23rd Annual Dispute Resolution Conference

July 30 – August 1, 2015

“What Did I Do…What Do I Do Now?”
Our objectives for this workshop

1. Help the mediators identify and understand common pitfalls or ethics violations that might lead to the filing of a grievance complaint against a mediator.

2. Help the mediators understand the grievance process and proceeding, beginning with the filing of a grievance complaining through the imposition of sanctions. We will discuss our divergent roles as investigators, prosecutors and legal advisers to the Panel members.

3. Help the mediators understand potential sanctions that may be imposed for violations and the process for imposing them.
Our mediator is The Honorable Dick Tater (Retired). He is a retired State Circuit Court judge and is a Florida Supreme Court Certified Circuit, Appellate and Family mediator. Judge Tater, on his website advertises that he is a Florida Supreme Court mediator and that during his tenure as a judge, in both the civil and criminal divisions, he acquired extensive experience assisting litigants with the resolution of disputes. He further promotes that his mediations have resulted in full settlements 95% of the time.
10.610 Marketing Practices

(a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practice, including advertising, which contains false or misleading information. A mediator shall ensure that any marketing of the mediator’s qualifications, services to be rendered, or the mediation process is accurate and honest.

(b) Supreme Court Certification. Any marketing practice in which a mediator indicates that such mediator is “Florida Supreme Court certified” is misleading unless it also identifies at least one area of certification in which the mediator is certified.

(c) Other Certifications. Any marketing publication that generally refers to a mediator being “certified” is misleading unless the advertising mediator has successfully completed an established process for certifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term “certified’ in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.

(d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified mediator.

(e) Prohibited Claims or Promises. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(f) Additional Prohibited Marketing Practices. A mediator shall not engage in any marketing practice that diminishes the importance of a party’s right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial system.
Since his retirement from the bench, Judge Tater has become a highly sought after mediator by the Bar, and the Bar affectionately refers to him as “the deal closer.” Although Judge Tater reputedly has somewhat of a “tough, no-nonsense and abrasive” demeanor during his mediations, he is routinely called upon to mediate cases, particularly those which have failed to settle in other mediations. The attorneys who retain him understand and appreciate the fact that Judge Tater will candidly assess the value of their clients’ cases with them.
10.350 Demeanor

A mediator shall be patient, dignified, and courteous during the mediation process.
10.370 Advice, Opinions, Or Information

(a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.
10.800 Good Moral Character; Professional Discipline

(a) Good Moral Character.

(1) Prior to approving an applicant for certification or renewal as a mediator the center shall review the application to determine whether the applicant appears to meet the standards for good moral character. If the center’s review of an application for certification or renewal raises any questions regarding the applicant’s good moral character, the center shall request the applicant to supply additional information as necessary. Upon completing this extended review, the center shall forward the application and supporting material as a complaint to the qualifications complaint committee.

(2) If the center becomes aware of any information concerning a certified mediator which could constitute credible evidence of a lack of good moral character, the center shall refer such information as a complaint to the qualifications complaint committee.

(3) The qualifications complaint committee shall review all documentation relating to the good moral character of any applicant or certified mediator in a manner consistent, insofar as applicable, with rule 10.810. In relation to an applicant, the qualifications complaint committee shall either recommend approval or, if it finds there is probable cause to believe that the applicant lacks good moral character, it shall refer the matter to a hearing panel for further action. In relation to a certified mediator, the qualifications complaint committee shall dismiss or, if there is probable cause to believe that the mediator lacks good moral character by dismissing the charges, denying the application in relation to an applicant, or imposing sanctions against a certified mediator pursuant to rule 10.830.
10.800 Good Moral Character, Professional Discipline (continued)

(4) The panel shall take appropriate action on the issue of good moral character by dismissing the charges, denying the application in relation to an applicant, or imposing sanctions against a certified mediator pursuant to rule 10.830.

(5) All such hearings shall be held in a manner consistent, insofar as applicable, with Rule 10.820.

(b) Professional Licenses and Certifications.

(1) A certified mediator shall inform the center, in writing, of the change in status of any professional license held by the mediator within 30 days of such change.

(2) Upon becoming aware that a certified mediator has been disciplined by a professional organization of which that mediator is a member, the center shall refer the matter to the qualifications complaint committee.
Judge Tater is retained as the mediator in a pending personal injury action. He was selected at the recommendation of the plaintiff’s counsel, who has mediated approximately 40-50 other cases with Judge Tater. The defense counsel has never mediated any cases with Judge Tater and does not know the extent to which the plaintiff’s counsel has mediated other cases with the judge. Defense counsel agrees to mediate this case with Judge Tater because this case has been mediated several times before and without success. The hope is that because of the judge’s reputation for settling difficult cases, this case will get resolved.
10.340 Conflicts of Interest
(a) Generally. A mediator shall 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.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(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 shall withdraw regardless of the express agreement of the parties.

