

The Caucus

A Publication of the Florida Academy of Professional Mediators, Inc.
Volume 21 Number 1 Winter 2010

www.tfapm.org



Serving Mediation Since 1988

DISPUTE RESOLUTION CENTER (DRC) 2010 CONFERENCE CANCELED!

The DRC has announced that, due to limited financial and human resources, this year's Annual Mediators and Arbitrators Conference has been canceled. For details, go to the DRC website at http://www.flcourts.org/gen_public/adr/index.shtml. The Academy's Board of Directors is already evaluating alternatives for this event that will best serve our members, and your suggestions are welcome. You will be advised as soon as plans are in place. Remember that Academy members can take advantage of The Academy's CME Resource Lending Library.

Inside this issue...

FORECLOSURE MEDIATION – On December 28, 2009, the Florida Supreme Court issued its Administrative Order on Residential Mortgage Foreclosures. The full text of the Order is on the Supreme Court web page at <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>. We have included an article regarding the Supreme Court Task Force recommendations, pros and cons of the proposed managed mediation, and other foreclosure mediation issues. This article is featured in our new "Hot Topics" section on Page 8.

MEMBERS' FORUM – This new feature provides an opportunity for our members to submit their concerns, comments, or questions to us for publication; and we invite members to respond to the featured submission. This issue's topic is on non-certified attorneys who conduct mediations. Please read the complete article on Page 11.

GOALS AND STRATEGIES – We have included The Academy's goals and strategies, which are designed to assist our members in developing and enhancing their mediation businesses. They also address Academy programs and the promotion of mediation in the community. See Pages 6 and 7.

NEW ACADEMY COMMITTEES – The Board of Directors has reorganized the committees in accordance with the plan developed at the Strategic Planning Conference. See the list of new committees on Page 5 and the details in the Goals and Strategies report on Page 6.

TRIBUTE TO MICHAEL GARLICK - Academy Past President Michael Garlick passed away in November, and we remember his contributions in a tribute on Page 4.

WELCOME TO THE NEW CAUCUS!

We have redesigned The Caucus to better serve our members, and we invite your comments. We also welcome your ideas for articles. Please email your comments or suggestions to Editor@tfapm.org. We are also using the internet more to communicate with our members, and we already sent this issue of The Caucus by email to our members. If you did not receive it, please contact Kathy Gayle at fapmgayle@aol.com to ensure we have your correct email address.

Also inside...

President's Message	2
Meet the Academy's Board	3
Meet the Editor	9
Congratulations	10
Welcome New Members	10

PRESIDENT'S MESSAGE

by Ted Deckert



Greetings Academy Members:

Let me begin by congratulating and thanking Deborah Haataja-Deratany, our new Editor, for the "new and improved" look of The Caucus. Deborah volunteered to become Editor and, with help from our Administrator Kathy Gayle, has worked hard to make The Caucus more interesting and more useful to our members. You can read more about Deborah later in this issue. She has

done a great job, but she wants to make The Caucus even better. She stresses she has a tough skin and welcomes all comments or suggestions.

Since the last issue of The Caucus, the Board of Directors of The Academy has been working very hard to reach our goal of making The Academy a resource of importance and value to all professional mediators in Florida. I am excited to be able to report we have made significant progress toward that goal. Before I do this, however, I want to recognize and thank two former officers of The Academy and introduce a new one.

I was saddened to learn that Michael Garlick passed away in November. Michael was a Past President and an active member of The Academy for many years. Those who did not have the pleasure of knowing Michael can read more about him later in this issue. On behalf of all of The Academy, I convey our sincere condolences to his wife, Judy, his sons, and his entire family.

I also want to thank our outgoing Treasurer, Jody Davis, and welcome and introduce our new Treasurer, Lex Green. I was disappointed when Jody told me that he would have to step down as our Treasurer. But true to his ability to come up with solutions, he recommended Lex as his replacement. You can read more about Lex later in this issue; but his professional experience combined with his enthusiastic, imaginative, and entrepreneurial spirit have already proven him a special gift to The Academy. Thank you, Jody, for your service to The Academy and for bringing Lex to us.

I am proud to report that the Board has completed the first step outlined in the recommendations from the Strategic Planning Conference. I appointed a special task force, which was named the Goals & Strategies Committee (and affectionately referred to as the "GAS" committee), to study and recommend better ways to focus the energy and resources of The Academy to meet the needs of our members. Two of our new Board members, Harvey Slentz and Debra Petry, volunteered to take the lead on this project; and with some assistance from Dan Baldwin and Gerry Levin, they presented ideas to the Board. These ideas culminated in the formulation of specific goals and strategies and reorganization of The Academy committees. These new committees are listed and explained later in this issue. Thanks to the GAS Committee and special thanks to Harvey and Debra for taking the lead and putting together this report. Special thanks also to Bruce Blitman, Chubby Damsel, Dave Wolfson and all past committee chairs for all their hard work.

