

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 16-028473 CA 21

MINTZ TRUPPMAN, P.A., as the
real party in interest and/or the assignee
of DAPHNE QUERY,

Plaintiff,

v.

LEXINGTON INSURANCE
COMPANY; COZEN O'CONNOR,
P.C.; and JOHN DAVID DICKENSON,

Defendants.

AMENDED COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT

Plaintiff, Mintz Truppman, P.A., sues Defendants, Lexington Insurance Company; Cozen O'Connor, P.C.; John David Dickenson; and says:

Jurisdiction and Venue

1. This is an action for damages in excess of Fifteen Thousand (\$15,000.00) Dollars exclusive of interest, costs and attorneys' fees.

2. At all times material to this action, Plaintiff, Mintz Truppman, P.A. ("Mintz"), was and is a Florida professional association authorized to do and doing business in Miami-Dade County, Florida as a law firm. Mintz and co-counsel, Kramer Greene, represented Daphne Query, a non-party to this action and the plaintiff in the underlying action,¹ but Mintz is the real party in interest in this action and has been assigned all rights pertaining to this litigation by Daphne Query and by prior co-counsel, Kramer Greene.

¹*Query v. Lexington*, Case No. 15-001587 CA 01 (Miami-Dade County Cir. Ct.)/ Case No. 1:15-CIV-21951-JLK/TORRES (S.D. Fla.).

3. At all times material to this action, Defendant, Lexington Insurance Company (the “Insurance Company”), was and is a foreign insurance company that had agents or other representatives in, was authorized to do and was doing insurance business in Miami-Dade County, Florida.

4. At all times material to this action, Defendant, Cozen O’Connor, P.C. (“Cozen”), was and is a foreign corporation authorized to do and doing business in Miami-Dade County, Florida as a law firm. Cozen represented the Insurance Company in the underlying action and is an agent of the Insurance Company, pursuant to Fla.R.Jud.Admin. 2.205(h).

5. At all times material to this action, Defendant, John David Dickenson (“Dickenson”), was and is a resident of Florida, a lawyer employed by Cozen and an agent of the Insurance Company, pursuant to Fla.R.Jud.Admin. 2.205(h).

6. The actions giving rise to this action occurred in Miami-Dade County, Florida; therefore, venue for this action is proper in Miami-Dade County, Florida.

General Allegations

7. The Insurance Company issued an insurance policy to Daphne Query, with effective dates from November 15, 2013 to November 15, 2014, and intended to provide insurance coverage on Ms. Query’s home. The subject insurance policy is an “all-risk” policy that covered all fortuitous loss or damage unless the cause of the loss was expressly excluded from coverage.

8. While the policy was in force, on or about June 24, 2014, Ms. Query suffered a plumbing loss and damage to her home, which resulted in an insurance claim being made to the Insurance Company.

9. Upon receiving notice of the claim, the Insurance Company had and has ongoing express statutory and contractual duty to properly investigate, adjust, settle and pay Ms. Query for her covered loss and related damages.

10. The insurance policy issued to Ms. Query incorporates all Florida statutes into the policy, including sections 624.155 (“bad faith” civil remedy); 626.877 (adjustment practices); 626.878 (code of ethics); 626.9541(unfair claims practices); 626.9373 (attorney’s fees); 55.03 and 687.01 (interest); and 120.54, which incorporates the ethical requirements set forth in the Florida Administrative Code and its Adjuster’s Code of Ethics, Rule 69B.

11. The Insurance Company acknowledged Ms. Query’s claim, assigned it claim number EV2014001743, and was given access to her home and the documents requested by the Insurance Company, to enable the Insurance Company to perform a sufficient and full investigation of the claim.

12. The Insurance Company initially delayed resolution of the claim by refusing to acknowledge that coverage was afforded for Ms. Query’s loss and damages. Thereafter, the Insurance Company delayed resolution of the claim through its denial of coverage, based on its attempt to apply an obviously inapplicable exclusionary provision, misrepresenting its policy provisions by attempting to turn a broken plumbing pipe into some kind of faulty repair for the purpose of excluding the cause of loss.

13. Based on the Insurance Company’s refusal to admit that even one single dollar in damages was covered under its insurance policy, Ms. Query was forced to file suit against the Insurance Company, retaining Mintz as her attorneys.

14. The Insurance Company retained Cozen as its attorneys to defend the action filed by Mintz on behalf of Ms. Query, with Dickenson being one of the lead attorneys for Cozen.

15. The Insurance Company, through its attorneys, requested that Mintz provide the Insurance Company with a settlement demand package, indicating that the Insurance Company was at this point willing to comply with its statutory and contractual duties to settle and pay Ms. Query's claim. However, the Insurance Company had no intention of settling Ms. Query's claim at this juncture.

16. The Insurance Company's request for a settlement demand package was just another delay tactic. Upon receiving the settlement demand package, the Insurance Company did not admit coverage, pay a single dollar on Ms. Query's claim or provide a counter-settlement offer, but instead, the Insurance Company used the confidential settlement negotiations, protected by Fla.Stat. § 90.408 and/or Fed.R.Evid. 408, as a basis to show that the amount in controversy exceeded \$75,000 and remove the action to federal court. Using such protected information in this manner also shows a course of conduct to ignore statutory confidentiality of documents, as well as a evidencing a course of conduct in failing to pay when the obligation to pay is clear, based on the fact that no reasonable settlement offer was made after receiving the requested settlement demand.

17. After the case was removed to federal court, the Insurance Company engaged in further delay tactics, including stalling on providing deposition dates for its witnesses involved in investigating and adjusting Ms. Query's claim.

18. Eventually, a mediation was scheduled for June 13, 2016. Prior to the mediation taking place, certain confidential mediation communications occurred between Mintz and Cozen, through Dickenson, on behalf of the Insurance Company, including a specific request from Ms. Query (through her counsel) for a written demand for use at mediation.

19. Florida substantive law governs any mediation that takes place in the State of Florida, as provided in, *inter alia*, the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406). Specifically, Fla.Stat. § 44.405 prohibits mediation communication to be disclosed to anyone who is not a mediation participant² or the participant's counsel, and expressly provides that violations of mediation confidentiality may be remedied as provided in Fla.Stat. § 44.406. Federal courts in Florida are not only bound by Florida substantive law, but also expressly provide in Local Rule 16.2 that any mediation shall be governed by Fla.Stat. § 44.405 (the confidentiality therein), which expressly references and includes the remedies provided in Fla.Stat. § 44.406.

20. A mediation is subject to its own unique statutes and rules, and is specifically defined by Rule 10.210 of the Florida Rules for Certified and Court-Appointed Mediators ("Mediation Rules") as "an informal and non-adversarial process." All mediation participants, including the Insurance Company, Cozen and Dickenson, are deemed to have actual knowledge of Florida's mediation confidentiality statute because ignorance of the law (particularly by attorneys and experienced participants such as the Insurance Company) is not a defense to a statutory violation, and mediators are specifically required by Rule 10.420(3), Mediation Rules to inform the mediation participants of the confidential nature of mediation communications.

21. Agreement to participate and participation in mediation constitutes a separate contractual agreement (oral or written) to the mediation procedure, including to be bound by the statutes and rules applicable to mediation, including the statutory confidentiality of mediation communications and being subjected to the remedies provided for any violation of mediation

²Any "person who attends a mediation in person or by telephone, videoconference, or other electronic means" is defined as a mediation participant under Fla.Stat. § 44.403(2), and includes the Insurance Company, Cozen, Dickenson and Mintz.

confidentiality, thereby waiving any privilege or defense to a violation other than those exceptions expressly provided in the statutes and rules applicable to mediation.

22. The Insurance Company, Cozen and Dickenson entered into a mediation contract with Mintz through its affirmative action of agreeing to participate in the mediation in the State of Florida, as evidenced by the Notice of Mediation (attached as **Exhibit A**), which was prepared by the Defendants, and then actually participating in the mediation.

23. On or about June 7, 2016, the Insurance Company, through its counsel, Cozen and Dickenson, indicated that it wanted to participate in mediation in order to resolve the underlying litigation, including the Insurance Company's specific request for a written demand for use at mediation. That written demand would be a confidential mediation communication and the Defendants knew or should have known that.

24. The Insurance Company, through its counsel, expressly stated that it would participate in mediation, (not some non-confidential meeting or activity) which the Insurance Company knew contained the confidentiality requirements set forth *supra*, thereby expressly promising Mintz that all mediation communications would remain confidential.

25. The terms of the mediation contract were supplied by Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730, including the following relevant contractual provisions supplied by statute:

Except as provided in this section, all mediation communication shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406.

Fla.Stat. § 44.405(1).

Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

- (a) Equitable relief.
- (b) Compensatory damages
- (c) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding.
- (d) Reasonable attorney's fees and costs incurred in the mediation proceeding.

Fla.Stat. § 44.406(1).

26. A settlement was reached at the mediation on Ms. Query's underlying insurance case and insurance claim. The Insurance Company also stipulated to entitlement and agreed that it was responsible for paying Mintz a statutory attorneys' fee and costs for the litigation of the underlying case and as part of the settlement of the underlying insurance claim. Mintz's entitlement to attorneys' fees has been stipulated to by all parties involved.

27. The Insurance Company agreed to entitlement to attorney's fees and costs, and that it would pay Mintz a reasonable attorney's fee pursuant to Fla.Stat. § 626.9373, based on the reasonable amount of time Mintz worked on the Query litigation, reasonable hourly rates for Mintz's attorneys and any multiplier that may be determined to be applicable, pursuant to S.D.Fla.L.R. 7.3. The Insurance Company's good faith duty to resolve the amount of attorneys' fees includes an ongoing duty to make a payment of the undisputed amount of attorney's fees and costs it had agreed with and not objected to, which is consistent with the Insurance Company's statutory duty under Fla.Stat. § 624.155 to pay when the obligation to pay is clear, and submit the remainder of Mintz's claimed fees to the Court/magistrate to determine the reasonableness of the claimed fees.

28. Since the Insurance Company agreed to pay Mintz a reasonable statutory fee and costs as part of the settlement of the underlying insurance claim, Mintz was not limited to receiving a percentage of Ms. Query's recovery as its fee. Instead, all of Mintz's attorney's fees

and costs would be paid by the Insurance Company, making Mintz the real party in interest with respect to payment of the fees and costs. Furthermore, Ms. Query has assigned any and all rights she may have had with respect to the payment of attorney's fees to Mintz.³ For the purposes of this case, Mintz has also received assignment of all benefits and claims from co-counsel, Kramer, Green, Zuckerman, Greene & Buchsbaum, P.A.

29. Mintz prepared a detailed itemization of attorneys' fees and costs and served the itemization on the Insurance Company on September 29, 2016.

30. Despite the fact that this detailed itemization was provided, the Insurance Company failed and refused to make a payment of even one single dollar of Mintz's attorneys' fees and costs. The Insurance Company purposely delayed payment although the obligation to make a payment of the uncontested attorneys' fees and costs was and continued to be clear; in spite of the fact that a Fla.Stat. § 624.155 civil remedy notice was filed on August 15, 2016 regarding the Insurance Company's failure to pay the undisputed amount of attorneys' fees;⁴ despite the fact that a demand was made for payment of the undisputed amount of attorneys' fees on September 18, 2016; and despite the fact that the Insurance Company has admitted in two different responses or court filings, on August 29 and October 21, 2017, that Mintz is owed an attorneys' fee in the amount of \$70,000. On February 1, 2017, the Court, in the underlying federal case, entered an Order which determined that Mintz was entitled to an amount of \$253,674.89 for

³Mintz has not unnecessarily attached the assignment because even oral assignments are valid in Florida, and a third party has no standing to challenge the validity of an assignment in any event.

⁴Mintz has not unnecessarily attached the statutory civil remedy notice because, while the filing of the civil remedy notice (and giving sixty days to cure) is a condition precedent to filing a statutory bad faith lawsuit, it is not a pleading requirement to even allege with specificity that a statutory civil remedy notice has even been filed. Furthermore, Mintz has not attached the documents that violate the mediation privilege in order to prevent re-publication of those documents.

attorneys' fees and costs, conclusively proving that the Insurance Company's failure to pay the uncontested amount of attorneys' fees in the amount of \$70,000 was intentionally withheld in bad faith. On March 17, 2017, a Final Judgment was entered against the Insurance Company in the amount of \$259,502.81 in attorney's fees and costs, and \$9,465.14 in pre-judgment interest, which was paid on March 28, 2017.

31. On October 21, 2016, the Insurance Company, through its counsel, Cozen, filed Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74), which was personally signed by Dickenson. Within the Response and attached to this Response were certain confidential and protected mediation communications, as well as an affidavit from the Insurance Company's attorneys' fee expert, in which he makes clear that certain confidential and protected mediation communication was provided to him as a basis for his analysis. None of the exceptions listed in Fla.Stat. § 44.405 were or are applicable to these confidential mediation communications and disclosure of the confidential mediation communications was not necessary for the purpose of disputing a few hours of claimed fees, which constituted a minuscule fraction of the total number of hours claimed, especially given that there were many other options available that did not involve an intentional violation of a Florida statute.

32. When the Insurance Company, Cozen and Dickenson filed its Response to Plaintiff's attorney's fee claim, with the confidential mediation communications attached, Mintz was deprived of the opportunity to have an unadulterated and unbiased fee evaluation conducted. The disclosure to the Federal Magistrate of these confidential mediation communications, deprived Mintz of that opportunity. The attorney's fee award entered was less than Mintz had claimed, thus resulting in damages from that lost opportunity.

33. Based on the Insurance Company, Cozen and Dickenson's conduct in making public privileged, confidential and proprietary mediation communications, Mintz filed suit against the Insurance Company, Cozen and Dickenson, and is entitled to an attorney's fee, pursuant to Fla.Stat. § 44.406, for this violation of the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406).

34. Furthermore, based on the Insurance Company's statutory violation/bad faith failure to settle the attorney's fee claim or pay the undisputed amount of \$70,000, in violation of Fla.Stat. § 624.155, or even make a reasonable offer to settle, Mintz is entitled to an attorney's fee, pursuant to Fla.Stat. § 626.9373.

35. After suit was filed, the Insurance Company hired the firm Cole, Scott & Kissane, P.A. ("Cole Scott") to represent the Insurance Company in this action. Cole Scott is an agent of the Insurance Company in this action, pursuant to Fla.R.Jud.Admin. 2.205(h).

36. In responding to the Complaint, the Insurance Company and Cole Scott, on behalf of its client, filed a motion to dismiss and attached the previously filed Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law from the federal court case, which contained the same confidential mediation communications that formed the original basis for this lawsuit, thereby once again, the Insurance Company unlawfully disclosed confidential mediation communications.

37. The Defendants filed two separate motions to dismiss, one filed on behalf of the Insurance Company and one filed on behalf of Cozen and Dickenson together, although the legal position taken by the Defendants was identical. The Defendants' position is that **anything** done during the course of the underlying litigation is protected by the judicially created litigation

privilege/immunity, which supersedes and thus eviscerates **any and all** statutory or common law causes of action that occur during litigation, such as an action for violation of mediation confidentiality (Fla.Stat. § 44.406), statutory insurance bad faith (Fla.Stat. § 624.155) or malicious prosecution.⁵

38. Accordingly, Mintz is entitled to an attorney's fee, pursuant to Fla.Stat. § 44.406, for this violation of the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406).

COUNT I
PETITION FOR DECLARATORY RELIEF AGAINST ALL DEFENDANTS

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

39. This is an action for declaratory relief pursuant to Florida Statutes Chapter 86 and the court's general equity powers to declare the parties' rights and obligations under a Florida statute, including the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406).

40. Declaratory relief is proper to determine the proper interpretation/construction of a Florida statute, including the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406).

41. Mintz wants the Defendants to be in compliance with the Mediation Confidentiality and Privilege Act and does not want to be subjected to the whim of the Defendants in regard to alleged statutory interpretation.

⁵See, Defendant, Lexington Insurance Company's Motion to Dismiss Complaint, para. 5 ("Second, Lexington is immune from suit for bad faith as a result of its actions in the Federal Court proceeding pursuant to the Litigation Privilege."); *id.*, para. 11 ("First, Lexington is immune from suit for violation of the mediation privilege pursuant to the Litigation Privilege."); and Defendants Cozen O'Connor, P.C. and John David Dickenson's Motion to Dismiss Plaintiff's Complaint, p. 4 ("Defendants' statements in the underlying litigation are protected by the litigation privilege and are afforded absolute immunity because they occurred in a judicial proceeding ...").

42. Based on the actions of the Defendants' blatant violation of the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), Mintz is unsure of the parties' rights, obligations and duties in regard to the Mediation Act, or even whether the legislatively created Mediation Act is eviscerated, obliterated and nullified by the judicially created litigation privilege, which is not a Constitutionally created privilege.

43. Accordingly, Mintz seeks a declaration of the parties' rights, duties obligations and status, in accordance with Florida law.

