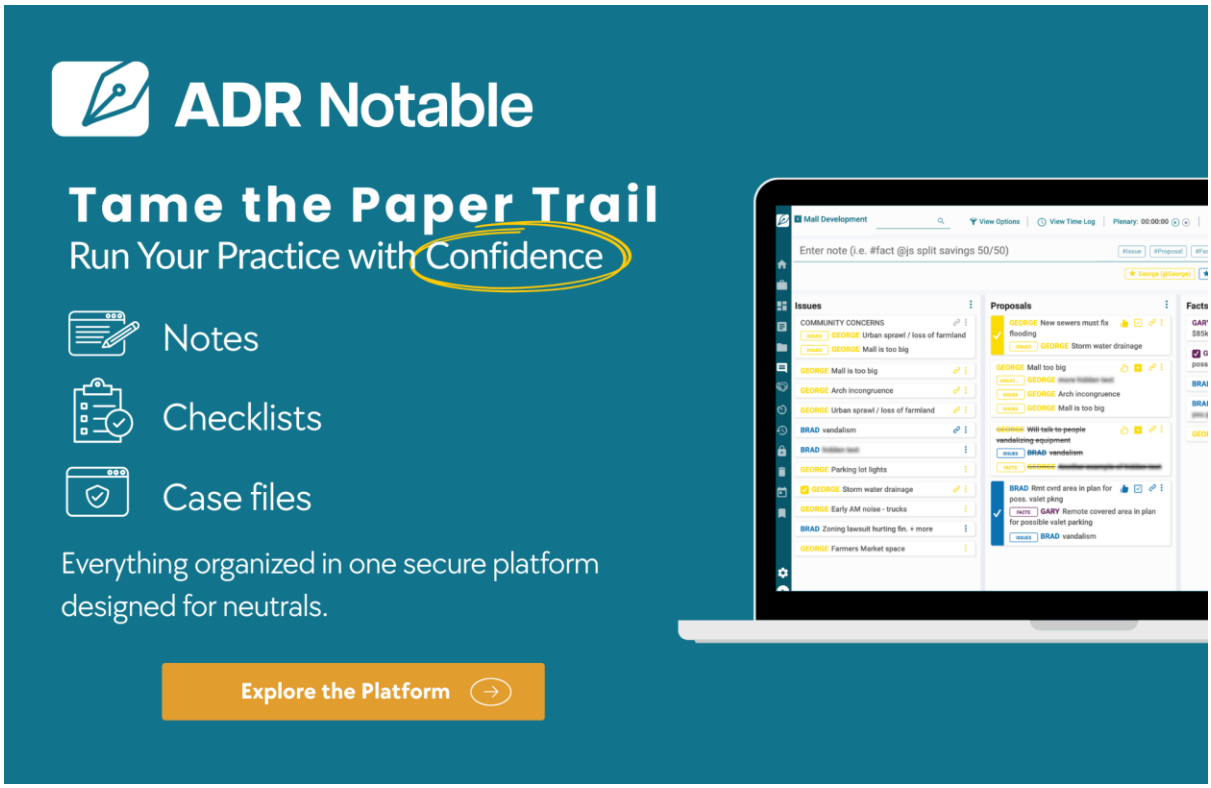

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confidentiality, remember that an end-of-caucus "privacy sandwich" is still a good practice: remind the caucus participants of confidentiality when caucus starts, have your discussions but before heading to the other room, review and clarify the offer/demand and verify what information should be kept confidential.

F. Other Confidentiality Clarifications.

Two additional important clarifications on confidentiality:

10.360(c) on Record Keeping now clarifies that "A mediator may, but is not obligated to, shred notes or other records immediately after the mediation."

10.360(d) on Staff Confidentiality states that "A mediator who uses the services of others to perform clerical tasks must take reasonable steps to ensure confidentiality is maintained. The mediator, in furtherance of the mediation, must advise office staff that the mediation records are confidential pursuant to this rule and Florida law."

G. Florida Supreme Court Approved Forms are Important Tools.

Rule 10.340(e)(3) Conflict During Mediation still states that:

> "A mediator must not provide services that are not directly related to the mediation process. A mediator is accordingly prohibited from providing services such as accounting, psychiatric, legal or paralegal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process."