I hope many of you will volunteer to serve on a committee that matches your particular interests and talents. As the Technology Chair, I particularly need help from those of you with talent and interest in computer, web page, and Internet technology. This is a great time to step up and be a part of The Academy's move forward in the 21st century. If you would like to be more involved in any way, we welcome your participation.

**Florida Academy
of Professional Mediators, Inc.**

P.O. Box 488 Archer, FL 32618
Phone & Fax: (800) 808-8494

www.tfapm.org

The Academy's mission is to facilitate the exchange of knowledge, information, and ideas between professionals in the field of mediation and to promote the process of mediation as an effective and efficient tool for dispute resolution.

OFFICERS

Theodore Deckert, President

tdeckert@bellsouth.net

Gary Feder, President-Elect

CPA1miami@aol.com

Bob Jett, Vice-President

bjettfapm@yahoo.com

Lex Green, Treasurer

lexgreen@embarqmail.com

DIRECTORS

Sandy Myers, Circuit Civil

samversesq@aol.com

Donald Smith, Family & Dependency

docvalhall@hotmail.com

Gerry Levin, County

mediatorg@aol.com

Roy Young, at Large

ryoung@yvlaw.net

Dan Baldwin, at Large

danbaldwin@baldwinandassociates.com

Debra Petry, at Large

debpetry@cox.net

Harvey Slentz, at Large

harvey@harveyslentz.com

Meah Tell, at Large

meahtell@aol.com

PAST PRESIDENT

Herb E. Langford

mediator@tntpc.com

ADMINISTRATOR

Kathy Gayle

fapmgayle@aol.com

(Continued on Page 3)

MEET THE ACADEMY'S BOARD OF DIRECTORS

For the next several issues, The Caucus will include background information about the people who contribute their time and talents to serve on The Academy's Board of Directors. We begin in this issue with three of your officers.



PRESIDENT - Ted Deckert: Theodore "Ted" Deckert is currently a Certified Circuit Civil, County, and Family Mediator who also serves as a Special Magistrate and Arbitrator. He has been practicing law since 1976 and obtained his first certification as a Circuit Civil and Family Mediator in 2000. He has been a full-time mediator since 2004 and is affiliated with Matrix Mediation, a full service alternative dispute resolution firm in West Palm Beach. He has been a member of The Academy since 2000 and became a Diplomate member in 2004. Ted has been active in legal and ADR leadership for many years, and he has been an active member of The Academy Board since he was elected Circuit Civil Vice President in 2006. He was born and raised in West Palm Beach, obtained his undergraduate and law degrees from the University of Florida, and lives in West Palm Beach with his wife, Marie. He is also proud to have served as an active leader in many professional, civic, and charitable organizations. He relaxes by getting his hands dirty in his garden and traveling with Marie.



VICE-PRESIDENT - Bob Jett: Bob Jett was born and raised in New York and has been a resident of Florida since 1963. He has been married to an elementary school teacher since 1969 and has two grown children. Bob served five years in the U. S. Army at the rank of Captain, with a tour of duty in Vietnam as a military intelligence advisor. He served five years as Director of Veterans Affairs at the University of South Florida. He is a graduate of the University of South Florida with a baccalaureate degree in Management Science and a graduate degree in Adult Education. In 1979, he became an investigator with the US Equal Employment Opportunity Commission, and since 1999 has been a Federal Mediator with the US EEOC, having conducted over 1500 mediations in the past 10+ years. He has been Certified County mediator since 1997; a member of SPIDR/ACR since 1997, currently as an Advanced Practitioner; member of The Florida Academy of Professional Mediators since 1998, and as a Diplomate member since 2001; and a founding member of Mediators Beyond Borders.



TREASURER - Lex Green: Robert "Lex" Green was born in Stark, Florida. He received a Bachelors Degree in Finance and an MBA in Management and Marketing from Mercer University. Lex was CEO of the North Florida Regional Chamber of Commerce for ten years, during which time he transformed the 75-member Starke Chamber of Commerce into a three-county, 500-member organization. During much of this time, he also served as Chief Administrator for five corporate entities. In 2004, he decided to earn his Certification in Public Accounting. He currently has his own accounting firm in Stark, which he calls "Cool Beans Accounting, Inc." While Lex provides customary CPA services, including tax preparation and bookkeeping, he also draws on his extensive business experience to provide part-time CFO services to small businesses. He has a long record of service with non-profit organizations. He also is the second generation of his family to serve The Academy, as his father, R. A. "Buzzy" Green, was one of its founders and is a Past President.