44. The Defendants' incorrect interpretation of Florida law has created the need for a declaration by the Court on the following issues:

- a. Whether Florida law requires mediation participants to maintain the confidentiality of mediation communications in all circumstances other than the exceptions specifically listed in Fla.Stat. § 44.405;
- b. Whether mediation confidentiality, codified in the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), is a statement of Florida public policy that is in the interests of society as a whole;
- c. Whether the judicially created litigation privilege can eviscerate, obliterate, nullify, supersede and/or overrule the legislatively created mediation confidentiality rule set forth in Fla.Stat. § 44.405;
- d. Whether the judicially created litigation privilege/immunity can eviscerate, obliterate, nullify, supersede and/or overrule the legislatively created insurance bad faith cause of action set forth in Fla.Stat. § 624.155; particularly where Fla. Stat. § 624.155(8) provides that: "The civil remedy specified in this section does not preempt any other remedy or cause of action provided for pursuant to any other statute or pursuant to the common law of this state."
- e. Whether the litigation privilege allows for anyone to circumvent the statutory and/or contractually mandated confidentiality of mediation communications or settlements through the mere act of attaching a confidential document to a pleading or motion;
- f. Whether the fact that the litigation privilege is considered an absolute privilege means that it applies without regard for motive or bad faith (as

opposed to a qualified privilege) or that the privilege absolutely applies to any situation in litigation whatsoever;

- g. Whether the judicially created litigation privilege is like any other privilege (constitutional, statutory, common law, judicially created) in that it can be voluntarily waived, or does the litigation privilege hold the status of being the only privilege that cannot be voluntarily waived;
- h. Whether participation in mediation subject to the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) constitutes a waiver of any litigation privilege;
- i. Whether the Defendants, joint and/or severally, waived any litigation privilege by participating in mediation with Mintz;
- j. Whether the disclosure of the confidential mediation communications was necessary for the purpose of disputing a few hours of claimed fees, which constituted a minuscule fraction of the total number of hours claimed, especially given that there were many other options available that did not involve an intentional violation of a Florida statute;
- k. Whether the Florida Supreme Court has mandated the application of the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) to the exclusion of any privilege or exception not expressly excepted therein by requiring all mediators to instruct mediation participants that mediation communications are confidential and/or expressly applying the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) to family law;
- l. Whether the Florida Supreme Court has mandated the application of the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) to the exclusion of any privilege or exception not expressly excepted therein by expressly stating and representing to the public on its website (www.flcourts.org) that “What you say in mediation is confidential.”⁶
- m. Whether the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) creates an enforceable oral or written contract to abide by the rules set forth in the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406);
- n. Whether the Defendants, joint and/or severally, entered into an enforceable oral or written contract to abide by the rules set forth in the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406)

⁶A copy of the Florida Supreme Court’s document, “Mediation in Florida,” is attached as **Exhibit B**.

by participating in mediation with Mintz;

- o. Whether Cozen's discovery objection to production of mediation related documents on the basis of "attorney-client, settlement and work product privileges" constitutes an admission that privileges, including the mediation privilege, attach to mediation communications;
- p. Whether Mintz, or any other party, waives all privileges, including the mediation confidentiality privilege, through the mere act of filing a claim for attorneys' fees;
- q. Whether Mintz waived all statutory mediation confidentiality through the truthful and accurate statement that Plaintiff in the underlying suit received "100% of Query's property damage claim" based on the fact that 100% of Ms. Query's damages to her home were ultimately paid by the Insurance Company; and
- r. Whether the Defendants' disclosure of confidential mediation communications had any relation to the proceedings and/or was necessary for resolution of the matter in which it was disclosed.

45. Pursuant to the Declaratory Judgment Statutes, the Court has the jurisdiction and power to construe relations that are affected by the construction of a statute and issue a declaratory decree/judgment in regard to same.

46. Accordingly, Mintz has filed this request for declaratory relief seeking the Court's construction of the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), as well as Florida law, and asks that Court retain jurisdiction of this matter thereafter to avoid piecemeal litigation.

47. The Defendants' conduct has created doubt or uncertainty as to Mintz's right or status in relation to the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) and Plaintiff seeks a declaration of those rights and status.

48. Due to the Insurance Company's conduct, your Plaintiff has been obligated to retain undersigned counsel to bring this action and, pursuant to Florida Statute §§ 626.9373 and/or

44.406, undersigned counsel is entitled to an attorney's fee in this matter to be paid by the Insurance Company.

WHEREFORE, Mintz prays this Honorable Court take jurisdiction of this matter in regard to the following:

- i) for a declaration of the parties' rights, duties and obligations under the Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) and Florida law as pled herein;
- ii) for an award of reasonable attorney's fees and costs pursuant to Fla. Stat. §§ 626.9373 and/or 44.406 because of the necessity of Plaintiff having to retain counsel and file the present declaratory judgment action;
- iii) for a reservation of jurisdiction to enter such further orders as may be required to enforce the Court's declaration of the parties' rights; and
- iv) for an award of such other and further relief as this Court deems just, proper and equitable.

COUNT II
DEFENDANTS, LEXINGTON INSURANCE COMPANY,
COZEN O'CONNOR, P.C. AND JOHN DAVID DICKENSON'S,
OCTOBER 21, 2016 BREACH OF THE MEDIATION CONTRACT

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

49. Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730 impose certain duties and obligations on all mediation participants in the State of Florida.

50. The Insurance Company, Cozen and Dickenson entered into an oral or written mediation contract with Mintz through its affirmative action of agreeing to participate in a

mediation in the State of Florida and became mediation participants by actually participating in a mediation in the State of Florida.

51. The terms of the mediation contract were supplied by Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730. Additionally, the mediator in this matter complied with his duty to inform all mediation participants that all mediation communications were to remain confidential, and all mediation participants agreed to keep all mediation communications confidential. The relevant contractual provisions of the mediation contract have been supplied by statute, as follows:

Except as provided in this section, all mediation communication shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406.

Fla.Stat. § 44.405(1).

Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

- (a) Equitable relief.
- (b) Compensatory damages
- (c) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding.
- (d) Reasonable attorney's fees and costs incurred in the mediation proceeding.

Fla.Stat. § 44.406(1).

52. On October 21, 2016, the Insurance Company, through its counsel, Cozen, filed Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74), which was personally signed by Dickenson. Attached to this Response were certain confidential,

proprietary and protected mediation communication, as well as an affidavit from the Insurance Company's attorneys' fee expert, in which he makes clear that certain confidential and protected mediation communication was provided to him as a basis for his analysis.

53. By filing the Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74) in a public forum, the Insurance Company, Cozen and Dickenson breached the mediation contract by failing to keep all mediation communications confidential.

54. As a direct and proximate result of the Insurance Company, Cozen and Dickenson's breach of the mediation contract, Mintz has suffered damages, including, *inter alia*, the dissemination of certain proprietary information, and continues to suffer further consequential damages, such as the effect such unlawful disclosure has on Mintz's attorneys' fee claim.

55. Based on the Insurance Company, Cozen and Dickenson's conduct in making public privileged, confidential and proprietary mediation communications, Mintz filed suit against the Insurance Company, Cozen and Dickenson, and is entitled to an attorney's fee, pursuant to Fla.Stat. § 44.406, for this breach of the mediation contract.

WHEREFORE, Plaintiff, Mintz Truppman, P.A., demands an entry of judgment in its favor and against the Insurance Company, Cozen and Dickenson for all of Mintz's damages as pled herein, including all consequential damages, attorney's fees, prejudgment interest, costs, and such other and further relief as the Court deems appropriate.

COUNT III
DEFENDANT, LEXINGTON INSURANCE COMPANY'S,
JANUARY 17, 2017 BREACH OF THE MEDIATION CONTRACT

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

56. Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730 impose certain duties and obligations on all mediation participants in the State of Florida.

57. The Insurance Company entered into an oral or written mediation contract with Mintz through its affirmative action of agreeing to participate in a mediation in the State of Florida and became a mediation participant by actually participating in a mediation in the State of Florida.

58. The terms of the mediation contract were supplied by Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730. Additionally, the mediator in this matter complied with his duty to inform all mediation participants that all mediation communications were to remain confidential, and all mediation participants agreed to keep all mediation communications confidential. The relevant contractual provisions of the mediation contract have been supplied by statute, as follows:

Except as provided in this section, all mediation communication shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406.

Fla.Stat. § 44.405(1).

Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

- (e) Equitable relief.
- (f) Compensatory damages
- (g) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding.
- (h) Reasonable attorney's fees and costs incurred in the mediation proceeding.

Fla.Stat. § 44.406(1).

59. On January 17, 2017, the Insurance Company, through its counsel, Cole Scott, filed Defendant, Lexington Insurance Company's Motion to Dismiss Complaint in this case, which attached as an exhibit Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74), containing certain confidential, proprietary and protected mediation communication.

