

THE COMMON GROUND

FALL - WINTER 2025 | VOLUME 8 | ISSUE 1
 ANA CRISTINA MALDONADO & MICHELLE BURKE, CO-EDITORS



MESSAGE FROM THE 2025-2026 CHAIR



NATALIE PASKIEWICZ, ESQ.

Dear fellow ADR Section Members,

It's a privilege to serve as Chair of the Alternative Dispute Resolution Section of The Florida Bar. With nearly 1,300 members, our section represents a strong and diverse community dedicated to advancing the practice of mediation, arbitration, and other forms of dispute resolution across Florida.

My focus this year is on increasing member **engagement, connection, and value**. I invite every one of you to get more involved by joining one of our many active committees. Whether your interests are in **mediation, arbitration, membership, communication, or collaborating with other sections**, your participation makes a difference. Reach out to me or any of our committee chairs to find your place.

In addition to committee involvement, my goals for the year include:

- **Increasing opportunities to connect**, both in person and virtually, through informal meetups and structured networking.
- **Offering CLEs tailored to your needs**, including practical programs on running and growing an ADR practice—shaped by member survey feedback.

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Message from The Chair

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- **Continuing our most popular events**, including:
 - The **Annual Retreat** in St. Petersburg this August
 - Our **Fall Meeting** in Orlando this October
 - The **Arbitration Institute** in February
 - Our **monthly mediation and arbitration forums**
 - Regional **dispute resolution mixers** across the state

We're also launching exciting **new programming**:

- **Voice of the Mediation film**: A groundbreaking film where you hear directly from mediation participants—offering insights rarely shared in our field.
- **Meet Your Mediator**: A speed networking event designed to connect mediators with litigators for referrals, conversations, and collaboration.

Ways to get involved today:

- **Join our listserv** to connect with fellow members and join the conversation.
- **Participate in a committee**—your input and experience are valuable. Contact me or a committee chair to learn more.
- **Attend or host a mediation mixer** in your region to build community and expand your network.
- **Subscribe to our ListServ** at: <https://groups.io/g/FlaBarADR>

I'm excited for the year ahead and look forward to working together to make the ADR Section even stronger. Let's make this a year of connection, contribution, and continued excellence in dispute resolution.

With kind regards,
[Natalie Paskiewicz](#)
Chair, Alternative Dispute Resolution Section
The Florida Bar



ADR Section members now have a new FREE benefit: a listserv to communicate with other ADR professionals! You can subscribe and manage your listserv preferences at groups.io/g/FlaBarADR. Your subscription will be approved when your ADR Section membership is confirmed. Please adhere to the rules—they're for the good of the group.

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2025 ADR RETREAT

We extend our sincere thanks to all members who joined us for the August retreat in St. Petersburg, Florida. The event was filled with meaningful connections at our Section happy hour, engaging CLE sessions led by outstanding presenters, and a productive ADR Section meeting. Together, we shared meals, exchanged practice insights, and collaborated on initiatives to strengthen our Section and better serve the Florida ADR community.

A NEW FLORIDA BILL COULD MAKE PRIVATE JUDGING MORE USER-FRIENDLY: WHAT TO KNOW

Voluntary trial resolution is poised to play a larger role in Florida civil litigation. Here's why.

By Judge Alan Fine (Ret.)



Florida litigators are used to waiting months for hearings, years for trial dates, and perhaps even weeks just to have proposed orders entered. With overcrowded dockets and heavy caseloads, even the state's most efficient courts can't always keep pace. However, within Florida Statute Section 44 is an option that allows parties in civil disputes

to sidestep the delays without relinquishing their right to a jury trial or appeal.

Although voluntary trial resolution (VTR), commonly known as private judging, has been in place for more than 25 years, it is rarely invoked. Private judging could soon become a more common tool for resolving civil disputes with the introduction of a proposed law, informally dubbed a "glitch bill," coming before the Florida Legislature in its next session. If passed, it would modernize and streamline section 44.104 for the first time since its adoption in 1999.

The glitch bill stems from the findings of a task force of experienced practitioners and retired judges convened to examine potential improvements to the statute. In 2024, Brian Barakat, then chair of The Florida Bar Business Law Section's Business Litigation Committee, created a study group and then a task force to identify opportunities to clarify and modernize the process of private judging. After reviewing Florida law, analyzing relevant case law from other jurisdictions and discussing best practices, the task force concluded that targeted updates to section 44.104 could enhance the use of private judges in civil disputes by clarifying the rules under which private judges would act. In addition to clarifying the process, the task force set out to make the rules and process of private judging as comparable to circuit court as possible. Such amendments could make it easier for judges with relevant expertise to handle complex or specialized cases, while allowing more time for detailed review of issues, expediting case resolution and reducing court congestion in Florida.

What could change?

Under the current statute, parties who agree to private judging can choose their own judge, file pleadings with the clerk, and conduct a trial in court or another agreed-upon venue. But the law leaves several important questions unanswered, such as:

- Who prepares the final judgment after trial: the private judge or the circuit judge?

- Can a private judge decide post-trial motions or award attorney fees?
- What are the criteria and procedure for judicial disqualification?
- Is there judicial immunity for VTR judges?

These uncertainties have made many attorneys reluctant to recommend private judging to their clients. The proposed bill aims to close these gaps, giving lawyers more confidence to pursue voluntary trial resolution and helping parties resolve disputes more efficiently.

If enacted, the updated statute would:

1. Remove outdated arbitration rules

Since Florida now has a revised arbitration code, the provisions in this statute relating to binding arbitration could cause unnecessary confusion.

2. Clarify which cases can go to private judging

Only certain types of cases can be referred.

3. Specify how private judges are appointed

The process and procedures are specifically set forth.

4. Define the role of the presiding judge

The law will clarify what the circuit court judge can and cannot do in these cases.