PRESIDENT'S MESSAGE *(continued from Page 2)*

I also want to stress that we are always looking for ways The Academy can better serve you, our members. Any time you think of something more we can do or something that we can do better, please share your thoughts with us by emailing them to me, or to our Administrator at fapmgayle@aol.com, or by going to "contact us" at The Academy's website www.tfapm.org.

Let me close by thanking all those who have worked so hard in the past, those who continue working, and those who step up now to help establish The Academy as the most important and valuable resource for all professional mediators in Florida. I invite those of you who are not already involved in the work of The Academy to take this opportunity to get involved, and I look forward to hearing from you. On behalf of the entire Board, I wish you and yours a joyful holiday season and prosperous New Year.

Ted Deckert, President

A Tribute to Michael Garlick – A Man of Passion

By John W. Salmon

I first met Michael as a teenager. He was my first teacher in the martial arts. I last saw Michael when the two of us presented a workshop entitled *Mediation and the Martial Arts: Becoming a Kick-#\$\$ Mediator* at the 2008 DRC Conference together with his sons, Nathan, Max, and Jacob. The thirty plus years in between only enhanced my respect and admiration for this wonderful man.



L-R: Jacob Garlick, Nathan Garlick,
Michael Garlick, Max Garlick, John Salmon

Michael passed away on November 9, 2009. He is survived by his beautiful wife, Judy, their three sons and too many friends and family to count. At his funeral, he was described as a “Renaissance Man” with far-ranging interests, who approached each new pursuit with the fervent passion to understand it from every possible perspective.

I knew Michael as the martial artist turned mediator. I remember him kicking *my #\$\$* as a young man and teaching me patience and the judicious use of humor as a “young” mediator. Not just smart, but wise, Michael understood the importance of timing – when to apply just the right amount of force, when to allow the opponent to believe they had the upper hand and when to back down so as to fashion a solution that worked for all parties. As a lawyer, his colleagues described him as the consummate listener and negotiator. Those skills are what made him such a successful mediator as well as such a great friend. Despite his illness, friends recall him always making time to demonstrate his care and compassion for them by listening. He was a true friend who “lived life with honor, excellence, and integrity.”

Michael’s greatest passion was his family. Judy was the love of his life. His sons described him as the most “supportive, encouraging and loving” father, always excited by their accomplishments. Never a harsh word or hand raised in anger, discipline was always preceded by the phrase “Remember I always love you-no matter what.” When his sons would compliment him for being such a great father, Michael would respond by saying to each “You make a great son.”

The Academy has lost a friend and mentor to all of us. Michael was the third President of The Academy and was so proud to be our president. During his tenure, The Academy experienced a significant increase in membership. Never flustered by any challenge – including cancer – Michael steered the fledgling organization with his quiet, calming demeanor. His never-ending goal was to improve the quality of services provided to Academy members. Past President R.A. “Buzzy” Green remembers Michael “as a kind, steady soul who had the ability to see the other fellow’s point of view, slow to anger and always seeking consensus.” Charles Castagna, also a past President, recalls Michael’s soft spoken way. “As a new mediator, he treated me as a peer and was truly encouraging. I will miss him, as will our profession”.

To celebrate The Academy’s tenth anniversary in 1998, we asked the former Presidents to share their thoughts and reflections on this important milestone. In the final paragraph of Michael’s remarks he wrote: “... In thinking over the past ten years with The Academy, the highlight for me has been the people and the friendships I have made. Yes, it has been educational and I have learned a great deal about mediation. However, the bottom line is that I have met some of the finest people I know through The Academy. They bring a little peace to this world where painful conflicts abound. As such, to me, they have always been an inspirational group. I consider it an honor to call many of them my friends.”

Such beautiful words. From a wonderful man who honored us by being *our* friend. Perhaps Past President Bruce Blitman said it best: “We are all a bit better for the privilege of having had the honor of knowing Michael and the world will be a bit poorer for his loss”. Michael once told Bruce that presenting our martial arts and mediation seminar was one of the highlights of his life. I will treasure that experience as one of the greatest moments in mine. Michael’s passion for life truly enriched the lives of so many of the people he touched during his too short lifetime. He will be missed by all.

Donations can be sent to:

SPIRITUALITY FOR KIDS at 2725 NE 163 Street, Miami, Florida 33160 (Phone: 305-238-0258) or

CANCER RECOVERY FOUNDATION at PO Box 238, Hershey, Pennsylvania 17033 (Phone: 800-238-6479) or

Get involved at: www.onelovefoundation.info or www.thehealingpathwaysfoundation.com.

NEW ACADEMY COMMITTEES CREATED

The Board of Directors has been working very hard to implement many exciting changes in The Academy. As you can read in the President's Message and Goals and Strategies article elsewhere in this issue, a special task force was created which, together with the full Board of Directors, developed specific goals and strategies for The Academy to pursue. Based on this analysis, the Board decided to replace our prior committees with eight new committees, each one to be chaired by a member of the Board. Some of the former committees and their Chairs will be merged into the new committees as appropriate. The concept is to place emphasis on and facilitate "action" toward goals of The Academy rather than just "activity". The following is a brief description of each new committee, along with the name and contact information of each Chair.