However, the note provided by the ADR Rules and Policy Committee on the 2024 Revision clarifies that:

> "a mediator is not prohibited from mediating the dispute and assisting *pro se* litigants with filling out forms approved by the Florida

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4 CLE, 2 Ethics

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> Supreme Court after a mediated settlement agreement. However, mediators should not use the mediation to solicit future business and should be aware of other professions' standards of conduct which may be violated (e.g., unauthorized or unlicensed practice of law, Florida Bar Rules of Professional Conduct). Further, the mediator must ensure the parties make all decisions regarding the completion of such forms, including, by way of example, the designation of petitioner and respondent in a family case."

Further guidance on this matter can be found in MEAC Opinion 2024-001, which touches on the frequent use of these forms in family mediation.

H. Mediators Can Witness and Notarize.

Rule 10.340(e)(4) reverses course on several previous MEAC opinions and formally authorizes mediators to serve as notaries or witness signatures on mediation agreements and associated documents. To do so, the mediator must be properly commissioned, and they cannot charge a separate fee on top of their regular mediation rate.

Mediators who have experienced the late in the day in-person situation where the paralegal with the notary stamp is gone will be happy about this change. However, we are all online now, which adds a new wrinkle. Mediators considering notarization should be aware of the state's requirements for getting commissioned to provide remote online notarization.

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I. Mandatory Reporting = Mandatory Withdrawal.

Rule 10.340(e)(2) Conflict During Mediation now states:

> "When a mediator decides to make a report permitted or required under applicable law, the mediator must withdraw from the case, if making the report creates a conflict of interest subject to the provisions of subdivision (c)[Effect of Disclosure[1]] or (d)[clear Conflict of Interest]."

This new section addresses situations of statutory reporting under Fla. Stat. Chapter 44 such as mandatory reports under Chapter 39: child abuse and neglect or Chapter 415: abuse, neglect or exploitation of a vulnerable adult, discretionary reports under the remaining statutory exceptions, as well as situations that are not considered confidential mediation communications, such as crimes committed in mediation. An interesting reference point is MEAC opinion 2023-002 (a mediator, upon learning in caucus that one party had recorded the other in Zoom without permission – a potential crime committed during mediation – must terminate mediation but has discretion as to whether or not to report the recording).

The note provided by the ADR Rules and Policy Committee on the 2024 Revision indicates that even if the mediator makes such a report, they should still close out their mediation session by completing a Mediation Report reflecting "No Agreement."

J. Mediator's Report Do's and Don'ts as to Attendance and Outcomes.

Review your Mediation Report forms and practices to ensure that you are in compliance with the changes to 10.360(e) "Reporting Outcome":

> "When a mediator is obligated to report the outcome of the mediation, a mediator may report to the court agreement, no agreement, partial agreement, or adjournment for further mediation without comment or recommendation. The mediator must not include comments reflecting the mediator's opinions regarding whether a party or counsel mediated in good faith. No other descriptors or modifiers may be used in the mediator report unless the parties have consented to them in writing."

Some local rules and court orders call on the mediator to address the "good faith" issue. With this change, Florida's ADR Rules and Policies Committee has provided some clear support for mediators who resist this reporting requirement as a violation of mediation confidentiality under Chapter 44.

10.360(f) further clarifies that the mediator may identify "who was or was not present at the mediation" and whether they appeared "physically or by communication technology."

This article focuses on the changes to Rule 10, but there have also been important revisions that impact matters of appearance at mediation and reporting at the conclusion of mediation across the various rules of procedure (Appellate, Civil, Dependency, Family, and Small Claims). Most notably, as of April 1, 2025, Fla. R. Civ. P. 1.730(b) no longer requires attorneys to sign a mediation settlement agreement. We encourage mediators to review the Civil Procedure rules applicable to your cases here.

K. Social Media and the Appearance of Impropriety.

Rule 10.340(g) takes the advisory MEAC opinion 2010-001 on social media and incorporates it into the rule. The rule now reads:

> "Social Networking. Mediators may create connections with mediation participants or their counsel on a social networking site (e.g., "friends" on Facebook, "followers" on X, formerly known as Twitter). However, mediators who do so must recognize that such designations may create the appearance of a conflict and may only mediate disputes

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[1] Rule 10.340(c) "Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator must withdraw regardless of any express agreement of the parties."

