

# SMALL CLAIMS MEDIATION SERVICES: A TREASURE TO BE TOLD

By **Judge Nina Ashenafi Richardson**, *Leon County Judge; Member, Supreme Court Mediation Training Review Board,<sup>1</sup> by appointment of Chief Justice Charles T. Canady; and TWL Member and Past President.*

By **Dr. Mark Palmquist**, *Retired Director, County Court Mediation Program, 2nd Judicial Circuit of Florida.*

One of the treasures of the 2nd Judicial Circuit of Florida is its dutiful, enthusiastic and dedicated team of approximately 45 Florida Supreme Court certified volunteer county court mediators that serve Leon, Gadsden and Wakulla counties.

Every Tuesday morning, between 20 to 25 mediators arrive at the Leon County Court Annex on Thomasville Road to serve their community by offering their professional services to assist parties in the resolution of their disputes. Although pre-trial mediation starts in Leon County at 9:00 a.m., the mediators begin appearing before 8:00 a.m. to meet in a large conference room on the second floor. They discuss a myriad of topics including best practices gained from their individual experiences, or use the time to receive continuing mediation education.

Well over half of the county mediators have served more than 10 years as volunteers. The parties that come before these mediators are benefiting from their vast experience and recurring training. Approximately 84% of the recent small claims cases that are filed in Leon County's small claims court are resolved by these highly skilled mediators. They serve the parties and the court without charging a fee, offering their time and expertise as a community service to citizens, the courts, and the communities of Leon, Gadsden and Wakulla Counties.

This article is intended to shine some light on county court mediation services, its history, and some of the dedicated individuals who helped lay a strong foundation for the tremendous success of the program.

## Leon County History

County court mediation services began in June of 1985 when **Leon County Judge Hal McClamma** and the **Trial Court Administrator Dozier Allen** formulated the program. 2nd Judicial Circuit of Florida **Chief Judge Donald O. Hartwell** signed Administrative Order Number 85-31 on July 11, 1985, thereby officially creating the "Leon County Dispute Settlement Program."

The late **Jack Blanton** served as Director of Mediation Services from June of 1985 until his passing in December of 1995. In January of 1996, **Dr. Mark Palmquist** assumed the duties of Director, further enhancing the program by recruiting more mediators and expanding educational activities and training.

In 2000, then-**Chief Judge George Reynolds III** moved mediation services from the main Leon County Courthouse to the present location of the Court Annex on Thomasville Road. **Dr. Palmquist** retired in May, 2011. In recognition of his outstanding service, the conference room where the mediators meet at the Annex has been dedicated in Dr. Palmquist's name, with the plaque adorning the wall inscribed with his favorite salutation, "Peace to the Peacemaker."

The current coordinator is **Susan Marvin, Esq.** The Alternative Dispute Resolution Director is **David**

**Wolfson.** The current **Chief Judge, Charles A. Francis**, has continued to fully support the mediators and their program. **Mr. Grant Slayden** is the Trial Court Administrator and has overall responsibility for Mediation Services.

Both **Chief Judge Francis** and **Grant Slayden**, with significant assistance from **Leon County Administrators Parwez Alam** and **Vince Long**, were instrumental in creating brand new and expanded county mediation space for mediations, caucuses, meetings, and training. The current **Clerk of Court, Bob Inzer**, has expanded the breadth of information available to parties about mediation services by including extremely helpful information about the process on the Clerk of Court's website, including some form pleadings available to the public for free.

Some of the very first county court volunteer mediators included: **Thomas Brushwood**, **Phillip Stuart**, **Peter Durland, Esq.**, former director of the Wakulla County Mediation program **Don Pace**, **Jack Blanton** (deceased), **Glenn Boggs**, **Arlan Bowen (d)**, **Joe D'Annunzio**, **Jon Davidson**, **John Davis**, **Jack T. Dobson**, **Ernest Doster**,

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<sup>1</sup> *The Mediation Training Review Board is the disciplinary body overseeing enforcement of the Mediation Training Standards and Procedures adopted by the Supreme Court of Florida in Administrative Order AOSC10-51.*