ACADEMY DEVELOPMENT – Develop Academy programs that enable the organization to be recognized as providing the support and programs that are meaningful to mediators. Improve The Academy as a professional association.

CHAIR - Don Smith, Spring Hill, 352-683-8440, docvalhall@hotmail.com

ADMINISTRATION AND FINANCE – Evaluate and develop the best ways to most effectively and economically conduct the day- to-day business of The Academy.

CHAIR - Bob Jett, Tampa, 813-228-2072, bjettfapm@yahoo.com

BUSINESS DEVELOPMENT – Support business objectives of The Academy mediators. Consider matters related to operating a for-profit mediation business.

CHAIR - Harvey Slentz, Amelia Island, 904-277-6716, harvey@harveyslentz.com

GOALS AND STRATEGIES – Facilitate the development of The Academy goals and strategies to guide the organization's activities and resources in both the short term (1 year) and long term (5 years).

CHAIR - Gary Feder, Coral Gables, 305-667-7100, CPA1miami@aol.com

MEDIATION ADVOCACY – Promote mediation as a superior process for resolving disputes. Educate the public and specific stakeholders about mediation as a process.

CHAIR - Deb Petry, Shalimar, 850-651-5577, debpetry@cox.net

PROFESSIONAL DEVELOPMENT - Support the professional objectives of The Academy mediators. Consider matters relating to the professional needs of our member mediators.

CHAIR - Dan Baldwin, New Port Richey, 727-375-0565, danbaldwin@baldwinandassociates.com

RESOURCE DEVELOPMENT – Identify and evaluate resources, programs, and services available from other organizations or sources that the committees can utilize.

CHAIR - Gerry Levin, Jacksonville, 904-733-0987, mediatorg@aol.com

TECHNOLOGY AND WEBSITE – Create technology and website strategies that are needed to support the goals of The Academy.

CHAIR – Ted Deckert, West Palm Beach, 561-835-9800, tdeckert@bellsouth.net

These Chairs need other people on their teams in order to achieve their respective goals. Many members have previously indicated their interest in helping The Academy achieve its full potential, and some of you have been contacted and have become involved already. Whether or not you have already volunteered, if you would like to serve on one of the committees, please contact the Chair of the committee which interests you. You can also volunteer by emailing our Administrator Kathy Gayle, at fapmgayle@aol.com or going to "contact us" at The Academy's website www.tfapm.org. The more people on the teams, the more the teams can accomplish. Please consider helping your fellow mediation professionals and The Academy achieve their full potential by sharing some of your time and talent.

The Florida Academy of Professional Mediators, Inc.
Goals and Strategies
Submitted by Harvey Slentz

Editor's Note - The following article excerpts and highlights the final Goals and Strategies Report accepted by the Board of Directors, with additional comments from the author, who was the Chair of the committee which submitted the report. The full report can be read and downloaded at The Academy's website, www.tfapm.org

One of the first priorities for the new Board was to identify The Academy's goals and strategies. In the last two months, your Board has been working to define our key goals, along with the actions (strategies) that will allow The Academy to achieve those goals. The goals and strategies have been presented to the entire Board, and the Board has approved moving forward on actions to achieve these goals. In this article, we want to accomplish two things: 1) inform the membership of our goals and strategies and 2) solicit feedback from the membership.

Overview of the goals: We identified four fundamental goals. The first two are directly related to supporting the professional and the business objectives of our membership. We distinguish 'professional' as those objectives related to the quality of mediation and professional requirements. We distinguish 'business' objectives as those objectives appropriate to operating a successful for-profit mediation practice. Will the strategies listed under these two goals help you in your professional mediation role and help you operate a successful business, if those are your objectives? The second two goals are more accurately defined as 'inside-focus' and 'outside-focus.' The inside focus deals not as much with how The Academy affects us personally, but rather what we want The Academy itself to become – how The Academy is perceived by mediation professionals. The outside focus addresses how mediation in general is perceived in our outside environment. With that preamble, here are the four goals and the strategies that were identified to support achievement of the goals.

Goal 1 - Support the professional objectives of The Academy's mediators. The Academy's mediators are professionals and have professional needs. These include:

- A. CME - Provide Continuing Mediation Education (CME) training that complements the training offered by many other providers. This and other strategies can include website-based services available only to members.
- B. UPDATES - Provide legislative and judicial updates to keep members current about mediation matters.
- C. LIABILITY INSURANCE - Negotiate for mediator liability insurance that is an excellent value for The Academy's members.
- D. DISCOUNTS – Negotiate membership discounts for mediation equipment, supplies, and learning tools.
- E. PACKAGE DEALS - Prepare and sell standardized mediation packages, including settlement wording on disc, business cards with The Academy's logo, links to marketing materials listed in 2B below.