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> disputes involving such mediation participants or their counsel consistent with subdivisions (a) [Generally[2]] and (b) [Burden of Disclosure[3]] above."

The burden of disclosure remains on the mediator and is triggered by the appearance of impropriety as well as an actual conflict of interest. Mediators are professional neutrals, similar but not the same to judges or arbitrators. We have statutory judicial immunity for our work, so the Spiderman rule applies: With great power comes great responsibility. However, unlike judges and arbitrators, mediators don't make decisions. And unlike judges, private mediators work in an "eat what you kill" business which requires constant business development. This usually involves social media marketing and building of professional relationships which appear as "friendships" on the platforms. This change is likely to generate a lot of discussion about what appropriate implementation looks like.

Conclusion.

The changes to Rule 10 are wide-ranging and impactful. Read the revised rules one more time, and where necessary, revise your business and mediation practices and forms accordingly.

[2] Rule 10.340(a) "CONFLICTS OF INTEREST Generally. A mediator must not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality."

[3] Rule 10.340(b) "Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure must be made as soon as practicable after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest and in a manner that allows the parties to exercise their right of self-determination freely as to both selection of the mediator and participation in the mediation process."

Ana Cristina Maldonado is the Chair of The Florida Bar's ADR Section 2024-2025. A member of Florida's Mediator Ethics Advisory Committee (MEAC) since 2023, this article is written in her personal capacity and not in her role as a member of MEAC. Certified by the Florida Supreme Court in Circuit Civil, County, Dependency and Family mediation and qualified as an arbitrator, Cristina has trained over 400 new mediators. She mediated full time between 2012 and 2023, with the 15th Judicial Circuit ADR Office, her own mediation firm and as a panel member of Upchurch Watson White and Max. In 2024, Cristina joined the faculty at Nova Southeastern University's Shepard Broad College of Law.

The Voice of the Mediation Client

SAVE THE DATE! Join the Alternative Dispute Resolution Section on September 10 from 3–5 p.m. for a powerful and insightful CLE: "The Voice of the Mediation Client." Registration opens soon.

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The Voice of the Mediation Client film premiered in April during the Fifth Annual Litigator Mediator Forum, emceed by ADR Section EC member Harold Oehler at the Hillsborough County Bar Association.

SNATCHING DEFEAT FROM THE JAWS OF SETTLEMENT

by Mark Greenberg, Breakthrough Mediation, Boynton Beach

We have all done it. At a hearing, we are about to win the argument but keep talking. The next thing we know, the judge has changed her mind and ruled against us. After a few "learning" experiences, we remember to stop talking when the judge seems convinced and thus avoid snatching defeat from the jaws of victory.

The same process happens at mediation. Sometimes a case should settle but does not for a variety of preventable reasons. Here are some experiences to help you avoid impasse when you could settle your case.

1. **Timing.** People tend to put off hard decisions until the last minute. A plaintiff who must sacrifice more than they want, or a defendant who has to pay a large amount, will want to wait until the end or close to the end to make those difficult decisions. Conversely, mediating too late can occur when attorney's fees have taken over the case so that settling the main issue results in a huge exposure to fees. For the practitioner, think about when you want to mediate the case from both your perspective and the other side's. As both an attorney and mediator I have seen too many cases impasse because mediation was held either too early or too late. While there is never a downside to mediating a case, not paying attention to timing can set it up for failure.

2. **Big or dispositive issues are unresolved.** If there is even a perceived 10 percent chance of success on summary judgment, it may be too early to mediate the case. This relates to timing, above, but can be a separate factor. There are times when once summary judgment or the big issue is briefed, that the other side will begin to perceive risk, making the case amenable to mediation. Other times, the court needs to deny summary judgment before the parties can productively mediate, which often occurs with insurance coverage and product liability matters. Accordingly, it is wise to brief such issues as soon as possible so that the case can be resolved without unnecessary expenditure of time, money, and emotion.