60. By filing the Defendant, Lexington Insurance Company's Motion to Dismiss Complaint and Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74) in a public forum, the Insurance Company breached the mediation contract by failing to keep all mediation communications confidential.

61. By again filing confidential mediation communications in this action, the Insurance Company has again breached the mediation contract by failing to keep all mediation communications confidential.

62. As a direct and proximate result of the Insurance Company's breach of the mediation contract, Mintz has suffered damages, including, *inter alia*, the dissemination of certain proprietary information, and continues to suffer further consequential damages, such as the effect such unlawful disclosure has on Mintz's attorneys' fee claim.

63. Based on the Insurance Company's conduct in making public privileged, confidential and proprietary mediation communications, Mintz filed suit against the Insurance Company and is entitled to an attorney's fee, pursuant to Fla.Stat. § 44.406, for this breach of the mediation contract.

WHEREFORE, Plaintiff, Mintz Truppman, P.A., demands an entry of judgment in its favor and against the Insurance Company for all of Mintz's damages as pled herein, including all consequential damages, attorney's fees, prejudgment interest, costs, and such other and further relief as the Court deems appropriate.

COUNT IV
DEFENDANTS, LEXINGTON INSURANCE COMPANY, COZEN O'CONNOR, P.C.
AND JOHN DAVID DICKENSON'S CONSPIRACY TO VIOLATE FLORIDA'S
MEDIATION CONFIDENTIALITY AND PRIVILEGE ACT

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

64. Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) prohibits mediation participants in the State of Florida from disclosing confidential mediation communications, as follows:

Except as provided in this section, all mediation communication shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406.

Fla.Stat. § 44.405(1).

65. The Insurance Company, Cozen and Dickenson were mediation participants in the underlying litigation between Ms. Query and the Insurance Company wherein the Insurance Company, Cozen and Dickenson obtained confidential mediation communications authored by Mintz, who was also a mediation participant.

66. The Insurance Company, Cozen and Dickenson, acting together and/or with knowledge thereof, agreed to file in Court Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74) and to unlawfully ensure that confidential mediation communications were contained therein, despite the fact that such a public filing and disclosure of confidential mediation communications would be in direct violation of Fla.Stat. § 44.405.

67. The unlawful disclosure of the confidential mediation communications was unnecessary for the claimed purpose of disputing a few hours of claimed attorneys' fees, which constituted a minuscule fraction of the total number of hours claimed, and there were many other options available that did not involve an intentional violation of a Florida statute which were not attempted by the Insurance Company, Cozen and Dickenson.

68. On October 21, 2016, the Insurance Company, Cozen and Dickenson, acting together and/or with knowledge thereof, took the affirmative action of actually filing in Court Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74), which contained confidential mediation communications that was unlawfully disclosed to the general public, who were not mediation participants, by placing the confidential mediation communications in the public domain of court filings, in direct violation of Fla.Stat. § 44.405.

69. The Insurance Company, Cozen and Dickenson's intentional violation of Fla.Stat. § 44.405 and unlawful actions involved malice, moral turpitude, wantonness and/or outrageousness. Although punitive damages are not being claimed at this time, Mintz will be amending by interlineation to include a claim for punitive damages after the filing of the necessary motion, pursuant to Fla.Stat. § 768.72.

70. As a direct and proximate result of the Insurance Company, Cozen and Dickenson's actions taken to unlawfully disclose confidential mediation communications in violation of Fla.Stat. § 44.405, Mintz has suffered damages, including, *inter alia*, the dissemination of certain proprietary information, and Mintz continues to suffer further consequential damages, such as the effect such unlawful disclosure has on Mintz's attorneys' fee claim.

WHEREFORE, Plaintiff, Mintz Truppman, P.A., demands an entry of judgment in its favor and against the Insurance Company, Cozen and Dickenson for all of Mintz's damages as pled herein, including all consequential damages, prejudgment interest, costs, and such other and further relief as the Court deems appropriate.

COUNT V
DEFENDANTS, LEXINGTON INSURANCE COMPANY; COZEN O'CONNOR, P.C.;
AND JOHN DAVID DICKENSON'S, VIOLATION OF FLA.STAT. § 44.405

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

71. Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) prohibits mediation participants in the State of Florida from disclosing confidential mediation communications, as follows:

Except as provided in this section, all mediation communication shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406.

Fla.Stat. § 44.405(1).

72. The Insurance Company, Cozen and Dickenson were mediation participants in the underlying litigation between Ms. Query and the Insurance Company wherein the Insurance

Company, Cozen and Dickenson obtained confidential mediation communications authored by Mintz, who was also a mediation participant.

73. On October 21, 2016, the Insurance Company, Cozen and Dickenson, filed Defendant's Response in Opposition to Plaintiff's Verified Motion for Attorneys' Fees and Non-taxable Costs and Incorporated Memorandum of Law (Federal Court D.E. 74), which contained confidential mediation communications that was unlawfully disclosed to the general public, who were not mediation participants, by placing the confidential mediation communications in the public domain of court filings, in direct violation of Fla.Stat. § 44.405. None of the exceptions listed in Fla.Stat. § 44.405 were or are applicable to these confidential mediation communications

74. Section 44.406, Florida Statutes, provides a civil remedy for violations of section 44.405, Florida Statutes, including the following:

- (a) Equitable relief;
- (b) Compensatory damages;
- (c) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding; and
- (d) Reasonable attorney's fees and costs incurred in the application for remedies under this section.

75. As a direct and proximate result of the Insurance Company, Cozen and Dickenson's actions taken to unlawfully disclose confidential mediation communications in violation of Fla.Stat. § 44.405, Mintz has suffered damages, including, *inter alia*, the dissemination of certain proprietary information.

76. Based on the Insurance Company, Cozen and Dickenson's conduct in making public privileged, confidential and proprietary mediation communications, Mintz filed suit against the Insurance Company and is entitled to an attorney's fee, pursuant to Fla.Stat. § 44.406, for this violation of Fla.Stat. § 44.405.

77. In addition, and also based the Insurance Company, Cozen and Dickenson's conduct in making public privileged, confidential and proprietary mediation communications, the Insurance Company, Cozen and Dickenson are responsible for payment of Mintz's compensatory damages as well as all attorneys' fees, mediator's fees and costs incurred in the mediation proceeding.

WHEREFORE, Mintz prays that this Court enter an order prohibiting the Defendants from making any further disclosures of mediation communications, awarding Mintz compensatory damages, reimbursing Mintz for the attorney's fees for preparing for and attending the mediation as well as any mediator fee and/or other costs incurred in the mediation, awarding Mintz attorney's fees and costs for this action, and granting such other and further relief as this Court deems just and proper.

COUNT VI
PRELIMINARY/TEMPORARY AND PERMANENT
INJUNCTION AGAINST ALL DEFENDANTS

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

78. This is an action for a preliminary/temporary and a permanent injunction pursuant to this Court's equitable powers.

79. The Defendants have shown that they have no intention of complying with the statutorily mandated confidentiality of mediation communications set forth in Florida's

Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) by intentionally violating Fla.Stat. § 44.405 on two different occasions, October 21, 2016 and January 17, 2017, nor doing anything to remedy their ongoing violations of Florida's mediation confidentiality.

80. The status quo should be maintained until the Court has determined the rights and obligations of the parties, as specified in the Petition for Declaratory Relief (Count I, *supra*).

81. A temporary and permanent injunction should be entered to prevent the Defendants from further violating the statutorily mandated confidentiality of mediation communications, based on the following factors:

- a. Mintz will suffer irreparable harm if an injunction is not entered, as additional proprietary mediation strategies and information could be disclosed; the Defendants' violation will continue and be multiplied; and affect negotiations and settlements in other cases;
- b. Mintz has no adequate remedy at law because Mintz's injury to its proprietary mediation strategies outweighs any damages that could be claimed by Mintz;
- c. Mintz has a substantial likelihood of success on the merits because the litigation privilege is not one of the exceptions to disclosure of confidential mediation communications listed in Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), as codified by the Legislature; and
- d. Entry of an injunction will serve the public interest, and the balance of the equities is favored, because application of the litigation privilege to statutorily protected mediation communications could adversely affect mediations on a statewide level if mediation participants' statements and communications could be used against them, thereby affecting pre-trial settlements of cases and

effectively multiplying litigation in the State of Florida because cases will not settle the same if mediation is not confidential.

WHEREFORE, Plaintiff, Mintz Truppman, P.A., prays for the entry of a temporary and permanent injunction against the Defendants, preventing any further violations of Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406) in this, or any other cases.