Goal 2 - Support the business objectives of The Academy's mediators. Some of The Academy's mediators want to operate mediation practices as for-profit enterprises. This goal recognizes the need to support this objective of many of our members. These include:

- A. WEB CAPABILITY - Improve The Academy's website capability to permit potential mediation clients to view the credentials of our members, determine the mediator's schedule availability, schedule a mediation and confirm it, all within our website.
- B. MARKETING – Support mediator marketing through the use of brochures that are generic or are customized for the individual member.
- C. SOLICITATION– Offer Continuing Education about mediation for Paralegals and Legal Assistants who schedule mediators for parties in disputes, as a draw to get them familiar with how The Academy can make their jobs easier.

- D. MARKETING EDUCATION – Offer information and programs to mediators, focusing on how to market their services to potential clients.
- E. BUSINESS PLAN – Provide information to The Academy mediators that would help them create a business plan.

Goal 3 – Develop Academy programs that enable the organization to be recognized as providing the support and programs that are meaningful to mediators. This goal is focused ‘inward’ to our mediators as well as non-member mediators throughout the state. This may also apply to non-mediators who are active in the mediation process or business.

- A. BRAND – Define how The Academy’s mediators and services can be distinguished from generic mediation, to add value to The Academy membership. Provide a business card logo.
- B. SURVEY – Survey our membership and other mediators to determine what support and programs are not now offered, but would be valuable for The Academy to provide.
- C. DEVELOP – Utilize internal surveys and feedback to develop programs that are responsive to our members’ needs.
- D. RECRUIT – Recruit new members by offering the support and programs that mediators desire and don’t get elsewhere.
- E. INFORM – Inform members about the services and programs The Academy is providing for them, including activities of the committees.

Goal 4 - Promote mediation as a superior process for resolving disputes. This is the ‘outward’ focused efforts to raise awareness of mediation as an excellent dispute resolution tool.

- A. SOLICIT – Offer mediator services to help resolve the thousands of foreclosure and related actions that are pending in Florida. Make specific solicitations to other groups, such as county Realtor™ organizations, small businesses that encounter disputes (car repair, etc.), and other likely groups. Provide a free “mediation clause” that mediation clients can include with their sales and service contracts.
- B. PREPARE – Build a PowerPoint and/or overhead projector presentation about how mediation can help resolve disputes, and make it available to members who wish to make presentations to various parties and groups in their communities.
- C. MEDIA – Develop a media package for use by print or broadcast media related to various mediation topics and link the package to The Academy for further information.
- D. WEBSITE – Update The Academy’s website to include pages that explain mediation and that will draw search engine queries.

Now here’s YOUR opportunity... Do you believe our goals are appropriate? Have we missed any major areas? Are the strategies the right ones to achieve these goals, or do you think there are other strategies that will work better? Think about the so-called ‘desired end state’ for The Academy. What do you want our organization to look like in a few years from now? How will it be different from today? What actions or strategies will help us get there? How will the strategy help our membership? Now here’s the catch – making this happen means that we have to do things, and doing things takes time and sometimes money. Are you willing to help us continue improving your Academy? If so, what are you skilled to do, and what are you willing to do? Maybe the best image here is a scene in the movie “The Untouchables”, in which Sean Connery, playing the partner to Kevin Costner’s Elliott Ness, lies bleeding from machine-gun bullets, and uses his last breath to grab Ness by the collar and ask, “What are you prepared to do?” This is an exciting time for The Academy! We need your help. *What are you prepared to do?*

Send your comments via e-mail to Kathy Gayle at fapmgayle@aol.com. In the subject line, please write “The Academy Goals and Strategies”.

✱HOT TOPIC✱

RESIDENTIAL FORECLOSURE MEDIATION

Is Managed Mediation the Solution?

By Patrick J. Mastronardo



Editor's Note: The following article was written before the Supreme Court issued its latest Administrative Order on Residential Mortgage Foreclosures. The full text of the order is on the Supreme Court web page as noted on page one of this issue. However, since the Supreme Court adopted virtually all of the recommendations of the Task Force, most of the observations in this article remain relevant.

Florida and its court system are in a serious residential foreclosure crisis. In March 2009, the Florida Supreme Court established a Task Force to propose ways to ease the backlog of pending cases. After receiving Task Force recommendations, the Court invited public comments and heard oral arguments.