3. **The unrealistic client.** Some clients simply think they "cannot lose." In my experience, these people often crack at the last minute, and then settle the case. So, part of this is timing, but part of it is also preparing your client with the risks and potential downfalls of the case. No lawsuit comes with a guaranteed result, as we all know. The sooner your client understands that, the easier it will be to settle at mediation. Likewise, if you have a hardnosed client, let the mediator know in advance. This helps the mediator prepare and start working early with your client. Often, mediation is a process of determining who or what is the holdout, and then pushing on that issue or person to achieve settlement.

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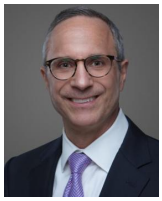
4. **Picking the wrong mediator.** Personalities are important. Even with large corporations, individuals are involved in the case and their personalities, needs, and quirks are important in selecting the mediator. Some people want to settle their case but need to feel they are heard before making that decision. Other people need a more clinical statement, and a mediator who will bluntly ask them questions and push aggressively. Still other people need to feel there was a significant give and take involved so that they are getting the "best" deal possible. People with different ethnic backgrounds may feel more comfortable with a mediator of a similar background. In short, select a mediator whom you believe will work best with either your client, or the other side, to maximize the chance of success at mediation.

5. **Not knowing your case.** This is hard to discuss, but unfortunately some attorneys come to mediation not knowing their case. What is your case about? What are its strengths? Its weaknesses? How well do the parties testify? Few things influence a jury more than the credibility and likability of the parties. The witness who can tell their story well, is better than one who has the same "case", but you have to pull teeth to get them to discuss it. Factor this in and think about what are the range of realistic verdicts in your mind? What does the jury verdict research show you? Then discount your analysis by at least 20 percent, and tell your client.

You can expect to feel the impact of these five dynamics during mediation.

The difference in your outcome will depend on strategic timing, uncovering dispositive facts and legal issues, choosing the right mediator, and preparing your client and yourself for all possible scenarios. In my experiences, I have found that the more cognizant I am of these dynamics, the better prepared I am to snatch victory from the jaws of defeat.



Mark Greenberg is owner of Breakthrough Mediation. He has tried over 100 cases to verdict, while representing both Plaintiffs and Defendants. He now mediates cases throughout Florida, helping people find peace in the resolution of contentious disputes. You can reach him at Success@btmediation.com or learn more at btmediation.com.

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The Jedi Mediator: Lessons From Star Wars For Conflict Resolution

by Sherrill W. Hayes, PhD, Assistant Vice Provost and Professor of Conflict Management, Kennesaw State University

This is an updated version of an article earlier published.

Like many men of my generation, I spent my childhood immersed in the original *Star Wars* trilogy. I lived in that world—acting out scenes, spending my parents' (and later, my own) money on action figures, and absorbing the films until their dialogue and lessons were woven into the fabric of my life.

I began working as a mediator in 1999, just as the *Star Wars* prequel trilogy debuted, and I soon recognized the striking parallels between the Jedi and the work of mediators and peacemakers. Over time, I've come to appreciate how George Lucas and his team cleverly wove elements of Eastern philosophy, Joseph Campbell's *hero's journey*, martial arts, and broader concepts of peace and conflict into the *Star Wars* universe. The result is a treasure trove of wisdom—lessons that, with a little translation, are highly relevant to mediation and dispute resolution.

When I find myself stuck in a case, I often think of advice from Yoda, Obi-Wan Kenobi, or Qui-Gon Jinn. Below, I explore some of my favorite *Star Wars* wisdom and how it applies to the work of mediators. If you're a mediator who grew up with these films but never made the connection before, I suspect you'll start making your own list as you read. And if you've never seen *Star Wars*, don't worry—no prior viewing is required. As the storybook records of my childhood used to say, "Let's begin now…"

The Force: A Mediator's Perspective

In the *Star Wars* universe, the Jedi—like Yoda, Obi-Wan, and Luke Skywalker—are the "guardians of peace and justice." They are peacekeeping, philosopher-warriors who believe that "there are alternatives to fighting." Yet, when necessary, they wield their lightsabers to maintain balance. Their eternal foes, the Sith—like Darth Vader and Emperor Palpatine—thrive on fear, anger, chaos, and power.

At the heart of this conflict is *the Force*, an energy field that binds all living things. It is ever-present, yet only those with the right training can tap into its power. The Jedi access the Force through knowledge, patience, calm, and inner peace. The Sith, in contrast, draw strength from fear, anger, and hatred.

