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SPECIAL REPORT ARBITRATION & MEDIATION

No J.D. needed: Good neutrals are inquisitive, hard-working

Commentary by Jason B. Dubow

Seven years ago this November, the Florida Supreme Court amended the Rules for Certified and Court-Appointed Mediators to no longer re-



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strict candidacy to members of the Florida Bar. In a state that required mediation before a civil suit could go to trial—and still does—many thought the decision would be a game-changer in an area that had been the exclusive domain of retired judges and attorneys. There are now more than 6,000 Florida Supreme Court-certified mediators, more than half of whom have completed a 40-hour circuit civil training course and met the requirements of a point-based system that quantifies education, mentorship and, among other miscellaneous criteria, professional licensure. While more than half come from a traditional legal background and are members of the Bar, there are an almost equal number of other industry-specific professionals, including architects, accountants, bankers and engineers.

Perry S. Itkin has been an attorney for 41 years. Despite his legal training, he says effective mediation “isn’t just about the law,” since it’s not a mediator’s job to determine right and wrong.

“It’s most important that the neutral have common sense, an inquisitive mind and excellent interpersonal skills,” said Itkin, who has been training mediators and providing continuing education at the Fort Lauderdale-based Mediation Training Center since 1992. “Often it’s the resolution of the nonlegal issues that leads to a settlement.”

Itkin says that doesn’t mean that lawyers can’t be great at alternative dispute resolution; they often are, only that, as the Florida Supreme Court’s opinion reflected, “possession of academic degrees, including law degrees, does not necessarily predict an individual’s ability to be a good mediator.”

Stanley Zamor, a certified mediator for nearly 15 years, says the diverse backgrounds that have flocked to the profession since the 2007 decision have improved the quality of the mediation work being done.

“Individuals with industry-specific subject knowledge can now be brought into the dispute, which wasn’t always the case,” said Zamor, the Pembroke

Pines-based president of the Florida Academy of Professional Mediators.

Zamor cautions, however, that subject-matter knowledge, while important in the selection of a third-party neutral, shouldn’t be the only criteria. He believes a strong sense of ethics, common sense (there’s that phrase again) and a broad range of prior experiences can be more important.

Of course, not all mediations are ‘successful’ in that every issue is resolved through the process, but most believe that even when both parties don’t come to an agreement, often enough progress can be made to lay the foundation for a settlement before trial.

“An effective mediator has to understand his or her audience and connect with them on a level that builds trust,” said Miami and Boca Raton-based Jeff Grubman of the JAMS Resolution Center and a member of the Florida Bar. “Being tenacious and hardworking are also critically important, maybe even more than intelligence or knowledge of the law, which is not what I thought when I began mediating 10 years ago.”

All this doesn’t mean that attorneys and those from other professions are getting dispute resolution work at the

same rate.

Long-established mediators, many of whom are lawyers, still get the lion’s share of assignments, and reputation, personality and prior effectiveness most often determine referrals. Zamor estimates the current caseload in the areas he works in to be 85-15 in favor of members of the Florida Bar.

“We live in a capitalist society where everyone with the proper training and certification can compete in this arena freely,” Grubman says. “The skills the mediator brings to the table and the results they deliver should be what determine who gets work.”

Itkin, the trainer of mediators and the one who helps many in Florida maintain their certification every two years with continuing education courses, says the profession is in a “good place.”

“We have excellent circuit civil mediators who are bar members and also those who aren’t, so in that sense the Florida Supreme Court got it right,” he said.

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