The Task Force recommended a uniform, statewide managed mediation program be adopted and implemented through a model administrative order issued by each circuit judge. Accordingly, homestead foreclosure cases must be referred to independent "managed mediation" prior to being set for a final hearing. Each circuit judge must select a management mediation provider, independent of the judicial branch, capable of operating indefinitely without financial assistance from the courts. The selected provider shall have authority to contact and enroll lender and borrower, make necessary referrals, supervise information exchange between the parties, recruit and train mediators, schedule mediations, monitor full compliance with the program, and to evaluate its effectiveness.

Homeowners are required to participate in foreclosure counseling prior to mediation. The selected provider must develop an information technology platform to facilitate electronic exchange of information between borrowers and lenders. Counsel for plaintiff is required to appear personally at mediation with a representative of the lender having full settlement authority who may appear electronically. Plaintiffs bear the entire cost of managed mediation.

Foreclosure cases involving residences not occupied by the borrower may be excluded from managed mediation at the discretion of the circuit court. Cases involving foreclosure of vacant and abandoned properties are to be expedited.

Critics of Task Force recommendations urge the Supreme Court either to reject managed mediation as an unproven constraint upon the circuit courts or to adopt a modified version. It is maintained that circumstances and needs differ in each circuit, and each Chief Judge ought to have the flexibility to select a conventional court mediation program that is far less expensive. The Florida Court System was asked to seek legislation to amend Section 44.108, Florida Statutes, to permit courts to collect fees for circuit civil mediation services (now prohibited). Providers of managed mediation are said to exercise quasi judicial authority, which requires legislative authorization.

Among various modifications proposed were (1) require the homeowner to specifically request managed mediation within a limited time frame ("opt in") and/or to file a responsive pleading, or (2) permit the homeowner to waive managed mediation ("opt out"), or (3) require homeowners to bear some part of the cost of the program.

Having learned from more than one year of experience, lenders, attorneys, and mediators usually are on the same page at mediation - all genuinely endeavor to participate in a positive and constructive manner, and recognize that no better alternative to seek settlement exists. It is gratifying to participate in a collaborative encounter between a prepared homeowner and an experienced bank loss mitigation representative. It should happen more frequently.

At foreclosure mediations, the parties do not sign an unconditional settlement agreement. In what may be called "settled" foreclosure mediations, the parties review all available facts and agree, in principle, upon a plan of action. The defendant elects to remain in or to leave the homestead, and to meet conditions to implement an alternative to foreclosure (e.g. loan modification or short sale). The parties exchange contact information so they are able to effectively communicate directly with each other thereafter, which obviates the need for a continuance of mediation. The homeowner must take the initiative and perform to avoid foreclosure on the sale date. Plaintiff may agree to put the foreclosure process and/or sale date on hold (though usually not). The "settlement" is memorialized by the signing of a briefly worded agreement prepared by lender's counsel. However, in similar cases, plaintiffs insist upon "impasse" since "settlement" is conditioned upon the uncertainty of performance by the homeowner. Naturally, questions now are raised as to the accuracy of reported mediated "settlements" furnished by the Collins Center programs and conventional court mediation programs.

Currently, there are three independent "managed mediation" programs operating in Florida, pursuant to contracts between the circuits and their selected provider, the Collins Center. Those programs are in the 1st, 11th, and 19th Judicial Circuits.

(Continued on Page 9)

MEET THE EDITOR – DEBORAH HAATAJA-DERATANY



I am privileged to be appointed as the Editor for The Academy's newsletter! It is a perfect union of my love for mediation and writing, and I thank President Ted Deckert for this opportunity and Administrator Kathy Gayle for her support!

As a Florida Supreme Court Certified County and Family Mediator since 1993 and 1995 respectively, I am a member of the Florida Bar-Family Law Section-Mediation and Collaborative Committee, Association of Conflict Resolution, and The Florida Academy of Professional Mediators. I am honored to have been reappointed by the Florida Supreme Court Chief Justice to the Mediation Training Review Board, and I have served on that Board since 1997. I earned my undergraduate degree and MBA from the University of Central Florida. I currently work part-time for the 18th Judicial Circuit Court Administration Mediation Program –Brevard County. In addition to conducting mediations, I am responsible for the financial and business aspects of the family and civil mediation programs. I am also the coordinator of a divorce education seminar, and I present the mediation portion of that program.

My love of writing began a very, very long time ago, when I was in high school in Minnesota. That passion extended to college where I wrote extensively and tutored college students in English. Recently, I've written articles for the Brevard County Bar newsletter and rewritten and updated Administrative Orders. I am very excited about the completion of my manuscript for a book on parenting and divorce, with anticipated publication early next year.

You may question my judgment when I disclose that I have been serving on my Homeowners' Association Board for several years as legal liaison and newsletter editor. However, I have input into protecting my home, and it's really not the thankless job many think it is! I was also an expert panel member for community association town halls throughout the state.