(d) Conflict During Mediation. A mediator shall not create a conflict of interest during the mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

(e) Senior and Retired Judges. If a mediator who is a senior judge or retired judge not eligible for assignment to temporary judicial duty has presided over a case involving any party, attorney, or law firm in the mediation, the mediator shall disclose such fact prior to mediation. A mediator shall not serve as a mediator in any case in a circuit in which the mediator is currently presiding as a senior judge. Absent express consent of the parties, a mediator shall not serve as a senior judge over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge who provides mediation services shall not preside over any case in the circuit where the mediation services are provided; however, a senior judge may preside over cases in circuits in which the judge does not provide mediation services.
Potential conflicts of interests which require disclosure include the fact of a mediator’s membership on a related board of directors, full or part time service by the mediator as a representative, advocate, or consultant to a mediation participant, present stock or bond ownership by the mediator in a corporate mediation participant, or any other form of managerial, financial, or family interest by the mediator in any mediation participant involved in a mediation. A mediator who is a member of a law firm or other professional organization is obliged to disclose any past or present client relationship that firm or organization may have with any party involved in a mediation. The duty to disclose thus includes information relating to a mediator’s ongoing financial or professional relationship with any of the parties, counsel, or related entities. Disclosure is required with respect to any significant past, present, or promised future relationship with any party involved in a proposed mediation. While impartiality is not necessarily comprised, full disclosure and a reasonable opportunity for the parties to react are essential.

Disclosure of relationships or circumstances which would create the potential for a conflict of interest should be made a the earliest possible opportunity and under circumstances which will allow the parties to freely exercise their right of self-determination as to both the selection of the mediator and participation in the mediation process. A conflict of interest which clearly impairs a mediator’s impartiality is not resolved by mere disclosure to, or waiver by, the parties. Such conflicts occur when circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.
To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator’s professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself. By way of example, a mediator would therefore be prohibited from providing accounting, psychiatric or legal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process. Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.
The underlying case involves an automobile accident. The plaintiffs are an elderly husband and wife who are both in their seventies. The plaintiff wife is claiming that she has sustained substantial injuries in the automobile accident with the defendant driver, as well as the aggravation of certain pre-existing conditions. The husband claims minor injuries and a claim for consortium.

The defendant driver is a young, attractive, aspiring model named Lacey Luscious. Judge Tater had briefly dated Lacey “on line” for several months. They have never met in person.
10.300 Mediator’s Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator’s responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator’s business practices should reflect fairness, integrity and impartiality.
10.330 Impartiality

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.
10.340 Conflicts of Interest

(a) Generally. A mediator shall 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.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

Committee Notes – Disclosure of relationships or circumstances which would create the potential for a conflict of interest should be made at the earliest possible opportunity and under circumstances which will allow the parties to freely exercise their right of self-determination as to both the selection of the mediator and participation in the mediation process. A conflict of interest which clearly impairs a mediator’s impartiality is not resolved by mere disclosure to, or waiver by, the parties. Such conflicts occur when circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.
To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator’s professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself. By way of example, a mediator would therefore be prohibited from providing accounting, psychiatric or legal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process. Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.
Upon being retained, Judge Tater sends a Notice of Mediation to both attorneys. This Notice sets the date, time, and place for the mediation. It is also states that,

“The parties shall come prepared to negotiate in good faith and they will remain at the mediation until Judge Tater declares an impasse or the matter is settled.”

No other written information was sent to the parties by Judge Tater. Prior to the mediation, Judge Tater discussed the case separately with each attorney.
10.220 Mediator’s Role

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.
10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.
Mediation is a process to facilitate consensual agreement between parties in conflict and to assist them in voluntarily resolving their dispute. It is critical that the parties’ right to self-determination (a free and informed choice to agree or not to agree) is preserved during all phases of mediation. A mediator must not substitute the judgment of the mediator for the judgment of the parties, coerce or compel a party to make a decision, knowingly allow a participant to make a decision based on misrepresented facts or circumstances, or in any other way impair or interfere with the parties’ right of self-determination.

While mediation techniques and practice styles may vary from mediator to mediator and mediation to mediation, a line is crossed and ethical standards are violated when any conduct of the mediator serves to compromise the parties’ basic right to agree or not to agree. Special care should be taken to preserve the party’s right to self-determination if the mediator provides input to the mediation process. See Rule 10.370.