For mediators, the Force serves as a useful metaphor. Conflict, like the Force, is an energy that exists between people. It is neutral by nature but can be shaped by our choices. Positive relationships and constructive dialogue foster the "light side" of conflict—leading to knowledge, patience, and resolution. Conversely, unchecked fear and anger pull people toward the "dark side," intensifying disputes.

As Yoda wisely warns:

"Fear is the path to the dark side. Fear leads to anger. Anger leads to hate. Hate leads to suffering." — *The Phantom Menace* (1999)

Fear often underpins conflict—fear of an uncertain future, public exposure, financial loss, or broken relationships. Left unchecked, this fear escalates into anger, resentment, and destructive actions. Yoda further cautions:

"Anger, fear, aggression. The dark side are they. Easily they flow, quick to join you in a fight. Once you start down the dark path, forever will it dominate your destiny."

— *The Empire Strikes Back* (1980)

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For mediators, this is a vital lesson. It is far easier for disputing parties to lash out and inflict pain than to exercise restraint. But indulging in that catharsis only fuels more suffering. As mediators, our role is to help parties resist the pull of the dark side—guiding them toward communication, understanding, and resolution.

Techniques from the Jedi Toolbox

While the Force is mystical, Jedi employ concrete techniques to maintain peace—many of which align with mediation practices.

The Jedi Mind Trick: The Power of Persuasion

One of the most famous Jedi abilities is the *Jedi mind trick*, first demonstrated when Obi-Wan Kenobi convinces stormtroopers to let his group pass unharmed:

"You don't need to see his identification." — *A New Hope* (1977)

While mediators don't have the luxury of waving our hands and compelling parties to agree, we do use an arsenal of communication techniques—such as active listening, reframing, and summarizing—to shift perspectives. A well-placed paraphrase can function like a Jedi mind trick, subtly helping parties see the conflict in a new light.

The Lightsaber: Redirecting Energy

Though often associated with combat, the lightsaber is primarily a defensive tool. Jedi use it to deflect attacks—redirecting an opponent's energy rather than striking first. This approach mirrors martial arts like Aikido, which emphasizes using an aggressor's force against them rather than engaging in direct confrontation.

Similarly, mediators can redirect parties' negative energy into constructive dialogue. When tensions rise, we employ techniques like reframing, reality testing, or caucusing—not to overpower the conflict, but to guide it toward resolution.

The Power of Multiple Perspectives and Forgiveness

The most profound conflict in *Star Wars* is not a battle of armies but an internal struggle—the fall and redemption of Anakin Skywalker.

Anakin's descent into the dark side is fueled by an inability to acknowledge manipulation, a refusal to see multiple perspectives, and a failure to forgive himself. He believes he has committed unforgivable acts, trapping himself in his own darkness. In contrast, his son, Luke Skywalker, takes a different path. When faced with the choice to kill Darth Vader in *Return of the Jedi* (1983), Luke refuses, choosing instead to trust in his father's lingering goodness.

