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Bar allows non-lawyers to become

BY JULIA NEYMAN

mediators in state courts

Tamarac City Commissioner Harry Dressler spent his career handling disputes, first as a branch manager for Morgan Stanley and then as a neutral panelist in NASD securities dispute arbitrations. But when Dressler tried to become a certified mediator for Florida courts in 2006, he was rebuffed because he didn't have a law degree.

Fast-forward 18 months, and Dressler will attend his first mediation training course on Feb. 6. He joins several students - including paralegals, CPAs and other business professionals - who, for the first time, will be allowed to serve as mediators in state court disputes.

For years, Florida's federal and state courts have required parties to attempt mediation before litigating a civil suit, but, until recently, mediators had to be lawyers practicing in Florida for more than five years. After being petitioned by the bar's alternative dispute resolution committee, the Florida Bar on Nov. 15 passed an order saying non-lawyers can become certified state court mediators.

That means the warring parties in a multi-million-dollar lawsuit could be trying to work out their differences with an accountant, architect or banker before they ever see a judge.

IN FLORIDA, IT'S MANDATORY

"It's getting more and more typical in a lawsuit for parties to attend mediation, and in Florida, it's mandatory," said Cindy Hannah, a certified mediator who has conducted more than 6,000 mediations in South Florida since

1993. "Allowing people outside the law business to become mediators lets trade-specific people do it, who may be better versed in the subject matter."

As civil lawsuits clog South Florida courts, judges are increasingly turning to mediation to free up room for disputes that can't be handled with a sit-down. Companies also favor mediation because it can save thousands of dollars in legal costs, not to mention days in a courtroom.

Many courts do not keep mediation statistics, but as an example: In the 2005-2006 fiscal year, about 5,400 Broward Circuit Court cases were referred to mediation, about 4,000 of them were actually mediated and 1,620 were resolved that way.

"The value of mediation is that not only do parties resolve their cases before going to trial, but often - even if the mediation didn't work - the negotiations become a springboard for further discussion and the case is settled prior to trial," said Perry Itkin, a member of the Florida Supreme Court's alternative dispute resolution rules and policy committee and director of Fort Lauderdale's Mediation Training Center.

Typically, a handful of very busy mediators like Hannah handle the bulk of the area's disputes. The court's inclusion of non-lawyers means the mediator pool will be larger and more diverse, Itkin said.

He noted that having a lawyer as a mediator could be counterproductive, since mediators are supposed to stay neutral and an attorney may "cross the line between lawyering and serving as a mediator" by asking leading questions.



Itkin

The rules governing who can become a mediator may have changed, but Itkin said they are no less stringent than previous requirements. Prospective mediators must accrue 100 points through a combination of education requirements, mentorships and a 40-hour training program.

SEEPING INTO COMPANY CULTURE

Mediators hope opening certification to non-lawyers will help mediation seep into company culture and help employees resolve their disputes without turning to litigation. Hannah said some private companies already use mediation, and recommended that other companies put mediation requirements into their HR handbooks.

Dressler said he plans to leverage his contacts with South Florida lawyers to get a piece of the area's mediation pie. He added that he has better conflict resolution skills than many lawyers, who are trained to be adversarial.

"Attorneys know my analytical capabilities, and my ability to act as a neutral," he said. "I plan to say to them, 'If you're looking for someone who you believe to be objective and able to help people resolve conflicts, think of me.'"

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Perry Itkin | Director, Mediation Training Center