COUNT VII
BAD FAITH/UNFAIR CLAIMS PRACTICES PURSUANT TO
FLA.STAT. §§ 624.155 AND 626.9541 AGAINST THE INSURANCE COMPANY

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

82. Liability and the amount of damages has been admitted by the Insurance Company in two different responses or court filings, on August 29 and October 21, 2017, in the amount of \$70,000, as the undisputed amount of attorneys' fees owed Mintz, yet the Insurance Company has failed and refused to pay even one single dollar of this undisputed amount due Mintz.

83. On February 1, 2017, the Court, in the underlying federal case, entered an Order which determined that Mintz was entitled to an amount of \$253,674.89 for attorneys' fees and costs, conclusively proving that the Insurance Company's failure to pay the uncontested amount of attorneys' fees in the amount of \$70,000 was intentionally withheld in bad faith. This Order was Amended on February 7, 2017 to include additional amounts, for a total of \$259,502.81 in attorney's fees and costs. On March 17, 2017, a Final Judgment was entered against the Insurance Company in the amount of \$259,502.81 in attorney's fees and costs, and \$9,465.14 in pre-judgment interest, which was paid on March 28, 2017.

84. Even after the Final Judgment was entered, the Insurance Company sought to further delay payment to Mintz by including multiple parties on the check, despite the fact that the Insurance Company had been informed that Mintz had received an assignment of all outstanding payments in the underlying case, and after Mintz agreed to provide the Insurance Company with a satisfaction of judgment. The Insurance Company continued to fail to pay when the obligation to pay was clear.

85. The Insurance Company has violated Chapter 624.155(1)(b)(1), Florida Statutes, by not attempting in good faith to settle the attorneys' fee claim when under all of the circumstances, it could have and should have done so, had it acted fairly and honestly towards Mintz and with due regard for its interests. The Insurance Company neither made a reasonable offer for attorney's fees and costs nor made any payment for attorney's fees and costs, despite having stipulated to Plaintiff's counsel's entitlement thereto, and the Insurance Company's admissions that certain amounts were undisputedly due to Mintz.

86. The Insurance Company has violated Chapter 624.155(1)(b)(3), Florida Statutes, by failing to promptly settle the attorneys' fee claim when the obligation to settle the claim became reasonably clear, under one portion of the insurance policy in order to influence settlements under other portions of the insurance policy, as discussed in the General Allegations, *supra*.

87. The Insurance Company has violated Chapter 626.9541(1)(i)(2), Florida Statutes, by making material misrepresentations to Mintz for the purpose and with the intent of effectuating settlement of such claims, loss or damage under such contract or policy on less favorable terms than those provided in and contemplated by, such contract or policy, as discussed in the General Allegations, *supra*.

88. The Insurance Company has acted in bad faith in violation of Chapter 624.155(1)(a)(1), and Chapter 626.9541(1)(i) Florida Statutes, as discussed in the General Allegations, *supra*, and in failing to do the following acts, including but not limited to:

- A. Failing to adopt and implement standards for the proper investigation of claims, including this claim;
- B. Misrepresenting the pertinent facts or insurance policy provisions relating to coverage at issue;
- C. Failing to acknowledge and act promptly upon communications with respect to the claim;
- D. Failing to attempt in good faith to make appropriate settlement offers or to engage in settlement negotiations in an effort to resolve the attorneys' fee claim;
- E. Engaging in litigation tactics that had no legal basis in order to further delay payment of the attorney's fee claim and frustrate Mintz's efforts to be made whole.

89. The Insurance Company has further acted in bad faith and violated Chapters 624.155 and 626.9541(1)(i), as discussed in the General Allegations, *supra*, and by:

- A. Failing to properly evaluate the amount of loss of the attorneys' fee claim;
and
- B. Failing to pay any amount of the attorneys' fee claim.

90. Mintz has complied with all conditions precedent to bringing this action, including filing a statutory civil remedy notice on August 15, 2016, pursuant to Fla.Stat. § 624.155(3), and

allowing the Insurance Company sixty days to cure all such violations, which the Insurance Company failed to do.

91. The Insurance Company has committed these acts with such frequency as to indicate a general business practice, both in this case and in general.

92. The Insurance Company's actions alleged above were willful, wanton, malicious and in reckless disregard for the rights of Mintz and solely for its own profit motive.

93. Mintz has retained undersigned counsel and is obligated to pay undersigned counsel a reasonable fee for their services including the costs incurred in bringing this action for which the Insurance Company is responsible.

94. Although punitive damages are not being claimed at this time, Mintz will be amending by interlineation to include a claim for punitive damages after the filing of the necessary motion, pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff, Mintz Truppmann, P.A., demands entry of a judgment against the Insurance Company for its damages as pled herein, plus interest, attorneys' fees and costs, and such other and further relief as the Court deems appropriate.

COUNT VIII
FRAUD IN THE INDUCEMENT AGAINST
DEFENDANT, LEXINGTON INSURANCE COMPANY

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

95. On or about June 7, 2016, the Insurance Company, through its counsel, Cozen and Dickenson, indicated that it wanted to participate in mediation in order to resolve the underlying litigation, including the Insurance Company's specific request for a written demand for use at

mediation. That written demand would be a confidential mediation communication and the Defendants knew or should have known that.

96. The Insurance Company and its attorneys have specific knowledge that any mediation that takes place in the State of Florida is subject to the confidentiality and other requirements contained in Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730. The Insurance Company was specifically aware that all mediation communications are confidential, especially since the Insurance Company has participated in, at least, hundreds of mediations in the State of Florida. The Insurance Company knew or should have known these things.

97. The Insurance Company, through its counsel, expressly stated that it would participate in mediation, (not some non-confidential meeting or activity) which the Insurance Company knew contained the confidentiality requirements set forth *supra*, thereby expressly promising Mintz that all mediation communications would remain confidential.

98. The Insurance Company knew its representation (through its counsel) to Mintz that the parties were going to mediation where all mediation related communications would be confidential, was false when made, because the Insurance Company never intended on keeping the mediation communications confidential, and thus knew it was not treating the proceedings like an actual mediation, but instead intended on using the confidential mediation communications to its advantage in any way it chose, including in what the Insurance Company knew or should have known could be ongoing proceedings regarding the amount of attorney's fees ultimately owed to Mintz.

99. The Insurance Company (through its counsel) specifically made the misrepresentation that the parties were going to mediation (and therefore communications were

confidential) and about keeping all mediation communications confidential in order to gain a strategic and/or tactical litigation advantage over Mintz and induce Mintz into revealing information that would otherwise be privileged work product and proprietary and confidential, including Mintz's mental impressions of the underlying (and other) cases.

100. Mintz justifiably relied on the Insurance Company's false promise (through its counsel), that the settlement conference was a mediation and that all mediation communications were confidential, because all attorneys and litigants in the State of Florida know and are expressly informed by every mediator in the State of Florida (as required by the Florida Supreme Court's Mediation Rules) that mediation communications are confidential. Mintz further relied on Defendant's false promises, feeling secure that there would be liability for disclosure of confidential mediation communications, pursuant to Fla.Stat. § 44.406. Moreover, all insurance companies know or should know these things.

101. Mintz's justifiable reliance on the Insurance Company's false promises (made through its counsel) was to Mintz's detriment because Mintz did in fact reveal certain confidential information to the Insurance Company (and its counsel) in the mediation of the underlying case that would otherwise be privileged work product and proprietary, including Mintz's mental impressions of the underlying (and other) cases.

102. As a direct and proximate result of Mintz's detrimental reliance on the Insurance Company's misrepresentation (through its counsel), Mintz has suffered, and continues to suffer, damages from the dissemination of the confidential mediation communications by the Insurance Company (through its counsel), including but not limited to the lost opportunity to have had Mintz's attorney's fee claim in the underlying action, litigated and decided without improper

evidence and to not have Mintz's confidential mediation communications and work product and proprietary settlement information published in the federal and state court public files.

103. Although punitive damages are not being claimed at this time, Mintz will be amending by interlineation to include a claim for punitive damages after the filing of the necessary motion, pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff demands judgment against the Insurance Company for its damages as pled herein, plus costs and prejudgment interest.

COUNT IX
FRAUD IN THE INDUCEMENT AGAINST
DEFENDANT, COZEN O'CONNOR, P.C.

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

104. On or about June 7, 2016, Cozen, through Dickenson, indicated that its client, the Insurance Company, wanted to participate in mediation in order to resolve the underlying litigation, including a specific request for a written demand for use at mediation. That written demand would be a confidential mediation communication and the Defendant knew or should have known that.

105. The Insurance Company and its attorneys have specific knowledge that any mediation that takes place in the State of Florida is subject to the confidentiality and other requirements contained in Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730. The Insurance Company and its counsel were specifically aware that all mediation communications are confidential, especially since the Insurance Company and its counsel have participated in, at least, hundreds of mediations in the State of Florida. Cozen knew or should have known these things.