5. Require private judges to follow judicial conduct rules

They must comply with the [Florida Code of Judicial Conduct](#), meaning litigators can trust that private judges are held to the same ethical standards as circuit judges.

6. Clarify recusal and disqualification rules

Private judges will be required to step aside under the same circumstances as circuit and county court judges, and the case would then be returned to the court that had jurisdiction over the case before transfer to the private judge.

7. Limit 'opting out' of private judging

Parties won't be able to back out just because they don't like rulings, unless the judge is disqualified or unable to serve.

8. Allow the presiding judge to enforce agreements

Circuit courts will have the authority to issue orders enforcing the parties' agreement to pursue voluntary trial resolution, including compelling payment of compensation to the private judge.

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A New Florida Bill Could Make Private Judging More User-Friendly: What to Know

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9. Enable private judges to perform nearly all judicial functions
Private judges will have full authority over the case, except in a few rare situations, such as the issuance of contempt orders or enforcing subpoenas to non-parties.

10. Apply standard court rules

The relevant rules of procedure (civil, family or probate) apply to private judging along with the Florida evidence code.

11. Make interlocutory rulings subject to review

If the presiding judge made any preliminary rulings before the case went to private judging, the private judge would have the power to review or reconsider those rulings, just as the judge would have if the case had stayed in court.

12. Ensure appeals work the same way as regular cases

Decisions made by private judges (whether they're final or non-final orders) could be reviewed or appealed just like decisions from circuit judges. That includes appeals of factual findings and, if appropriate, further review by the Florida Supreme Court.

13. Provide court resources for jury trials before private judges

The new law would clarify that voluntary trial resolution judges can hold jury trials to the same extent that circuit judges can. The trial court administrator and clerk of court must therefore provide facilities, jurors and other resources when needed. Alternatively, for non-jury trials, the parties can agree to use private facilities and cover the costs themselves.

14. Make the process more transparent

Provide that voluntary trial resolution proceedings shall be

noticed and opened to the public to the same extent as proceedings before a circuit or county court.

A strategic opportunity for Florida litigators

For years, voluntary trial resolution has quietly sat in the statutes as an underused option. With proposed updates poised to make voluntary trial resolution a more viable and user-friendly option, litigators and their clients can leverage it to resolve complex or time-sensitive disputes more efficiently without sacrificing their rights to a jury trial or appeal.

Attorneys who understand the new framework will be best positioned to advise their clients on when private judging makes sense and when it doesn't. With clogged dockets unlikely to clear anytime soon, voluntary trial resolution could give lawyers a practical way to move cases forward faster.

About the Author

Alan S. Fine, JD, is a former Circuit Court Judge for the Eleventh Judicial Circuit of Florida and the founder of Private Resolutions, Inc., an ADR firm specializing in private judging, mediation, and arbitration. With over three decades of experience in domestic and international litigation, Judge Fine has served as a Private Judge, Special Magistrate, Arbitrator, Mediator, and Court-Appointed Receiver in complex business and high-profile cases. He brings deep expertise in dispute resolution and judicial leadership, recognized by honors such as the Spellman-Hoeveler Inn of Court's Chief Justice John Jay Judicial Leadership Award and the Miami Jewish Legal Society's Shofetz Tzedek award.

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COULD VICARIOUS TRAUMA BE A PIECE OF THE FLORIDA LAWYER WELLNESS PUZZLE?

by K.K. Grossman, J.D., LL.M., Esq.



I have practiced yoga and meditation for over 30 years and have been certified to teach since wrapping up that cold Massachusetts March in 1999 when I spent a month training at the Kripalu Center for Yoga & Health. Given that I have practiced for over half my life, yoga and meditation are an integral part of who I am and inform how I view the

world. These practices kept me (relatively) sane through law school and now help me navigate the often difficult terrain of law practice.

When I entered the practice of law, I thought I understood what ailed the legal community (and me). I accepted that the way we felt – the stress, depression, intrusive thoughts etc. - were due to working in an intense profession and that good self-care was the simple key to wellness.

It wasn't until the summer of 2018 that I began developing a new perspective on my life and the wellness challenges presenting in our legal community. This was when I began training with Warriors at Ease, a non-profit that trains yoga teachers to deliver trauma-informed yoga and mindfulness practices to the military community.¹

While I progressed through my education exploring what we term “trauma-informed” practices, I began wondering if the behavioral and psychological challenges presenting in the legal community were symptomatic of something other than just stress or an imbalance in family/work priorities. Could part of the above-average rates of alcoholism, depression, and suicide be a result of trauma?² Trauma could be a missing piece of the mental health puzzle and until it's more widely recognized and treated, I believe the same challenges will continue to plague our lawyer population.

Jeena Cho, co-author of the ABA publication *The Anxious Lawyer*, says that

“many lawyers are in the “suffering business.”³ They help people during some of the toughest, heart-breaking times in their lives.”

Cho says that all too often lawyers believe that being adversely affected by client suffering is due to inadequate lawyering or weakness, when in fact it's simply part of being human.⁴

And being exposed to the suffering embodied in the stories and events of another person's life can lead to what is termed “vicarious trauma” (VT).⁵ Mental health professionals and authors of *Second-Hand Shock: Surviving and Overcoming Vicarious Trauma*, Ellie Izzo and Vicki Carpel Miller, advance that *any* time a person in a helping profession interacts with a person in distress, he or she is at risk for sustaining VT.⁶ Izzo and Carpel Miller define VT as

“a set of cognitive, emotional, physical, and spiritual disturbances that result from helping trauma survivors.”⁷

According to Tish Vincent, a lawyer and licensed clinical social worker, these “disturbances” can take the form of the same symptoms of Post-traumatic stress disorder (PTSD) that the client carries with them into the law office: intrusive thoughts of the event, distressing dreams, sleep disturbances, angry or irritable outbursts, and hyper-vigilant or self-destructive behaviors.⁸