**Peter Durland, John Goldinger, Robert Henderson, John Hutchinson, Gerald Jahoda (d), Pat Jahoda, Tom Lightsey, Edward Malo (d), Bradley Munroe, Jean Worth Owen, Mark Palmquist, Rissette Posey, Jack Overstreet, David Ramba, Cheryl P. Rose, Madelon Rossner, Bill Salmon, Warren Schave, Pat Shafer, Pat Thornburg (d), Ric Thornburg, Don Tobin, and George Woerner (d).**

Other volunteers that followed included: **Ann Anthony, Gary Callaway, Larry Cerro, John Cottone, Ed Dunley, David Ferguson, Sally Gandy, Fred Goodrow, Bob Greenberg, Joan Guilday, Bonnie Holub, Bill Jones, Dan King, John Lensch, Grant Logan, Gerald Lewis, Bonnie Marmor, Stephanie McHardy, June McKinney, Hank Nash, Carolyn Palmquist, David Pargman, Marsha Pargman, Dorys Penton, Lucy Pride, Willis Rabon, Earnestine Reschard, Dick Saunders, Rebekah Shuler, Louis Schwartz, Rhea Schwartz, Grant Slayden, James Taylor, Richard Tritschler, Roger Walton, Richard Woerner, David Wolfson, and David Young.**

### Small Claims Cases

Typical cases referred to volunteer county mediation are civil small claims cases. These are cases filed in county court to settle legal disputes between parties where the dollar amount at issue is \$5,000 or less, excluding costs, interest, and attorneys fees. See Rule 7.160, Florida Small Claims Rules. Case types include landlord/tenant; contract; recovery of money/property; auto repair; consumer claims; and property damage.

After the filing of a small claims case, each person or business sued must be served with a Summons or Notice to Appear in court for a pre-trial conference. At the pre-trial conference, the county judge has discretion to offer mediation services if both parties to the dispute are present, have full negotiating authority, are unable to settle their dispute, and agree to attend mediation. If the judge refers the case to mediation, the mediator takes the parties to a private room specially designed for mediation during the Annex's renovation.

Many of the parties attend the mediation unrepresented by counsel and find the mediators involvement extremely helpful in facilitating a resolution of the dispute in an informal and non-adversarial setting. If the dispute cannot be settled, the parties will be brought back to the courtroom where the judge will go over the pre-trial order and schedule a trial date.

### High Success Rate at Mediation

It was evident from the very beginning of the program that mediation was a beneficial tool in resolving the high volume of small claim cases filed in county court. For instance, in 1985, 11 volunteer mediators settled 117 cases out of 166 cases assigned for a 70% settlement rate. No statistical records were kept for Wakulla County from 1992 to 2003, but the coordinator at that time, **Dr. Palmquist**, indicates that at least one thousand cases were resolved during those years. In 2004, there were 1,398 cases referred to mediation, 1,157 of which were resolved at the mediation table. At the end of December, 2010, mediation services documented over 17,966 cases settled out of 24,320 cases for an average settlement rate of 74%. The settlement rate as of August 2011 is an outstanding 84%!

If one were to place a monetary value on the hours expended in just 2010, for instance, to determine a dollar value of donated services, it would add up as follows: If \$125 per hour were applied to the 3,400 hours expended by the mediators, the result would be \$425,000 donated in mediation services in 2010 alone! This is a tremendous savings to the parties and the courts.

### Benefits of Mediation

Mediation is actively encouraged by the county judges in the 2nd Judicial Circuit.<sup>2</sup> The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision making authority, however, rests solely with the parties. Rule 10.220, Florida Supreme Court Rules for Certified and Court-Appointed Mediators.

Some of the benefits of small claims mediation are as follows: 1) small claims mediation services are free to the parties; 2) it is economical both in time and money, since a typical case is resolved after one court date; 3) it is a consensual process, so the settlement achieved is generally viewed as fair by both parties; 4) all mediation discussions are confidential except where disclosure is required by law; 5) issues, needs and interests of the par-

<sup>2</sup> *The county judges in the 2nd Judicial Circuit are **Judith W. Hawkins, Augustus D. Aikens, Jr., Robert R. Wheeler, Nina Ashenafi Richardson, Jill C. Walker, Kathy L. Garner, Kenneth L. Hosford, Robert R. Plaines, Van Russell and Ronald W. Flury**, who is also a member of the Supreme Court's Mediator Qualification Board (MQB).*