My greatest achievement is being the proud mother of a 15-year-old daughter. I credit her with providing some technical assistance to me while preparing this newsletter, too! She has a learner's license, so I work out at the gym to lower my stress level. [This is where I put "LOL".] I am pleased to be a Parent Delegate for Melbourne High School's Business and Finance Academy and the local Chamber of Commerce. I also enjoy jet skiing, snow skiing, and traveling.

I welcome any comments and suggestions from The Academy's members to make The Caucus an even better communication tool. Please email me any time at Editor@tfapm.org. I look forward to serving you!

Sincere wishes for peace and prosperity,

Deborah

For information on advertising in The Caucus,
please contact Kathy Gayle at 800-808-8494 or via email at fapmgayle@aol.com.

HOT TOPIC – RESIDENTIAL FORECLOSURE MEDIATION *(Continued from Page 8)*

To measure the mediated settlement rate, it may be desirable, subject to court or legislative authorization, to require the mediator to report a case coded outcome indicating the alternative to foreclosure contemplated at mediation. For any designated time period, the Circuit Court then would be able to (1) statistically summarize promptly all case coded outcomes of mediation, i.e., impasse and/or each specific primary alternative to foreclosure contemplated; and (2) at a later date, if feasible, compare said outcomes with a current summarized status/disposition of the underlying cases, e.g., "sale at foreclosure", "action withdrawn", "pending", etc. It is well to note a foreclosure action may remain pending until a trial loan modification is made permanent.

The future direction of foreclosure mediation in Florida is still uncertain. The Florida Supreme Court heard oral arguments regarding the Task Force's recommendations on November 4, 2009; but as of the time this article is written, it has not yet rendered its opinion on the report. [Editor's note: See page one regarding Administrative Order issued December 28, 2009.] Pending in the 2010 session of the Florida House of Representatives is bill HB 75 to enact a "Foreclosure Bill of Rights". Its original text makes no reference to "managed mediation"; see www.myfloridahouse.gov. Due to its present controversial content, HB 75 very likely will be modified, and proposed revisions may relate to "managed mediation".

Patrick J. Mastronardo is a Certified Circuit Civil, County, Family, and Dependency mediator, member of the Mediator Ethics Advisory Committee, retired member of the New York Bar, associate member of the Orange County Bar Association, and a former business owner and commercial banker. He mediates foreclosure cases in Seminole and Orange Counties. You may visit his website at www.patsolution.com.

CONGRATULATIONS

CHARLES “Chubby” H. DAMSEL, JR., is the recipient of the Florida Defense Lawyers Association’s Douglas P. Lawless Award for his contribution to the alternative dispute resolution area of the association. Chubby is a mediator, arbitrator, and private judge and has been Chair of the Academy’s Diplomat Committee for many years. He is also a Certified Mediator with the Florida Federal District Court. Chubby is a Certified Civil Trial Lawyer, who has been trying and settling difficult cases for 54 years. After graduating from the University of Florida Law School, he was admitted to the Florida Bar in 1956. Among his numerous credentials, Chubby is listed in “Who’s Who in America”, “The Best Lawyers in America,” and “Who’s Who Among Outstanding Americans.”

PALM BEACH COUNTY PRE-FILING SMALL CLAIMS MEDIATION PROGRAM has been awarded a grant by The Academy’s Community Involvement Committee (CIC). The Board of Directors of the Academy approved the CIC’s recommendation to award a grant to the Palm Beach Program, which began in 2004. The Academy’s current President, Ted Deckert, and Judge Peter Evans of Palm Beach were instrumental in developing the program. Mediation is now available to residents, for a nominal charge, without having to file a lawsuit within the jurisdiction of small claims court. Academy member Robin Caral Shaw’s office now provides administrative support, pro-bono, to the program and can be reached at rshaw@moylelaw.com. For information on the program, visit www.communitymediation.us.

WELCOME NEW ACADEMY MEMBERS

Abercrombie, David	Marco Island	Jones, John	St. Augustine
Bickerstaff, Joan	West Melbourne	Kettring, Gary	Sarasota
Bird, Christine	Ocala	Leffert, Dennis	Naples
Brainerd, Stanley	Tallahassee	Langston, Herbert	Maitland
Brier, Bonita	Parkland	Long, Lauren	St. Cloud
Bromiley, Hugh	Lady Lake	Marlowe, Russell	New Port Richey
Brown-Mack, Melissa	Holly Hill	Maxey Jr., Robert	Tampa
Colbert, Thomas	Tallahassee	Meredith, Olen	St. Augustine
Cronin, Joel West	Palm Beach	Mestdash, Alexandre	Maitland
De Martini, William	Lauderdale-By-The-Sea	Minnax, Bernard	Tampa
Dermer, Robin	Ft. Myers	Quinones, John	Kissimmee
Diaz, Anthony	Winter Park	Rapkin, Jeffrey	Punta Gorda
Diaz de la Portilla, Renier	Miami	Reinstein, Stephen	North Miami Beach
Figley, J. Patrick	Tampa	Rodriguez, Jorge	Miami
Figley-Taylor, Shannon	Tampa	Rubin, Steven	Boca Raton
Gelber, Robert	Hollywood	Shekey, Michael	Lutz
Graves, Richard	Ft. Lauderdale	Smiley, Carmen	Silver Springs
Green, Lex	Starke	Smith, Stacy	Orlando
Hack, Reinhard	Port St. Lucie	Sochacki, John	Lantana
Hoppenworth, Valorie	Clearwater	Tamir, Denise	North Miami Beach
Howe, Jacqueline	Ft. Lauderdale	Taylor, Sandra	St. Augustine
Hudson, Michele	Cooper City	Weaver, Marsha	Navarre
Hughart, David	Jacksonville	Witten, Barbara	Heathrow