It's important to remember that trauma happens not only in dramatic circumstances like a murder, house fire, or catastrophic injury, but also in every-day tragedies such as divorce, bankruptcy, losing a job, or losing a loved one – the kind of scenarios lawyers often navigate.⁹ Cho reminds us that VT can be cumulative, with onset occurring after many interactions with traumatized clients or with just one exposure to an intensely traumatized client.¹⁰

Vincent advises that vicariously traumatized individuals can often engage in “unhealthy coping mechanisms” including substance abuse.¹¹ These people attempt to escape the effects of trauma by seeking the relief that alcohol and drugs temporarily offer.¹² In the words of Izzo and Carpel Miller, “we choose distracting behaviors that inevitably fail us miserably.”¹³

To make matters worse, helpers tend to “go it alone” and resist the possibility that VT may be the root cause of their challenges.¹⁴ They also fail to look at their own personal histories with trauma which may be exacerbating their VT.¹⁵

Roderick MacLeish, who was lead counsel on more than 500 clergy sex abuse cases in Boston writes about the effects of his close work with the abuse victims in “*A Proposal for Reducing the Risk of Vicarious Trauma for Advocates and Attorneys Representing Victims of Violent Crime*.”¹⁶ After his experience of hearing abuse stories and working with victims, he was diagnosed with PTSD and could not practice law for a number of years.¹⁷

Continued on next page

MacLeish had himself experienced sexual abuse as a child and his work with the cases “rekindled unresolved issues.”¹⁸ He notes that although some advocates have themselves experienced trauma, VT can happen to any advocate.¹⁹

So, what action can we take? Recognizing the possibility that you might be suffering from VT is the first step. It is then that you can proceed with getting help.

Tish Vincent tells us that VT and PTSD respond to therapeutic interventions with treatments such as Eye Movement Desensitization and Reprocessing (EMDR), empathic listening, and cognitive behavioral techniques.²⁰

As a supplement to professional treatment, Ellie Izzo and Vicki Carpel Miller crafted the Rapid Advance Process for those suffering from VT.²¹ The workbook for the 5-step sequence is available in their *Second-Hand Shock* book cited in this article.²²

Jeena Cho recommends meditation as a tool for navigating this challenge in addition to needed therapeutic interventions. Science supports this suggestion with a key study coming out of Harvard Medical School and Massachusetts General Hospital.²³ In this study it was found that meditation supported the thickening of those regions associated with emotional regulation and self-awareness, and regions such as the amygdala, that fight or flight part of the brain that is so often overreactive in those of us who have suffered trauma, got smaller.²⁴

As a result of the education I received through Warriors at Ease, I now build all my yoga and mindfulness classes on practices that evoke the “Relaxation Response” (RR), a mind/body state researched for over 40 years by Dr. Herbert Benson.²⁵ The RR is your unique ability to shift from a fight/flight state to what we call the “rest and digest” state.²⁶ This can be elicited by many different practices including specific breathing practices, a simple one being extending the exhale longer than the inhale and repeating a helpful word on the exhale.²⁷ The RR can be elicited by a myriad of meditative movement practices, so I encourage you to explore what feels right to you.²⁸

These are just some of the many ways to navigate VT. If you think you may be suffering from VT, please know it is no cause for shame and that VT is a normal stress response.²⁹ I wholeheartedly encourage you to seek out the help of a caring therapist who can guide you on your healing path and help you implement helpful practices into your daily self-care regimen.

Originally published by University of Central Florida Center for Law and Policy, Legal Practitioner Points, July 2019. Republished by Warriors at Ease, October 2019.

About the Author:

Kristin “Kiki” Grossman, JD, LLM, Esq., is a Florida Supreme Court certified Family mediator, lawyer, and trauma-informed conflict navigation educator. She holds both a Juris Doctor and a Master of Laws in Dispute Resolution from the Straus Institute at Pepperdine Caruso School of Law and is certified in trauma-sensitive yoga instruction through Warriors at Ease. Kiki integrates legal expertise, mindfulness practices, and strategic consulting to help professionals and organizations build resilience and navigate conflict with clarity and compassion.

¹ Warriors at Ease Home Page, <http://warriorsatease.org/> (last visited July 16, 2025).

² The Florida Bar Health and Wellness Center Resources, National Lawyer Mental Health Statistics, <https://www.floridabar.org/member/healthandwellnesscenter/> (last visited July 16, 2025).

³ Jeena Cho, *Suffering can be the human consequence of lawyering*, ABA Journal, June 1, 2018, http://www.abajournal.com/magazine/article/distressing_business_suffering_consequence_lawyer (last visited July 16, 2025).

⁴ *Id.*

⁵ ELLIE IZZO & VICKI CARPEL MILLER, *SECOND-HAND SHOCK: SURVIVING AND OVERCOMING VICARIOUS TRAUMA* 10 (2010).

⁶ *Id.*

⁷ *Id.*

⁸ Tish Vincent, *Lawyers and Post-Traumatic Stress Disorder*, Michigan Bar Journal, 58-59, June 2014, <https://www.michbar.org/file/journal/pdf/pdf4article2386.pdf> (last visited July 16, 2025).

⁹ Cho, *supra* note 3.

¹⁰ *Id.*

¹¹ Vincent, *supra* note 8 at 58.

¹² *Id.*

¹³ Izzo, *supra* note 5 at 107.

¹⁴ *Id.*

¹⁵ Izzo, *supra* note 5 at 107.

¹⁶ Roderick MacLeish, *A Proposal for Reducing the Risk of Vicarious Trauma for Advocates & Attorneys Representing Victims of Violent Crime* 2, <https://www.lclma.org/wp-content/uploads/2018/09/MacLeish-Vicarious-Trauma.pdf> (last visited July 16, 2025).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Vincent, *supra* note 8 at 59.