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ties that may not be considered relevant at trial can be openly discussed; 6) parties can explore and work out creative settlement terms, such as bartering or exchange of goods and services; 7) trial preparation such as conducting discovery, deposing individuals, subpoenaing evidence or witnesses are eliminated; 8) preserves personal and business relationships; 9) allows debtors to arrange repayment plans, avoid a judgment, and preserve credit reputation; 10) risks and uncertainty associated with trials are avoided; 11) protects privacy and avoids possible publicity of trial; and 12) helps reduce the court system's overburdened case load.

### **Training Requirements**

Pursuant to Article V, Section 2(a) of the Florida Constitution and Chapter 44, F.S., the Supreme Court of Florida has the responsibility for certifying all persons who are eligi-

ble to receive court referrals for mediation. The Supreme Court adopted rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed Mediators, and Administrative Order AOSC11-1, *In Re: Procedures Governing Certification of Mediators*.

Generally, becoming a county court mediator in Florida requires the person be at least 21 years of age, of good moral character, with an education (a high school diploma or G.E.D. being the minimum), completion of training certified by the Supreme Court of Florida, and participation in a mentorship program.

The Florida Supreme Court released Opinion SC05-998 amending the qualifications required to be a mediator effective August 1, 2006. The changes now allow certification to be based on a flexible system that allows "points" to be credited in the following areas: training (30 points), education/exp-

erience (10 points), and mentorship (60 points, with each observation worth 5 points, and each co-mediation worth 10 points). All candidates for court-appointed mediator must submit an application to the Supreme Court of Florida Dispute Resolution Center. An excellent resource on training prepared by the Center is *Florida State Courts: How to Become a Florida Supreme Court Certified Mediator (A Step-By-Step Guide)*, revised Feb. 16, 2011, which may be found at [www.flcourts.org](http://www.flcourts.org), under "Alternative Dispute Resolution."

What a treasure the county court mediators are and the tremendous contribution they make for the 2nd Judicial Circuit of Florida. If you would like more information or are interested in serving your community by becoming a member of this treasure trove of dedicated volunteer mediators, please contact Susan Marvin at (850) 577-4434 or [susanm@leoncountyfl.gov](mailto:susanm@leoncountyfl.gov).

## **MEMBER NEWS**

TWL Member **Madonna M. Finney** is now one of 17 Board Certified Adoption Attorneys in the State of Florida. Ms. Finney is also a Fellow of the American Academy of Adoption Attorneys and practices exclusively in the area of adoption law. Ms. Finney is a partner with The Law Office of Madonna M. Finney. She may be reached at (850) 577-3077 or by email at [madonnaell@aol.com](mailto:madonnaell@aol.com).

TWL Member and Past President **Wendy S. Loquasto** received the Pro Bono Award, given to a member of The Florida Bar's Appellate Practice Section who has devoted significant pro bono efforts in appellate matters. Ms. Loquasto is also a Past President of FAWL and serves as TWL's Liaison to Legal Services. Ms. Loquasto is Board Certified in Appellate Practice and is a partner with Fox & Loquasto, P.A. She may be reached at [wendyloquasto@flappeal.com](mailto:wendyloquasto@flappeal.com) or at (850) 425-1333.

TWL Member and Past President **Kathy J. Maus** was recently appointed to the Board of Directors for the International Association of Defense Counsel, to serve a 3 year term. Ms. Maus has also been elected as the President-Elect for the American Board of Trial Advocates (ABOTA). Ms. Maus is a partner with Butler Pappas Weihmuller Katz Craig, LLP, practicing in its Tallahassee office. She may be reached at (850) 894-4111.

*TWL Members may submit Member News items to **Jessica L. Slatten**, TWL's Newsletter Director, at [jslatten@raybounmulligan.com](mailto:jslatten@raybounmulligan.com) and to **Aubrey Posey**, TWL's Public Relations Director, at [aubreyposey@hotmail.com](mailto:aubreyposey@hotmail.com). Publication of member news items in TWL's Newsletters and E-News is just one of TWL's many member benefits. We look forward to sharing your news!*