On occasion, a mediator may be requested by the parties to serve as a decision-maker. If the mediator decides to serve in such a capacity, compliance with this request results in a change in the dispute resolution process impacting self-determination, impartiality, confidentiality, and other ethical standards. Before providing decision-making services, therefore, the mediator shall ensure that all parties understand and consent to those changes. See Rules 10.330 and 10.340.

Under subdivision (d), postponement or cancellation of a mediation is necessary if the mediator reasonably believes the threat of domestic violence, existence of substance abuse, physical threat or undue psychological dominance are present and existing factors which would impair any party’s ability to freely and willingly enter into an informed agreement.
Florida Statute 44.404 Mediation; duration.—

(1) A court-ordered mediation begins when an order is issued by the court and ends when:
(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
(b) The mediator declares an impasse by reporting to the court or the parties the lack of an agreement;
(c) The mediation is terminated by court order, court rule, or applicable law; or
(d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:
   1. Agreement of the parties; or
   2. One party giving written notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

(2) In all other mediations, the mediation begins when the parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:
(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
(b) The mediator declares an impasse to the parties;
(c) The mediation is terminated by court order, court rule, or applicable law; or
(d) The mediation is terminated by:
   1. Agreement of the parties; or
   2. One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.
At 9:00 a.m. the parties arrive to commence mediation. Judge Tater proceeds with his opening statements informing the parties and their counsel, among other things,

“I have extensive judicial experience in automobile negligence cases, and I’ll tell you up front, there are always unexpected perils and pitfalls of a trial in matters such as these.”

He then states, as he looks at each of the participants,

“I expect you to negotiate in good faith today and this mediation will continue until I determine that the matter cannot be settled and I declare an impasse.”

As he sits down, he looks over to Lacey Luscious and says,

“Good morning, you look very lovely today.”
10.220 Mediator’s Role

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.
10.300 Mediator’s Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator’s responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator’s business practices should reflect fairness, integrity and impartiality.
10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.
10.330 Impartiality

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.
10.350 Demeanor

A mediator shall be patient, dignified, and courteous during the mediation process.
10.410 Balanced Process

A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.
10.420 Conduct of Mediation

(a) Orientation Session. Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:
   (1) mediation is a consensual process;
   (2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and

(b) Adjournment or Termination. A mediator shall:
   (1) adjourn the mediation upon agreement of the parties;
   (2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;
   (3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;
   (4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and
   (5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) Closure. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.
The mediation proceeds for several hours with the defendant offering the plaintiffs less than one half of their demanded amount for settlement. Judge Tater concludes that the sticking point is the plaintiffs’ unrealistic expectations of their claimed injuries. Judge Tater has a private conversation with counsel for the plaintiffs to discuss this matter. Plaintiffs’ counsel explains to the judge,

“I agree with you…my clients’ claims are unrealistic, but I have been unable to persuasively convey that to them. I desperately want this case to settle so judge, I need your help.”
10.330 Impartiality

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.
10.370 Advice, Opinions, or Information

(a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent counsel.

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination, however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.
During a private caucus with the plaintiffs and their attorney, Judge Tater tells the plaintiffs,

“I have to give you my candid, confidential, and professional judgment. If this case proceeds to trial, there would either be a verdict for the defense or if you folks were to win it would be such a small amount.”

The plaintiff wife became visibly upset and told Judge Tater that she would not accept anything less than that to which she thought she was entitled. Judge Tater became angry and stated to her,

“The defendant’s current offer is very fair and reasonable…don’t be stuck on stupid…half a loaf is better than no loaf. The two of you need to understand that if you go to trial, you’re going to risk the possibility of getting a jury full of uneducated immigrants who barely speak English and won’t understand your case. You need to get off your high horse. I will present to the defendant your ridiculous and unrealistic counteroffer.”
10.300 Mediator’s Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator’s responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator’s business practices should reflect fairness, integrity and impartiality.
10.330 Impartiality

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.
A mediator shall be patient, dignified, and courteous during the mediation process.
10.370 Advice, Opinions, Or Information

(a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.
The plaintiff began to cry and shake uncontrollably. Her husband told Judge Tater,

"My wife is on valium and other pain medications and perhaps we need some time right now."

At that point, Judge Tater concluded that it was an opportune time for a lunch break and ordered everyone back in 1 1/2 hours.
10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.
10.420 Conduction of Mediation

(a) Orientation Session. Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:
   (1) mediation is a consensual process;
   (2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and

(b) Adjournment or Termination. A mediator shall:
   (1) adjourn the mediation upon agreement of the parties;
   (2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;
   (3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;
   (4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and
   (5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) Closure. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.
When the parties returned, the plaintiff appeared to be lethargic and visibly subdued. Judge Tater asked,

“Well, do you think you’re ready to proceed with this mediation?”