²¹ Izzo *supra* note 5 at 57.

²² *Id.* at 101.

²³ Britta K. Hölzel et al., *Mindfulness practice leads to increases in regional brain gray matter density*, Nov. 10, 2010, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3004979/> (last visited July 16, 2025); Brigid Schulte, *Harvard neuroscientist: Meditation not only reduces stress, here's how it changes your brain*, The Washington Post, May 26, 2015, https://www.washingtonpost.com/news/inspired-life/wp/2015/05/26/harvard-neuroscientist-meditation-not-only-reduces-stress-it-literally-changes-your-brain/?utm_term=.a82fcb05eec (last visited July 16, 2025).

²⁴ *Id.*

²⁵ Benson Henry Institute, *About Dr. Herbert Benson*, <https://bensonhenryinstitute.org/about-us-dr-herbert-benson/> (last visited July 16, 2025).

²⁶ Understanding the stress response, Harvard Health Publishing, Harvard Medical School, March 2011, Updated May 1, 2018, <https://www.health.harvard.edu/staying-healthy/understanding-the-stress-response> (last visited July 16, 2025).

²⁷ Video of Dr. Herbert Benson, <https://www.youtube.com/watch?v=HR0bUf2iwOg> (last visited July 16, 2025).

²⁸ Penelope Klein et al., *Meditative Movement, Energetic, and Physical Analyses of Three Qigong Exercises: Unification of Eastern and Western Mechanistic Exercise Theory*, Sep. 23, 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5750593/> (last visited July 16, 2025); Albert Yeung et al., *Effectiveness of the Relaxation Response-Based Group Intervention for Treating Depressed Chinese American Immigrants: A Pilot Study*, Sep. 5, 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4199014/> (last visited July 16, 2025); Catherine Woodyard, *Exploring the therapeutic effects of yoga and its ability to increase quality of life*, July-Dec., 2011, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3193654/> (last visited July 16, 2025).

²⁹ Izzo *supra* note 5 at 97.



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NOTICE OF REJECTION OF THE ARBITRATION DECISION AND REQUEST FOR TRIAL DE NOVO IN MANDATORY NON-BINDING ARBITRATIONS: CAUTIONS AND CAVEATS

By Meah R. Tell, Esq.



The Right to a Day in Court

Fundamental to the constitutionality of Florida's Mandatory Non-Binding Arbitration Statute, §44.103 Fla. Stat. (2025), is the right of a party to request a trial de novo. Paragraph (5) provides: "An arbitration decision shall be final if a request for a trial de novo is not filed within the time provided by rules promulgated by the Supreme Court." In her 1997 article, "Constitutional Challenges to Court-Ordered Arbitration," 24 Fla. St. U.L. Rev. 1055, 1067, Kimberly J. Mann explained that "legislatures may constitutionally mandate non-binding arbitration as long as they do not use it to deprive parties of their day in court." Fla. R. Civ. P. 1.820 (h) governs the time and manner for filing a request for trial de novo.

How Will a Party Be Entitled to their Day in Court? Strict Compliance With Fla. R. Civ. P. 1.820 (h)

At this time, effective as of July 1, 2024, Fla. R. Civ. P. 1.820 (h) was amended by the Florida Supreme Court to require the filing of a **Notice of Rejection of the Arbitration Decision and Request for Trial De Novo in the same document.** This clarification was made at the request of the Civil Procedure Rules Committee, and in adopting this revision, the Florida Supreme Court stated:

As to rule 1.820(h), we retitle the subdivision "Notice of Rejection of the Arbitration Decision and Request for Trial" and amend it to clarify the process for rejecting an arbitrator's decision and requesting a trial de novo. **Under the amended rule, an arbitration decision will be deemed rejected only if a "notice of rejection of the arbitration decision and request for trial" is filed with the court within 20 days of service of the arbitrator's written decision.**

See In re Amends. To Fla. Rules of Civ Proc., 386 So3d 876, 878 (Fla. 2024)(Case No. 2022-1719).

The intent of this 2024 amendment was to make it clear that decisions of different courts of appeal that allowed cases to proceed to a trial de novo without the filing of a timely request for trial de novo, or refusing to enter a judgment on an arbitration decision even though no request for trial de novo was timely made, were overruled.

The Civil Procedure Rule Committee expressly stated that this change was "intended to overrule the holding in *De Acosta v. Naples Community Hospital, Inc.*, 300 So.3d 264 (Fla. 2d DCA

2020)." In *De Acosta*, the trial judge entered a judgment based upon the arbitration decision since neither party moved for a trial de novo within the time required by rule 1.820 (h). However, the Second District Court of Appeal reversed and determined that there had been a notice of trial served prior to the arbitration proceedings, and within nine days after the arbitration decision had been rendered the plaintiff had filed her statement of facts and identified disputed issues of facts and issues of law. The plaintiff clearly indicated she wished to proceed to trial on the set trial date. The Second District Court of Appeal also opined that the defendant waived its right to challenge the failure to file a formal motion for trial de novo when it responded by filing its own statements of facts and identification of issues of law, and acknowledged there were disputed factual and legal issues.

Proposed Revisions to Rule 1.820 (h). A Timely Request for Trial Construed to Do Substantial Justice

However, since this July 1, 2024 revision, the Civil Procedure Rules Committee, is now proposing to change the rule to only require the filing of a **request for trial.** The proposal also adds to the rule that "**Any timely request for trial must be construed as to do substantial justice.**" <https://www.floridabar.org/the-florida-bar-news/amendments-to-florida-rules-of-civil-procedure-1-080-1-090-1-200-1-202-1-280-1-490-1-630-1-700-1-820/>.