106. Cozen, through Dickenson, expressly stated that its client, the Insurance Company, would participate in mediation, (not some non-confidential meeting or activity) which Cozen knew contained the confidentiality requirements set forth *supra*, thereby expressly promising Mintz that all mediation communications would remain confidential.

107. Cozen knew its representation to Mintz that the parties were going to mediation where all mediation related communications would be confidential, was false when made, because Cozen never intended on keeping the mediation communications confidential, and thus knew it was not treating the proceedings like an actual mediation, but instead intended on using the confidential mediation communications to its advantage in any way it chose, including in what Cozen knew or should have known could be ongoing proceedings regarding the amount of attorney's fees ultimately owed to Mintz.

108. Cozen, through Dickenson, specifically made the misrepresentation that the parties were going to mediation (and therefore communications were confidential) and about keeping all mediation communications confidential in order to gain a strategic and/or tactical litigation advantage over Mintz and induce Mintz into revealing information that would otherwise be privileged work product and proprietary and confidential, including Mintz's mental impressions of the underlying (and other) cases.

109. Mintz justifiably relied on Cozen's false promise (through Dickenson), that the settlement conference was a mediation and that all mediation communications were confidential, because all attorneys and litigants in the State of Florida know and are expressly informed by every mediator in the State of Florida (as required by the Florida Supreme Court's Mediation Rules) that mediation communications are confidential. Mintz further relied on Defendant's

false promises, feeling secure that there would be liability for disclosure of confidential mediation communications, pursuant to Fla.Stat. § 44.406.

110. Mintz's justifiable reliance on the Insurance Company's false promises (made through its counsel) was to Mintz's detriment because Mintz did in fact reveal certain confidential information to the Insurance Company (and its counsel) in the mediation of the underlying case that would otherwise be privileged work product and proprietary, including Mintz's mental impressions of the underlying (and other) cases.

111. As a direct and proximate result of Mintz's detrimental reliance on Cozen's misrepresentation (through Dickenson), Mintz has suffered, and continues to suffer, damages from the dissemination of the confidential mediation communications by Cozen (through Dickenson), including but not limited to the lost opportunity to have had Mintz's attorney's fee claim in the underlying action, litigated and decided without improper evidence and to not have Mintz's confidential mediation communications and work product and proprietary settlement information published in the federal and state court public files.

112. Although punitive damages are not being claimed at this time, Mintz will be amending by interlineation to include a claim for punitive damages after the filing of the necessary motion, pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff demands judgment against Cozen for its damages as pled herein, plus costs and prejudgment interest.

COUNT X
FRAUD IN THE INDUCEMENT AGAINST
DEFENDANT, JOHN DAVID DICKENSON

Mintz re-adopts and re-alleges paragraphs 1 through 38 above as if fully set forth herein, and further states:

113. On or about June 7, 2016, Dickenson, indicated that his client, the Insurance Company, wanted to participate in mediation in order to resolve the underlying litigation, including a specific request for a written demand for use at mediation. That written demand would be a confidential mediation communication and the Defendant knew or should have known that.

114. The Insurance Company and its attorneys have specific knowledge that any mediation that takes place in the State of Florida is subject to the confidentiality and other requirements contained in Florida's Mediation Confidentiality and Privilege Act (Fla.Stat. §§ 44.401-44.406), the Mediation Rules, and Fla.R.Civ.P. 1.710-1.730. The Insurance Company and its counsel were specifically aware that all mediation communications are confidential, especially since the Insurance Company and its counsel have participated in, at least, hundreds of mediations in the State of Florida. Dickenson knew or should have known these things.

115. Dickenson expressly stated that his client, the Insurance Company, would participate in mediation, (not some non-confidential meeting or activity) which Dickenson knew contained the confidentiality requirements set forth *supra*, thereby expressly promising Mintz that all mediation communications would remain confidential.

116. Dickenson knew his representation to Mintz that the parties were going to mediation where all mediation related communications would be confidential, was false when made, because Dickenson never intended on keeping the mediation communications

confidential, and thus knew he was not treating the proceedings like an actual mediation, but instead intended on using the confidential mediation communications to his advantage in any way he chose, including in what Dickenson knew or should have known could be ongoing proceedings regarding the amount of attorney's fees ultimately owed to Mintz.

117. Dickenson specifically made the misrepresentation that the parties were going to mediation (and therefore communications were confidential) and about keeping all mediation communications confidential in order to gain a strategic and/or tactical litigation advantage over Mintz and induce Mintz into revealing information that would otherwise be privileged work product and proprietary and confidential, including Mintz's mental impressions of the underlying (and other) cases.

118. Mintz justifiably relied on Dickenson's false promise, that the settlement conference was a mediation and that all mediation communications were confidential, because all attorneys and litigants in the State of Florida know and are expressly informed by every mediator in the State of Florida (as required by the Florida Supreme Court's Mediation Rules) that mediation communications are confidential. Mintz further relied on Defendant's false promises, feeling secure that there would be liability for disclosure of confidential mediation communications, pursuant to Fla.Stat. § 44.406.

119. Mintz's justifiable reliance on Dickenson's false promise was to Mintz's detriment because Mintz did in fact reveal certain confidential information to Dickenson in the mediation of the underlying case that would otherwise be privileged work product and proprietary, including Mintz's mental impressions of the underlying (and other) cases.

120. As a direct and proximate result of Mintz's detrimental reliance on Dickenson's misrepresentation, Mintz has suffered, and continues to suffer, damages from the dissemination

of the confidential mediation communications by Dickenson, including but not limited to the lost opportunity to have Mintz's attorney's fee claim in the underlying action, litigated and decided without improper evidence and to not have Mintz's confidential mediation communications and work product and proprietary settlement information published in the federal and state court public files.

121. Although punitive damages are not being claimed at this time, Mintz will be amending by interlineation to include a claim for punitive damages after the filing of the necessary motion, pursuant to Fla.Stat. § 768.72.

WHEREFORE, Plaintiff demands judgment against Dickenson for its damages as pled herein, plus costs and prejudgment interest.

DEMAND FOR JURY TRIAL

122. Plaintiff hereby demands a trial by jury of all issues so triable as a matter of right.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically through the Florida Courts E-Filing Portal on April 4, 2017, to:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:15-cv-21951

DAPHNE QUERY,

Plaintiff,

v.

LEXINGTON INSURANCE COMPANY,

Defendant.

NOTICE OF MEDIATION

PLEASE TAKE NOTICE that the parties to this action will participate in Mediation, which will take place on **June 13, 2016 at 9:30 a.m.**, with the Honorable Judge Norman Gerstein. The Mediation Conference will take place at the Offices of Veritext, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2250, Miami, Florida 33133.

COZEN O'CONNOR

By: 

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*Attorneys for Defendant, Lexington Insurance
Company*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been served by Electronic Mail and U.S. Mail this 9th day of June, 2016 to: All Counsel listed on the Service List below.


John David Dickenson

SERVICE LIST

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Mediation in Florida

I'm going to Mediation, Now What?

PLEASE NOTE:

1. This document is for educational and informational purposes only; it is not intended to replace the need for independent legal advice.
2. There is a **GLOSSARY** at the end of this document which is designed to assist the reader.
 - What is mediation?
 - What happens if I don't come to any agreement in mediation?
 - What are some advantages to mediation?
 - What is a mediator?
 - What happens in mediation?
 - Tips for how to prepare for mediation
 - Frequently Asked Questions (FAQs) and helpful links.
 - Glossary

What is mediation?



Mediation is a way for people who are having a dispute to talk about their issues and concerns and to make decisions about the dispute with the help of another person (called a mediator). A mediator is not allowed to decide who is right or wrong or to tell you how to resolve your dispute. In mediation, you can try to find solutions that make sense to you and the other person in the dispute to resolve some or all of your concerns.

While the goal is to try to work something out, you may decide it would be better for you not to come to an agreement. Sometimes emotions may be driving the dispute which can make talking to the person or party with whom you are in a dispute difficult. A mediator can assist you in easing the way for communication. The mediator is there as a neutral person to help you focus on solving your dispute; however, the mediator is prohibited from providing therapy, counseling or legal advice.

What happens if I don't come to any agreement in mediation?

Mediation is used by the courts; additionally there are state and local agencies as well as individuals and corporations which use mediation. When it is used by the court, it is called a "court-ordered mediation." If you are court ordered to mediation and you are unable to settle your differences, you will go back to court and the judge (or jury) will make a decision for you.

What are some advantages to mediation?