The plaintiff’s reply

“I… I just don’t know.”

Her husband, however, stated,

“My wife is fine. Let’s move on.”

Judge Tater says,

“Now listen to your husband.”
10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.
The mediation went on for several more hours. The plaintiff wife remained quiet and disengaged in the process. The plaintiff husband asked for an opportunity to speak with his wife alone. When they returned, he announced to Judge Tater,

“My wife and I will accept the defendant’s latest offer to settle the case. I understand that each side will bear its own attorneys’ fees and costs.”

His wife said nothing, but began to cry.
10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.
Judge Tater was elated that a settlement had been reached. He brought the parties back together in a joint session for the announcement. The judge instructed the attorneys to prepare and type a settlement agreement for everyone’s signature including his own. He wanted the Settlement Agreement to be signed in the presence of a notary public. Judge Tater is a Notary Public. It was already 6:30 p.m., but the parties were unable to readily gain access to an independent notary public. Judge Tater, wanting to insure a settlement, agreed to notarize everyone’s signature including his own, on the mediated settlement agreement. The plaintiffs’ counsel asked,

“Can my clients sign it the next day?”

Judge Tater responded,

“No, this case is settled and we’re all going to stay here until it’s signed.”
Florida Statute 117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(1) No person shall obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State if so requested. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
Within 10 days of the execution of the mediated settlement agreement, the plaintiff wife filed a Motion to Set Aside the Mediated Settlement Agreement with the Court on the grounds of coercion. The Court set this matter for an evidentiary hearing and directed all participants, including the mediator, to appear for testimony.
Can a mediator add to an agreement anything that protects himself?

Can a mediator have language that he is precluded from being called in the event of a dispute?

Isn’t a mediation agreement between the parties and should not be inclusive of anything pertaining to the mediator?
Florida Rules of Civil Procedure 1.730  Completion of Mediation

(b) Agreement. If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court or a stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court. The mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days thereof. No agreement under this rule shall be reported to the court except as provided herein.
A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation.
The cases where the mediator testified:

   Feldman v. Kritch, 824 So. 2d 274 (Fla. 4th DCA 2002)

   McKinlay v. McKinlay, 648 So. 2d 806 (Fla. 1st DCA 2001)

   Vitakus-Valchine v. Valchine, 793 So. 2d 1094 (Fla. 4th DCA 2001)
Approximately, thirty days after the mediation, the parties received Judge Tater’s invoice for the mediation in the total sum of $5,937.50 for 12 ½ hours of mediation at the rate of $475 per hour. The bill was allocated as: 2 hours of pre-mediation preparation time and consultation with both attorneys and 10 ½ hours of mediation time. Each side was requested to make payment in the amount of $2,968.75 within thirty (30) days thereafter. Upon their receipt of this bill, all of the parties and counsel became upset as they all deemed this fee to be exorbitant and unwarranted. Lacey Luscious was also upset as Judge Tater had told her on the night that the mediation agreement was signed that there would be no need to pay him so long as they could renew their “dating experience.”

All parties initiated complaints with the DRC.
10.380 Fees and Expenses

(a) Generally. A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.

(b) Guiding Principles in Determining Fees. A mediator shall be guided by the following general principles in determining fees:

1. Any charges for mediation services based on time shall not exceed actual time spent or allocated.
2. Charges for costs shall be for those actually incurred.
3. All fees and costs shall be appropriately divided between the parties.
4. When time or expenses involve two or more mediations on the same day or tip, the time and expense charges shall be prorated appropriately.
10.380 Fees and Expenses (continued)

(c) Written Explanation of Fees. A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:

   (1) the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;
   (2) the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;
   (3) the basis and amount of charges for any other items; and
   (4) the parties’ pro rata share of mediation fees and costs if previously determined by the court or agreed to by the parties.

(d) Maintenance of Records. A mediator shall maintain records necessary to support charges for services and expenses and upon request shall make an accounting to the parties, their counsel, or the court.

(e) Remuneration for Referrals. No commissions, rebates, or similar remuneration shall be given or received by a mediator for a mediation referral.