The Civil Procedure Rules Committee's motivation for this proposed change is the decision of the Fourth District Court of Appeal in *People's Trust Ins. Co. v. Hernandez*, 413 So. 3d 127 (Fla. 4th DCA March 26, 2025), which the Civil Procedure Rules Committee believes was wrongly decided, and "to make it easier to address the unintended appellate court interpretation of a recent amendment to the provision."

In *People's Trust Ins. Co.*, Plaintiff's counsel failed to follow the amended rule and failed to include in the homeowner's request for trial the language "notice of rejection of the arbitration decision." Counsel for the insurer asked the circuit court to enforce the arbitration decision (which found for the insurance carrier on the Plaintiff's breach of contract cause of action), because the motion for trial de novo was deficient. The Fourth District Court of Appeal agreed with the insurer that this was not a trivial scrivener's error, and that under the amended rule the Supreme Court expressly indicated that "an arbitration decision will be deemed rejected *only if* a 'notice of rejection of the arbitration decision and request for trial' is filed with the court within 20

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Notice of Rejection of the Arbitration Decision and Request for Trial De Novo in Mandatory Non-Binding Arbitrations: Cautions and Caveats

Continued from previous page

days of service of the arbitrator's written decision. *In re Amends*, 386 So.3d 878 (emphases added)." *Id.* at 128.

People's Trust Ins. Co. made it clear that the Court rejected the homeowner's "substantial compliance" argument which would "erroneously re-open a door which we had correctly closed in *Lawnwood Medical Center, Inc. v. Rouse*, 394 So.3d 51 (Fla. 4th DCA 2024)." 413 So.3d at 130. In *Lawnwood Medical Center*, the Court receded from *Nicholson-Kenny Capital Management, Inc. v. Steinberg*, 932 So.2d 321 (Fla. 4th DCA 2006) --which had been relied upon by the *De Acosta* court. The Fourth District Court of Appeal stated:

In *Lawnwood*, we receded from *Nicholson-Kenny Capital Management, Inc. v. Steinberg*, 932 So.2d 321 (Fla. 4th DCA 2006), which had deviated from our well-established recognition of the mandatory, ministerial, and non-discretionary enforcement of section 44.103 (5). *Lawnwood*, 394 So.3d at 58. Instead, *Nicholson-Kenny* had created a non-statutory, non-rule based discretionary analysis where, in the absence of the statutorily-required request for a trial de novo, a trial court could nevertheless order a trial de novo upon determining 'some notice' had been given to the opposing party that its adversary is rejecting an arbitration award and renewing its demand for trial. *Id.* at 30.

People's Trust Ins. Co. is not the only case where a trial court rejected a motion for trial de novo because it did not contain the precise words "notice of rejection of the arbitration decision." In *Insurcomm, Inc. v. The Naples Continental Club, Inc.*, L.T. No. 112023CA002991, Twentieth Judicial Circuit, Collier County, the trial court advised the parties that since the Motion for Trial De Novo filed by Insurcomm did not include a notice of rejection of the arbitration decision, it was deficient and Insurcomm could not proceed to a trial de novo. The trial court stated that Naples should file a motion to unseal the arbitration award so that the court could enter a judgment. This case is on appeal to the Sixth District Court of Appeal. 6D2024-2811. The Appellant's Initial Brief has been filed and the Appellee's Answer Brief is scheduled to be filed by November 14, 2025.

Whether the Sixth District Court of Appeal can or will give any weight to the proposed revision to Rule 1.820 by the Civil Procedure Rules Committee to do away with the language "notice of rejection of the arbitration decision" in light of the decision in *People's Trust Ins Co.* is unknown. If the Sixth District Court of Appeal rejects the reasoning in *People's Trust Ins Co.* it will create a split among the district courts of appeal.

Caveats For Arbitration Advocates

- Make sure you include in one document a timely filed Notice of Rejection of Arbitration Decision and Request for Trial.

- In multi-party cases, don't rely upon the filing of the Notice of Rejection of Arbitration Decision and Request for Trial filed by any other party.
- Because Rule 1.820 (h) is unclear as to the timely filing of Notice of Rejection of Arbitration Award and Request for Trial for third party claims, make sure all Notices of Rejection of Arbitration Decision and Request for Trial De Novo are filed by a party seeking a trial de novo within 20 days of service of the written Arbitration decision.
- Remember that an error in the Notice of Rejection of Arbitration Decision and Request for Trial arguably may be considered a "scrivener's error." For example, in *Vitesse, Inc. v MAPL Associates LLC*, 358 So.3d 437 (Fla. 4th DCA 2023), the motion for trial de novo misstated the arbitration decision's date. This was considered trivial and the Court found the error did not substantially impair the court or the opposing party from having reasonable notice of the movant's desire to proceed to trial.
- It may be possible to vacate a judgment on an arbitration decision on the grounds of excusable neglect under Fla. R Civ. P. 1.540 (b)(1) after a party fails to timely move for a trial de novo. But don't count on not knowing the updated rules or simply forgetting to file the motion as a basis for excusable neglect. See *Polymer Extrusion Technology Inc v. Glasshope Manufacturing, Ltd.*, 374 So.3d 34 (Fla 4th DCA 2023). In *Polymer*, the court stated found excusable neglect on the basis that "The circumstances ultimately boil down to a calendaring error stemming from a series of oversights and miscommunications between Polymer's counsel and his legal assistants. This was not a case where Polymer's counsel "simply forgot" about the motion for new trial. Notably, the transition between legal assistants is further evidence of a system gone awry, as the new assistant had an understandable misunderstanding in believing that a motion for trial de novo had already been filed by her predecessor, because her predecessor had calendared various deadlines associated with the February 2023 trial date." *Id.* at 39.

Caveat for Arbitrators

- Make sure that all parties are served with your written decision within 10 days of the conclusion of the final arbitration hearing.
- File a notice in the court file indicating the date on which you served the arbitration decision on all parties and their counsel, and the manner in which you effectuated service.