1. Mediation provides an opportunity to talk with someone who is impartial.
2. The issues in your dispute are not decided by someone else (self-determination).
3. What you say in mediation is confidential.
4. The mediator can help you overcome obstacles to communication with the other person or party in your dispute.
5. Mediation agreements are enforceable.
6. A mediated agreement allows you and the other person or party to reach flexible solutions to your dispute.
7. Mediation is not a trial nor an arbitration.
8. Mediation can save time and costs.
9. You know what you have agreed to in mediation instead of gambling with what the judge or jury may decide if you go to court.
10. Mediation is an opportunity to gain a greater understanding about why the dispute arose.

1. ***Mediation provides an opportunity to talk with someone who is impartial:***
2. ***The issues in your dispute are not decided by someone else (self-determination):***

In mediation, you are the “decision maker.” The mediator helps you discuss your concerns, but cannot make decisions for you.

3. ***What you say in mediation is confidential:***

Unlike trials and hearings, which are held in public courtrooms, mediations are private and, with a few exceptions, confidential. If your mediation is court-ordered or conducted by a certified mediator, there are laws and rules which require confidentiality. (See the *Mediation Confidentiality and Privilege Act*, sections 44.401 – 44.406, Florida Statutes). The Act always applies if the mediation is court-ordered, but the act will also apply in a non-court ordered mediation if either a) the parties agree it will apply or b) it is mediated by a certified mediator. Although not required, sometimes the mediator may ask the parties to state in writing that they will keep everything confidential. The goal is to allow you and anyone at mediation and their lawyer, if any, to talk about legal and non-legal issues without fear of others (including the judge) hearing about it. While most things said during mediation will be confidential, there are some exceptions. (Three main examples of these exceptions are child abuse, elder/vulnerable adult abuse, or anyone saying that they are committing or planning a crime. If you are interested in all the exceptions, see section 44.405(4)(a)(1) – (6), Florida Statutes. A signed mediated settlement agreement is not confidential unless the parties agree it will be confidential and the law allows the agreement to be confidential. Instead, the agreement may – and in some cases MUST – be put in a court file.

4. ***The mediator can help you overcome obstacles to communication with the other person or party in your dispute:***

Even if you have already tried to talk it out or negotiate with the other or party, a mediator can help you and the other party listen to each other and keep you focused. A mediator is there to help both sides communicate and explore possible solutions. If you and the other party get stuck, the mediator can sometimes help restart the conversation in a new way and help everyone take another step forward.

5. *Mediation agreements are enforceable:*

If you reach an agreement in mediation, that agreement must be put into writing and signed by the parties. The written agreement becomes a legally binding document (contract), which is enforceable by the court.

6. *A mediated agreement allows you and the other person or party to reach flexible solutions to your dispute:*

Mediation provides you with an opportunity to be creative with your solutions. If both sides agree, you can reach a settlement agreement specific to your individual needs. Mediation is different from litigation (a trial), where the judge or jury makes a final decision. With mediation, both sides can “win,” this is called a “win-win” situation.

7. *Mediation is not a trial nor an arbitration:*

Mediation is neither a trial nor an arbitration. In a trial, the parties present evidence and argument so a judge or jury decides the outcome of the dispute. Likewise, in arbitration, the parties present evidence and arguments so an arbitrator or panel of arbitrators decides the outcome of a dispute. In mediation, the mediator assists the parties as they talk about their dispute to help them find and explore mutually acceptable resolutions of their dispute. If you reach an agreement at mediation, you do not have to go to trial or arbitration.

8. *Mediation can save time and costs:*

Since mediation is a discussion between the parties, it can be much quicker than the formal trial process. Thus, it may also cost less than going to court - in both dollars and stress.

9. *You know what you have agreed to in mediation instead of gambling with what the judge or jury may decide if you go to court:*

If you resolve the dispute in mediation, you are not gambling on what the judge or jury might decide. In a trial, the final decision will be made by the judge or the jury (if there is a jury). It is uncertain what decision will be made at trial, but you will be bound by that decision whether you agree with or like the outcome of the trial. At mediation, the parties make the decisions.

10. *Mediation is an opportunity to gain a greater understanding about why the dispute arose:*

In mediation you are talking with each other, the mediator, and your attorney if you bring one. This interaction promotes a better understanding of the actions that lead to the conflict. Sometimes when the parties understand the “why” of the other person’s actions, it helps create a desire to resolve the dispute.

What is a mediator?

A mediator helps you talk with the party with whom you are having a dispute. The mediator does not make decisions for you. The mediator is a neutral and impartial *guide* to help you come up with possible solutions, stay on track, and clarify areas of agreement and disagreement. The mediator may help you and the other party see the conflict from each other side’s point of view.

Many kinds of people can be mediators: mental health or business professionals; attorneys; educators; and others. To become certified by the Florida Supreme Court, a mediator must meet many requirements. There are ethical standards for mediators adopted by the Florida Supreme Court. See the Standards of Professional Conduct in Part II of the Florida Rules for Certified & Court-Appointed Mediators.

A mediator is not there to provide therapy, counseling, business or legal advice. While mediation is a good place to recognize the emotions that may be driving the dispute, the mediator is there as a neutral to help you focus on resolving your dispute.

What happens in mediation?

Court-ordered mediation must begin with an introduction by the mediator explaining the process and the role of the mediator. Among other things, the mediator should explain that the parties make the decisions, not the mediator. The mediator's introduction is usually followed by an opportunity for you and the other party to describe your concerns. If your lawyer is with you at mediation, these opening remarks may be made by you, your lawyer, or both of you. After these initial procedures, how the mediation is conducted varies. The mediator usually will meet with both parties together to discuss the issues to help you work out your differences. The mediator may also meet with each party privately. This separate meeting is called a caucus. Generally, unless you give the mediator permission to repeat what you say in caucus, the mediator is prohibited from sharing what is discussed.

If you are represented by a lawyer, you and your lawyer will decide how the two of you will interact during the mediation. Some lawyers instruct their clients not to talk during mediation. If this is your decision with your lawyer it is fine; however, it is important for you to know that you are allowed to speak to the mediator at any time.

Eventually, the mediation will end in one of three ways, either: 1) the parties reach an agreement as to some or all issues - all parties (and their lawyers if present) must sign the agreement; 2) the mediator declares an impasse (because you, the other party, or both are unwilling to continue discussing resolution); or 3) the mediator, with the parties' consent, continues the mediation session by adjourning for the day. If the mediator declares an impasse as to some or all issues, then you and the other party will have to go back to court to have the judge or jury (if there is one) decide your case.

Tips on How to Prepare for a Mediation

Before you attend a mediation, there are a few things you can do to help prepare yourself and to help make the mediation more beneficial to you.

1. Get legal advice:

Because a mediator cannot give any legal advice to any parties, if you are not currently represented by an attorney but you have legal questions about your case (including what your case may be worth or what to accept as a "good" settlement), you should contact an attorney before the mediation, so you may make an informed decision about settling your case. If you cannot afford one, Legal Aid or The Florida Bar may have a program to assist you.

2. Get organized:

Go over all of the information that you have and organize it. It may be helpful to list events in the order in which they occurred. Gather any documents about your issue and put them in a folder to bring with you to the mediation. If you have an attorney, talk to your attorney about your case and mediation. Your attorney may be able to provide you with even more information on what to do during the mediation

3. ***Come prepared:***

Arrive at the mediation on time. Be prepared to talk to the other party in the dispute. Even if you have had problems talking to the other party on your own, the mediator is there to help with communication. Be aware of the security regulations in the building where your mediation is to take place.

4. ***Understand the dispute:***

Get the issues straight in your head. If it helps, write the issues down. Think about which issues are the most important to you as well as which issues are least important. In addition, think about what may be most and least important to the other person or party.

5. ***Set goals:***

Think about what you really need to resolve the case or dispute. Set realistic goals to guide you in your decision making, but be flexible because you may get new information at the mediation that could change your mind.

6. ***Get to the mediation on time:***

It is important that you arrive at your mediation on time. There are things you should consider in order to be on time - one item is parking. At many buildings, it is difficult to park. Find out in advance about what parking is available and the cost. You may have to pay fees prior to appearing at the mediation or in court. Arrive in enough time to pay your fees.

7. ***Arrange for childcare:***

If you have children who must be cared for, you should arrange for a babysitter. Often courts and other mediation meeting places do not have anyone to care for children and children are generally not allowed in a mediation.

Frequently Asked Questions (FAQs) and Helpful Links

1. Where can I get more information?
2. Do I have to have an attorney at mediation?
3. My friend/relative is a mediator; may he/she mediate my case?
4. May I bring a friend or relative with me to mediation?
5. May I talk to other people about what was said in the mediation?
6. What if we reach agreement at mediation?
7. What if we can't agree on anything at mediation?
8. The other party has selected the mediator – do I have to agree?
9. How much does it cost to go to mediation?