MEMBERS' FORUM

WE ARE PLEASED TO OFFER THIS NEW COLUMN.
WE WELCOME YOUR CONTRIBUTIONS!

The Academy invites members to submit questions or concerns to us for publication and welcomes comments from the membership. Please limit your submission to a maximum of 400 words. To submit a concern or to respond to today's issue, please email Editor@tfapm.org.

Disclaimer: All views expressed are those of the author. Unless expressly noted, they do not necessarily reflect the views of The Academy or its Board of Directors. The Academy reserves the right to edit all submissions.



TODAY'S ISSUE: NON-CERTIFIED ATTORNEYS CONDUCTING MEDIATIONS

Submitted by Alexander "Sandy" Myers

Many of the people who read this are mediators who have been certified by the Florida Supreme Court and who have met all the requirements for certification and continuing education of the Dispute Resolution Center (DRC). We call ourselves 'professional', since we are held to certain standards and subject to peer review. We are also subject to sanctions if someone files a complaint, and a review committee determines that we have violated the rules that govern certified mediators.

There are attorneys who are conducting mediations who are not certified and have no intention of becoming certified. The current rules/statutes allow the attorneys/parties to agree on their mediator, regardless of credentials. Many of these attorneys have been practicing law in excess of 25 years and are effective in their skills to reach a settlement. They are free to use any method they choose and are not limited in any way; they can do and say things that we certified mediators cannot. For example, when a party or an attorney asks the mediator, "What do you think?", "What would you do?", or "What do you think the judge will do?", the non-certified attorney "mediator" can respond any way they choose, because they are not restricted or may not have a clue as to their responsibility as a "mediator". It would make your job and my job much easier if we could give them the answers to their inquiries as they often request, and sometimes demand.

When I discuss this issue with my attorney colleagues who are engaging in the practice, they firmly believe that their method helps, not hinders, the process. Are they right or wrong? None of them would ever consider going to the time and expense of being certified. Their response is, "Why bother? I'm doing mediation now and getting paid my regular attorney hourly rate."

In those situations, neither the parties nor their attorneys would have recourse to file a grievance with DRC if "something goes wrong".

By requiring certification for all mediators, it would essentially put us on the same level playing field as other professionals, such as attorneys, counselors, massage therapists, etc, whether it is administered by the Supreme Court, the Florida Bar, or an agency such as the Department of Business and Professional Regulation.

WHAT DO YOU THINK? SHOULD THE ACADEMY SEEK ESTABLISHMENT OF A RULE, STATUTE, ADMINISTRATIVE ORDER, OR OTHER PROCEDURE REQUIRING A PERSON BE CERTIFIED, LICENSED, OR OTHERWISE "LEGALLY QUALIFIED AND REGULATED" BEFORE THEY CAN PROVIDE AND CHARGE FOR PROFESSIONAL MEDIATION SERVICES IN FLORIDA?



Florida Academy
of Professional Mediators, Inc.
P.O. Box 488
Archer, FL 32618-0488

Presorted
First-Class Mail
U.S. Postage Paid
Gainesville, FL
Permit No. 726

ADDRESS SERVICE REQUESTED



Paid Advertisement

PROBLEMS DON'T HAVE AN AGE ONLY A SOLUTION

Change your problems into solutions



Beraja Counseling Center was established to help individuals, families and organizations reach their maximum potential through counseling, parenting coordination, consulting, psychological and educational testing.

- Individual • Family • Marital Counseling • Adults • Teens • Children
- anxiety, depression, divorce, relationships, weight, social skills, drug and alcohol
- Psychological & Educational Testing

learning disability, poor concentration, poor behavior, emotional and academic evaluations, IQ testing, family assessments



BERAJA COUNSELING CENTER

Lisette N. Beraja, LMFT

English/Spanish

Key Biscayne | Miami | Miami Beach
Tel: 305-858-7763 | lisette@beraja.com