Continued on next page

Notice of Rejection of the Arbitration Decision and Request for Trial De Novo in Mandatory Non-Binding Arbitrations: Cautions and Caveats

Continued from previous page

- Although when you were trained, you may have seen a legend at the bottom of some model arbitration awards about requesting a trial de novo, don't use this language in your awards because it may be misleading and lead a party to believe they just have to file a motion for trial.

This language appears at the bottom of model forms provided by the Florida Dispute Resolution Center to arbitration trainers:

NOTICE TO ALL CONCERNED

RULE 1.820(h), Fla. R Civ. P. provides that any party may file a motion for trial. If a motion for trial is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge, who shall enter such orders of judgments as may be required to carry out the terms

of the decision as provided by section 44.103(5), Florida Statutes.

About the Author

From 2001-Present, **Meah Tell** has been a Primary Trainer for the Florida Supreme Court Qualified Arbitrator Training Course for Court-Connected Arbitration, focusing on Chapters 44 and 682, Florida Arbitration Statutes, Florida Supreme Court Rules of Civil Procedure for Court-Connected Arbitration, Ethics Rules for Arbitrators, and Current Arbitration Case Law. Meah Tell is a member of the Executive Council of the ADR Section of the Florida Bar and is a past Chair of the ADR Section. She is a member of the National Academy of Distinguished Neutrals.

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We invite you to be an active member of our section. There are always opportunities for leadership on one of our many committees, and we welcome ideas and engagement from our membership.



Learn More & Apply!

From Adjudication to Facilitation: How Arbitration Strengthened My Mediation Practice

By Lori Adelson, Esq.



As a Florida-based attorney and alternative dispute resolution (ADR) professional, I have had the privilege of serving as both an arbitrator and a mediator in a wide array of matters — from complex commercial disagreements to sensitive employment and workplace disputes. Yet I’ve found that many neutrals do not do both mediation and

arbitration; some choose to mediate instead of arbitrating, and others solely focus on arbitration. ADR professionals often prefer one or the other, but I have found it valuable to have an ADR practice where I do both.

While arbitration and mediation are inherently different in structure and purpose, my experience as an arbitrator has become a vital asset to my work as a mediator. It has equipped me with not only legal and procedural acumen but also with deeper insight into how parties evaluate risk, process conflict, and ultimately, resolve their disputes.

“In arbitration, process is paramount —scheduling, discovery, briefing, and final awards must follow timelines and procedural rules.”

The practical synergies between arbitration and mediation are markedly salient. Here is a closer look at how the rigor of arbitration has shaped my approach to mediation, particularly in Florida’s dynamic legal landscape.

Clarifying the Distinction

Arbitration is an adjudicative process where a neutral third party renders a binding decision, often governed by institutional rules or contractual terms. Mediation, by contrast, is non-binding and collaborative, designed to empower parties to reach their own resolution with the support of a neutral facilitator. In both settings, neutrality and preparation are essential, but the mediator must create space for self-determination rather than issue rulings.

Understanding of Legal and Evidentiary Tools

My arbitration experience has honed my ability to analyze legal issues, assess evidentiary weight, and understand how decision-makers reason through complex cases. In mediation, this doesn’t translate into providing legal advice, but rather into asking the right questions and prompting parties to realistically evaluate their own arguments. I have found that parties often appreciate

— and expect — a mediator who can track legal nuances without becoming directive.

Neutrality as a Shared Cornerstone

Arbitrators are held to the highest standards of impartiality, and that same expectation carries over into mediation. When parties trust that I do not favor one side, they are more likely to engage openly in the process. The discipline of maintaining neutrality in arbitration has only strengthened my ability to hold space for divergent perspectives in mediation.

More Efficient Process and Structure

In arbitration, process is paramount — scheduling, discovery, briefing, and final awards must follow timelines and procedural rules. I bring this same respect for structure into mediation. Clarity around the process contributes significantly to outcomes, particularly in high-conflict or multi-party matters. Clients in Florida’s busy employment litigation environment often value a mediator who can keep discussions productive and focused while remaining flexible to the needs of the parties.

More Credibility with Clients

One of the most tangible benefits of serving as an arbitrator is the credibility it lends to in the eyes of attorneys. When counsel recognize that I understand the demands of evidentiary proof, burdens of persuasion, and judicial discretion, they are more inclined to allow their clients to engage candidly in the mediation process. This credibility enhances my ability to assist parties in evaluating risk and in considering the practical implications of continuing litigation.

Enhanced Risk Assessment and Decision-making

In arbitration, I have seen well-prepared cases falter due to unexpected procedural twists or evidentiary challenges. These experiences have made me especially attuned to the uncertainty of litigation. In mediation, I use this awareness to help parties understand the range of potential outcomes they may face, and how a negotiated resolution, while not perfect, may serve their broader interests more effectively despite their otherwise entrenched positions.

Improved Handling of Emotions and Conflict

Florida is home to diverse industries, cultures, and personalities. Whether mediating employment disputes, business dissolutions, or intra-organizational conflicts, emotional dynamics can

Continued on next page

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significantly affect resolution. My arbitration background has helped me stay calm under pressure and to support parties through emotionally complex discussions with empathy and professionalism.

Enhanced Communication and Listening

The ability to communicate clearly and listen attentively is indispensable in both arbitration and mediation. Arbitration sharpened my focus on precision and clarity, while mediation deepened my appreciation for nonverbal cues and emotional subtext. I aim to blend both styles — concise communication with active, empathetic listening — to help parties feel understood and empowered to problem-solve.



Facilitation of Creative Solutions

While arbitration often ends in a win-lose decision, mediation offers an opportunity to craft outcomes tailored to each party’s needs. I encourage parties to consider interests beyond legal claims — such as the cost to business, preserving business relationships or reputational interests — when exploring solutions. This flexibility often results in more durable and meaningful resolutions.