(f) Contingency Fees Prohibited. A mediator shall not charge a contingent fee or base a fee on the outcome of the process.
The Grievance Process

Grievance → Court Administrator → Dispute Resolution Center → Call Complainant

Proper Form? Yes → Complainant Committee Selected and Meets

Facial Sufficiency Yes → Committee Generates List of Possible Rule Violations

List, MQB list, rules to Mediator; rules, MQB List to Complainant

Mediator Response

Can lacking info be obtained by phone? Yes → Return to Complainant

No → Dismiss without Prejudice → Letter to Mediator & Complainant
Participant Information

- Place your name, address and telephone number in the spaces provided.
- If your grievance refers to a specific case, please provide the case number and the county or judicial circuit. If the case was not court-ordered or the grievance is not case specific, please provide the county where the alleged action(s)/mediation occurred. Also, indicate the type of case which was mediated (i.e., county, family, dependency, circuit or appellate).
- What day did the action which caused you to file take place? Place this information in the space provided.
- Provide the mediator’s name where indicated. If the case was ordered to mediation by a judge, but the mediator was not a certified mediator, provide the mediator’s address if possible.

Description of Complaint

This section must contain the specific actions which prompted your complaint. Please give an explicit, detailed account of the conduct which constitutes your grievance.

Example

The mediator did not state that she is married to the opposing party’s counsel. This is a required disclosure under Rule 10.340(b).

As much as possible, refer specifically to the rule that you believe was breached. Be sure to include all pertinent information. It is crucial that the facts be carefully described. If you do not have a copy of the Rules for Certified and Court-Appointed Mediators, you can obtain them on the web at www.ficourts.org, then click Alternative Dispute Resolution, then see the rules by clicking on the left side of the page. If you do not have access to the internet you can obtain a copy by contacting the Dispute Resolution Center at the number listed above.

Notary
Mediator Grievance

Complaint Information  (please PRINT legibly)

Name of Complainant: __________________________________________

Address: ______________________________________________________

Phone (home): ___________________________ Phone (work/cell): __________

Email Address: ________________________________________________

Case Number: ___________________________ Case Type: _______________

Case Locale: ___________________________ Date of Alleged Activity/Mediation: __________

Mediator’s Name: ________________________________________________

Non-certified Mediator (provide mediator’s address if known):

________________________________________________________________

Description of Complaint

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

(Attach and number additional sheets if necessary)

Under penalty of perjury, I hereby certify that everything stated in this complaint is true and accurate.

________________________________________________________________

Signature of Complainant

Notary

State of ___________________________

County of ___________________________

Sworn to and subscribed before me by _______________________________ this ___________________________

(Name of person-print legibly)

day of _________________________, 20____.
Office of the State Courts Administrator
Janice M. Fleischer, J.D., Director
Florida Dispute Resolution Center
(850) 921-2910 - 922-9290 (fax)
fleischerj@flcourts.org

June 13, 2014

RE: MQB

TO WHOM IT MAY CONCERN

This letter will serve to provide proof that the Mediator Qualifications Board Grievance
Committee has appointed...
Role of Investigator – Presented by Yale T. Freeman

Presentation:

1. Initiation of grievance – grievance form

2. Grievance assignment to investigator - letter

3. General Understanding
   a. The investigation is based as to the acts of a mediator
   b. You are the subject of the investigation
   c. The grievance form and often the letter sets forth potential violations of the rules
   d. Investigators appointed by the DRC are not looking to build a case against you
   e. Investigator job is to interview parties, find potential witnesses, review documents, etc.
   f. The investigation is a fair process and can often result in dismissal
   g. The investigation will be thorough
4. This investigation pertains to the actions of Judge Dick Tater. For the purposes of our discussion, the rule violations are going by the wife and center around things such as:

a. Advertising and Promotion

b. Demeanor – personal and professional opinions

c. Conflict of Interest – duty to investigate and advise

d. Failure to create a forum for consensual dispute resolution by the parties

e. The signing of the agreement by his notarization – potential felony leading to a good moral character issue

f. Fees
5. Steps taken by investigator

   a. Review and analyze grievance form – often includes detailed attachments

   b. Put together a list of alleged rule violations alleged

   c. Generate a proposed witness list; i.e., witness list with all contact information - mediator, lawyers, husband, Lucy Luscious

   d. Send letters to all potential witnesses, participants in mediation including the letter of assignment by Dispute Resolution Center.

   e. Have initial conversation/interview with the person initiating the grievance – the wife

   f. Have initial conversation/interview with the subject of the investigation – mediator, Judge Dick Tater

   g. Google the mediator and all participants

   h. Look for documents

       a. Run names in civil and criminal courts
       b. Public Records Requests
       c. Bar and JQC
       d. Examine website both current and past for changing marketing technique
6. Interview witnesses - try to do in person and under oath

7. **Detailed** interview of complainant

8. **Detailed** interview of mediator

9. Determine other potential witnesses or documents necessary

10. Review and analyze – Facts and Rules

11. Prepare Report – Short - Long