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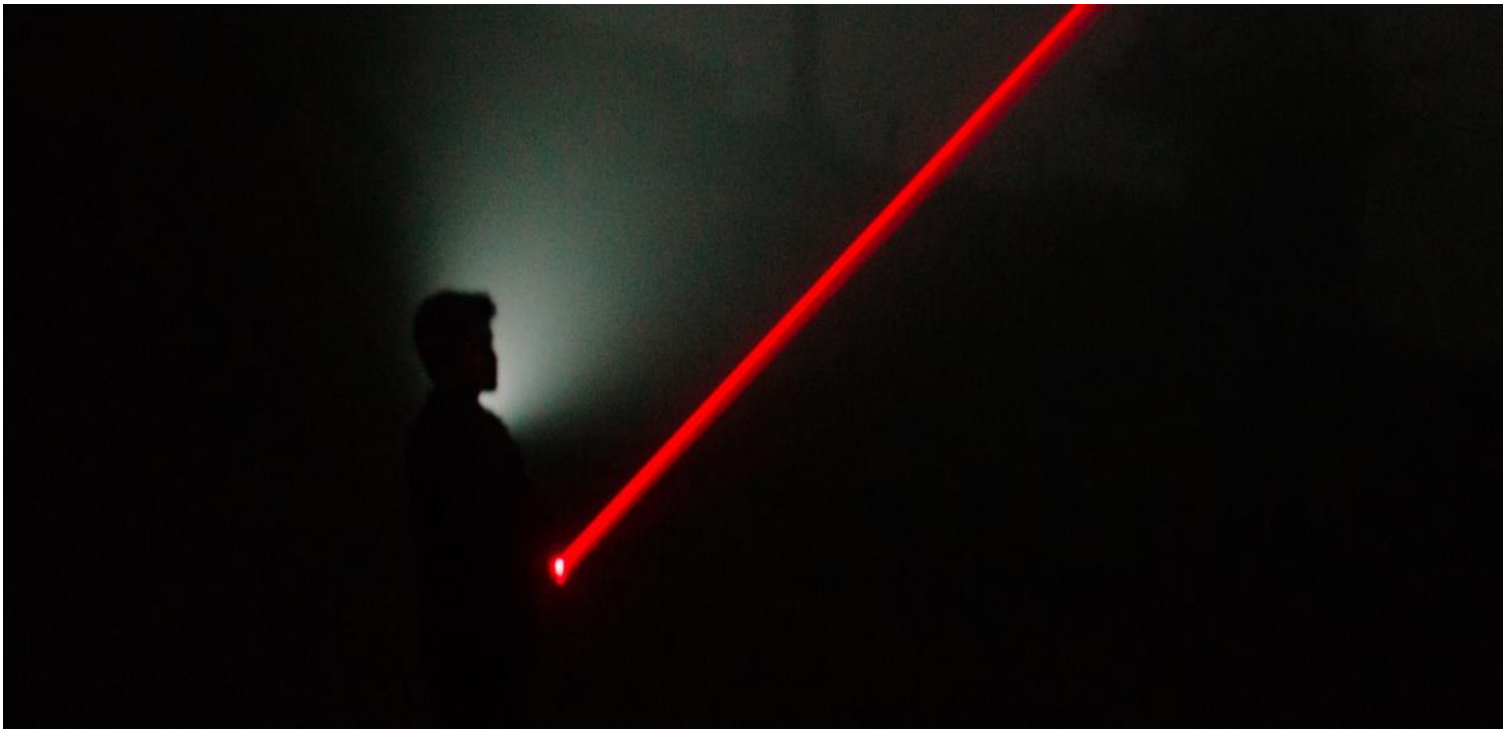

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Obi-Wan later explains to Luke:

"You're going to find that many of the truths we cling to depend greatly on our own point of view." — Return of the Jedi (1983)

This insight is critical in mediation. Parties often hold rigid perspectives, convinced of their own truth while dismissing the other side's experiences. But resolution comes not from proving one's truth, but from acknowledging multiple viewpoints.

Additionally, true conflict resolution often requires forgiveness—not just of others, but of oneself. In many cases, an apology, an acknowledgment, or a simple act of empathy is more powerful than any legal settlement. As truth and reconciliation processes have shown, even deep-seated conflicts can be transformed when people are ready to address the past in pursuit of a better future.

"Use the Process, Mediator"

In the climactic battle of *A New Hope* (1977), Obi-Wan's voice urges Luke Skywalker:

"Use the Force, Luke."

Luke, flying toward the Death Star, must trust in his training and instincts to take the perfect shot. As mediators, we often find ourselves in a similar position—facing high-stakes disputes where a single breakthrough can resolve the conflict.

It's easy to become impatient or discouraged. But when fear leads us to take control or dictate solutions, we risk slipping into the "dark side" of mediation. Instead, we must trust the process—staying calm, using our skills, and guiding parties toward their own resolutions.

So the next time you're in a challenging mediation, remember: *Use the process, Mediator.* It may not be as flashy as wielding a lightsaber, but in the end, it's just as powerful.

Dr. Sherrill W. Hayes is Assistant Vice Provost of Student Success and Professor of Conflict Management at Kennesaw State University. A scholar-practitioner with international experience, his research and leadership focus on interdisciplinary approaches to conflict resolution in family, community, and organizational contexts. He is also a contributor to both volumes of Star Wars and Conflict Resolution (DRI Press), more information about those can be found at starwarsconflictresolution.com.

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