Opportunity for Growth in Both Roles

Florida’s legal and regulatory environment continues to evolve, especially in areas like employment law, non-competes, contracts, and regulatory compliance. For Florida’s legal professionals and business leaders navigating a rapidly changing dispute landscape, this dual perspective offers both strategic and human advantages. The lessons from arbitration continue to inform my commitment to principled, practical, and people-centered resolution. Staying active as both an arbitrator and mediator keeps me informed and adaptive. I routinely engage in continuing education and professional dialogue to sharpen my practice.

While I recognize that some neutrals prefer to choose only one ADR option, my arbitration experience has provided me with invaluable tools and insights that directly enhance my mediation work. The ability to analyze complex issues, manage structured processes, and maintain impartiality under pressure has made me a more effective and trusted neutral. More importantly, it has reinforced my belief that the best outcomes often come not from rulings, but from conversations — when people are given the opportunity to be heard, to reflect, and to choose their own resolution.

Originally published in the Daily Business Review and reprinted with author’s permission.

Lori Adelson is a mediator and arbitrator working out of the Miles Ft. Lauderdale office.

3rd Edition
FLORIDA MEDIATION BEST PRACTICES HANDBOOK
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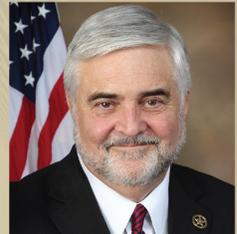
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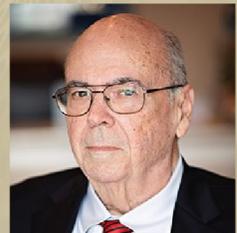
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Monthly Mediator's Forums

FREE & Open To All

The ADR Section's monthly Mediator's Forum offers mediators a dynamic space to connect, learn, and grow. Each virtual forum is **free**, interactive, and offers 1 hour of CME credit.

This year, we've discussed the role of mediators in organizational leadership, the lawyer's perspective in mediation, and the use of AI to prime parties and counsel for success.

Mark your 2026 calendar for:

 February 6  March 6  April 3  May 1  June 5



Check out our calendar for the Zoom link at FlaBarADR.com

CLE Coming Soon!



January 21 2026	Client-Centered Mediation: Opening Statements, Hearings, and More
March 4 2026	The Mediator Complaint and Disciplinary Process
March 18 2026	2026 Arbitration Advocacy Institute
April 2 2026	Justice on the Spectrum: Neurodivergence in Mediation and Law
May 13 2026	Building a Thriving ADR Practice Through Strategic Networking and Modern Business Development

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- In collaboration with the Dispute Resolution Center
- Kicked off January 9, 2026
- Second Friday of each month
- Virtual programs from dynamic speakers
- CME (sometimes CLE)
- Topics like tech, marketing, skills & more!

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Monthly Arbitration Forums

The ADR Section's monthly Arbitration Forum offers arbitrators a collaborative environment for exchanging ideas, refining techniques, and strengthening our statewide arbitration community.

This year, we've tackled practical and nuanced issues such as damages, remedies, and sanctions; best practices for pro se arbitrations; and the evolving role of AI in arbitration.

Mark your 2026 calendar for:



February 10



March 10



April 14



May 12



Check out our calendar for the Zoom link at FlaBarADR.com



THE VOICE OF THE MEDIATION CLIENT

By Cristina Maldonado and Harold Oehler



The Alternative Dispute Resolution Section of the Florida Bar embarked on a unique project to interview litigants who recently engaged in mediation, asking actual parties what they really think about the mediation process. The result is “The Voice of The Mediation Client.”

This groundbreaking film includes the perspectives of actual parties who recently mediated cases, including plaintiffs, a risk manager, an adjuster with over 40 years of experience, a human resources director, and several in-house attorneys, among others.

These litigants share, from the client’s perspective, how trial lawyers and mediators are perceived by parties engaged in mediation. This film also reveals how litigators and mediators can speak more effectively to decision makers during mediation. The litigants will provide answers to these long-debated questions, among others:

- What makes an opposing counsel’s opening statement persuasive?
- Is in-person or virtual mediation the better platform for reaching an agreement?
- What is the best way to prepare clients for mediation?
- What is the most effective negotiation strategy?
- How can mediation be conducted more effectively?

The project is the result of the efforts of many people but would not have been possible without the initiative and creativity of ADR Section Members Harold Oehler, Jay Castle, and Hadas Stagman, as well as Fred Smith, the film’s videographer.

After a pre-screening event in April hosted by the Hillsborough County Bar Association, the film premiered officially in a Florida Bar CLE on September 10, along with a discussion panel co-moderated by Harold Oehler and Mark McLaughlin, including Yvette Everhardt and George Knox. The event was jointly sponsored by the ADR Section of The Florida Bar, the

Trial Lawyers Section of The Florida Bar, the Labor and the Employment Law Section of The Florida Bar.

If you are interested in setting up a CLE for your legal organization or law firm featuring “The Voice of The Mediation Client” film, please contact ADR Section Outreach Chair Harold Oehler at harold@oehlermediation.com and copy flabaradroutreach@gmail.com.

View the film trailer at: <http://thevoiceofthemediationclient.com/>

About the Authors

Ana Cristina Maldonado is the immediate past Chair of the ADR Section of The Florida Bar, and an Associate Professor and Director of Externships at Nova Southeastern University’s Shepard Broad College of Law. In 2023, Cristina was appointed by the Chief Justice to the Mediator Ethics Advisory Committee (MEAC). As a Florida Supreme Court Certified circuit civil, county, dependency and family mediator, Cristina has mediated 2,500 cases and trained over 400 new mediators.

Harold Oehler, of Oehler Mediation, is a full time, certified Federal and Florida Circuit Civil mediator. Harold is one of only approximately 140 mediators in the country inducted into the American College of Civil Trial Mediators. Harold wrote the Florida Mediation Best Practices Handbook. In 2022, Harold was named MVP of the Alternative Dispute Resolution Section of the Florida Bar for his work to bring mediators and trial lawyers together across the state in “Litigator Mediator Forums” to improve the mediation process. Harold recently worked with a film maker and the ADR Section for over a year to create “The Voice of the Mediation Client” documentary to give litigants a voice in improving the mediation process.



Florida Lawyers Helpline

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The film premiered on September 10, 2025 and the full program is now available in our catalog!

AVAILABLE NOW

Voice of the Client



The ADR Section of the Florida Bar has produced *The Voice of the Client*, a groundbreaking film featuring interviews with parties who recently participated in mediation. From the client's perspective, the film explores how trial lawyers and mediators are perceived, offering practical insights on persuasive openings, effective negotiation strategies, client preparation, and more. This CLE project provides valuable guidance on how litigators and mediators can better communicate with decision makers and conduct mediation more effectively. This award winning film has already made its way across the state for screenings in Hillsborough, Sarasota, and Miami (featured above).

Host a screening

Watch the Trailer

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ADR SECTION COMMITTEES

Our committees are the heart of the ADR Section, offering members opportunities to lead, learn, and connect. Explore where your talents fit best:

Standing Committees

- **Arbitration (Chair: Chardean Hill)**
Promotes excellence in arbitration practice through education, resources, and collaboration. The Arbitration Committee plans our Arbitration Advocacy Institute every other year. The Committee also hosts a monthly Arbitration Forum on the second Tuesday of each month. Additionally, the Arbitration Committee crafts comments regarding pending rule changes for arbitration in Florida.
You should get involved if you are passionate about arbitration and want to shape its future in Florida.
- **Bylaws / Surveys (Chair: Vacant)**
Ensures our governing documents remain current and gathers member feedback to guide Section priorities.
You should get involved if you enjoy policy review, organizational structure, or data analysis.
- **Ethics (Chair: Fran Tetunic)**
Provides guidance on ethical issues in ADR and develops resources to support professional integrity.
You should get involved if you value ethics and want to help colleagues navigate complex issues.
- **Mediation (Chair: Hadas Stagman)**
Advances mediation practice by sharing best techniques, fostering dialogue, and supporting mediator growth. This Committee also hosts a monthly Mediator Forum on the first Friday of each month. Additionally, the Mediation Committee crafts comments regarding pending rule changes for mediation in Florida.
You should get involved if you are committed to strengthening mediation standards and mentoring peers.
- **Nominating (Chair: Ana Cristina Maldonado)**
Identifies and recommends strong leaders for Section positions to ensure continued growth and innovation.
You should get involved if you believe in leadership development and want to help shape the Section's future.

Special Committees

- **ADR Collaborative Practice Subcommittee (Chair: Keith Grossman)**
A Hybrid Approach to Dispute Resolution - Collaborative Law and Mediation together represent an innovative evolution in alternative dispute resolution (ADR), blending the structured, team-oriented framework of Collaborative Practice with the neutral facilitation of mediation. This model aims to empower parties to craft customized settlements while minimizing the adversarial nature of traditional litigation, making it particularly suitable for disputes where preserving relationships is key.
You should get involved if you want to help promote the collaborative process and help others understand the connection to mediation
- **Arbitration Advocacy Institute (Chairs: Deborah Mastin & Meah Tell)**
Organizes a one day intensive training every other year to improve advocacy skills in arbitration proceedings.
You should get involved if you enjoy teaching, mentoring, or advancing advocacy in ADR.
- **Communications & Publications (Chair: Megan Moschell)**
Manages newsletters, social media, and publications to highlight Section initiatives and member achievements.
You should get involved if you have writing, editing, or marketing skills and want to amplify ADR voices.
- **CLE (Chair: Megan Moschell)**
Develops and promotes highquality educational programs to keep ADR professionals informed and skilled.
You should get involved if you are organized, collaborative, and passionate about ADR education.
- **Finance (Chair: Jay Castle)**
Oversees budgeting and financial planning to ensure the Section's fiscal health.
You should get involved if you have financial acumen or enjoy strategic resource management.
- **Former Chairs (Chair: Kathy McLeroy)**
Provides wisdom and continuity by advising current leadership and supporting Section initiatives.
You should get involved if you are a past chair who wants to continue contributing to the Section's success.
- **JEDI – Justice, Engagement, Development & Innovation (Chair: Ana Cristina Maldonado)**
Fosters mentorship and innovation to strengthen ADR across Florida.
You should get involved if you value collaboration and advancing innovation and development in the profession.
- **Mediation Mentoring Academy (Chairs: John Salmon & Christina Magee)**
Hosts biennial training featuring advanced techniques, role plays, and peer learning from model mediators.
You should get involved if you enjoy mentoring, event planning, or sharing mediation expertise.
- **Membership (Chair: Christy Foley)**
Attracts, welcomes, and retains members through outreach, events, and engagement strategies.
You should get involved if you love building relationships and fostering community.
- **Outreach (Chair: Harold Oehler)**
Promotes awareness of the ADR Section to legal organizations, law schools, and community partners.
You should get involved if you enjoy networking, public speaking, or serving as an ambassador for ADR.
- **Sponsorship (Chair: Alicia Perez)**
Builds partnerships with firms and organizations to support Section programs and growth.
You should get involved if you thrive on relationshipbuilding, marketing, or strategic outreach.
- **Strategic Planning (Chair: Shari Elessar)**
Shapes the Section's longterm vision and ensures alignment with member needs and professional trends.
You should get involved if you enjoy bigpicture thinking and guiding organizational strategy.