10. How long does a mediation last?
11. How do I select a mediator?
12. How do I file a grievance against a mediator?

1. Where can I get more information?

More information is available on this website. If you choose to get more information about mediation from the internet, please be advised that other states have different rules and only the Florida rules apply to mediation when you are mediating in Florida courts.

2. Do I have to have an attorney at mediation?

You do not have to have an attorney at mediation. However, it may be helpful to consult an attorney prior to going to mediation or to have an attorney with you.

3. My friend/relative is a mediator; may he/she mediate my case?

Whether someone may mediate for you depends on the connection that person has to either the case or the people involved in the mediation. Because a mediator must be both neutral and impartial, the mediator should not have any close connection to anyone in the dispute or anyone participating in the mediation. If the mediator does have such a close personal or business connection, (examples: parent, employee, landlord) the mediator may not mediate that dispute. If the connection is not close, then the mediator must disclose the connection. If you recognize any connection or relationship to the mediator, you must disclose the connection as soon as you are aware of the connection. Once the connection is disclosed, if all parties agree, the mediator may serve.

4. May I bring a friend or relative with me to mediation?

Non-parties (examples are: friends, relatives, advisers.) may attend the mediation ONLY if all parties agree. If all parties do not agree, non-parties may not attend the mediation. Therefore, it is best to ask the mediator about bringing someone with you before you go to the mediation. Anyone who attends a mediation is bound by confidentiality. See "What are some advantages to mediation?"

5. May I talk to other people about what was said in the mediation?

Generally, the rule is that people who attend a mediation may only discuss what is said in a mediation with others who attend the mediation or their attorney.

6. What if we reach agreement at mediation?

At mediation you can resolve all of your issues, some of your issues, or none of your issues. If a full or partial agreement is reached, all resolved issues must be written down and all parties in the dispute and their attorneys (if appearing at the mediation) must sign. If, there is only a partial agreement that means there are still issues to be resolved by the court. Those issues will be addressed in a trial unless they are settled after the mediation but before the trial begins.

7. What if we can't agree on anything at mediation?

If you do not reach an agreement at your court-ordered mediation, the mediator must report to

the court the fact that no agreement was reached. The confidentiality rules still apply. Even if you do not reach an agreement during the mediation, you may continue to try to settle your case after mediation. If you settle your case after mediation but before trial, contact the court to ask what procedures you need to follow.

8. The other party has selected the mediator – do I have to agree?

The parties should work together to select a mediator. If you cannot agree on the selection of a mediator, the judge will select a Florida Supreme Court certified mediator for you. If you object to the mediator requested by the other party or appointed by the court, there are procedures to deal with your objection. If the parties cannot agree, the court will make the final decision.

Please note: in some cases, you are not able to select your mediator. For example, if you are using a court program, such as in small claims and family court, the mediator may be selected for you by the court or the court program.

9. How much does it cost to go to mediation?

The cost of mediation depends on many factors. In some cases (example: small claims) the court provides mediators for free. In family cases, the amount charged depends on whether the court program provides the mediator or the parties are selecting their own mediator. If the program provides the mediator, the amount charged depends on the parties' combined or joint income. [See section 44.108(2), Florida Statutes]. Many circuits provide dependency mediation services at no charge to the parents. Check with the mediation program in your circuit to see if such services are available. Parties who select private mediators should expect to pay market rates. The ethical standards for mediators require that the mediator provide a written explanation of any fees and costs prior to the mediation. The mediator may have minimum fees and charge for travel time, postponements, cancellations, or other expenses. (See rule 10.380, Florida Rules for Certified and Court-Appointed mediators). If the parties do not select a mediator, the court will select a mediator and will set the fees the mediator may charge.

10. How long does a mediation last?

The length of a mediation will depend on many factors. Mediation may range from a half hour to a day or several days, depending on the complexity of the case or number of parties in the dispute.

11. How do I select a mediator?

In cases where the mediator is not appointed by the judge, when choosing a mediator, you may wish to consider any number of factors, including the mediator's background, training, and experience with mediation or with your type of case. You may also wish to consider the fees the mediator proposes to charge. See also Question 9. above.

The Mediator Database of all mediators certified by the Florida Supreme Court can be found on this webpage. [Click here to go to the database](#). This may help you find a mediator in your area; however, it is not the only way to find a mediator. If you have a lawyer, the lawyer may know many mediators; you can also ask friends or trusted colleagues; or you can visit the websites of statewide organizations.

12. How do I file a grievance against a mediator?

If you believe that a mediator has violated the ethical standards for mediators, you may file a grievance with the Dispute Resolution Center.

Glossary

PLEASE NOTE: These definitions are provided to assist the reader in understanding the terms used in this document. They are not “legal” definitions; rather, the terms are explained in plain English to attempt to ensure the greatest level of understanding.

- **Caucus**

A private meeting at a mediation between the mediator and one side. “Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.” [See rule 10.360(b), Florida Rules for Certified and Court-Appointed Mediators].

- **Florida Supreme Court Certified mediators**

In Florida, individuals who have completed a Florida Supreme Court certified training program for mediation and satisfied other requirements may designate themselves as “Florida Supreme Court certified.” As of October 2014, there are five certification areas: county; circuit; family; dependency; and appellate.

- **Confidentiality**

Keeping discussions and information private. With only a few exceptions, mediations are confidential. Unless one of the exceptions applies, you may only discuss what happened or was said at mediation with your attorney, another person who attended the mediation, or that person’s attorney.

- **Impartiality**

Not showing any favoritism or prejudice. A mediator must remain impartial at all times and must not show a preference for one party or another.

Other terms you may encounter:

- **Defendant/Respondent**

The person being sued. Depending on which court you are in, these terms may differ.

- **Guardian ad Litem**

A specially trained person appointed by the court to represent the interests of a minor child or incompetent adult party. The guardian acts on the child’s or adult’s behalf, making sure their needs are considered.

- **Judgment**

A final order entered by a judge at the end of a lawsuit. Frequently, a judgment will determine the amount of money owed by one person to another, but a judgment may also include other items. A judgment is usually not confidential and may be obtained from the court records. A judgment is enforceable by the court.

- **Plaintiff/Petitioner/Claimant**

The person who is suing. Depending on which court you are in, these terms may differ.

- **Pro Se**

A person who does not have a lawyer and is representing themselves.



Staff/Board /Committees

The Florida Dispute Resolution Center (DRC) was established in 1986 by Supreme Court of Florida Chief Justice Joseph Boyd and FSU College of Law Dean Talbot "Sandy" D'Alemberte as the first statewide center for education, training and research in the field of alternative dispute resolution (ADR). The DRC provides staff assistance to four Supreme Court of Florida mediation boards and committees; certifies mediators and mediation training programs; sponsors an annual conference for mediators and arbitrators; publishes a newsletter and an annual Compendium; provides basic and advanced county mediation training to volunteers; and assists the local court systems throughout Florida as needed.

Supreme Court Committee on ADR Rules and Policy

The Supreme Court Committee on ADR Rules and Policy was created in 2003 as a successor joint committee of previously separate rules and policy committees.

The committee provides the Supreme Court with recommendations relating to: all aspects of ADR policy and rules, legislation, model ADR practices, mediator certification and renewal requirements including continuing mediator education, and mediation training program standards and requirements.

Mediator Qualifications Board

The Mediator Qualifications Board was appointed in 1992 as the grievance board under the Florida Rules for Certified and Court-Appointed Mediators.

The Board is comprised of 51 members; 17 members each from the three regions of Florida. The members include judges, county mediators, family mediators, circuit mediators, dependency mediators and attorneys who meet in complaint committees when grievances are filed against mediators.

Mediator Ethics Advisory Committee

The Mediator Ethics Advisory Committee was appointed in 1994. The nine member panel issues advisory ethics opinions for mediators. For the benefit of all mediators, the opinions are printed in the DRC's newsletter and are available on the Court's web page.

Mediation Training Review Board

The Mediation Training Review Board was appointed in 1997 to consider complaints against certified mediation training programs.

The members include judges, and county, family, circuit and dependency mediators who meet in complaint committees and hearing panels when grievances are filed against certified mediation

training programs.

The DRC is staffed by:

Susan C. Marvin, J.D.

Acting Chief of Alternative Dispute Resolution

Kimberly Kosch

Senior Court Operations Consultant

Dawn Burlison

Senior Court Analyst I

Sherry Waites

Administrative Assistant III

Ramon Waters

Administrative Assistant III

Kristina Svec

OPS Administrative Assistant I

Jessica Baker

OPS Administrative Assistant I

Contact the DRC at:

Dispute Resolution Center

Supreme Court Building

500 S. Duval Street

Tallahassee, Florida 32399

Phone: (850) 921-2910

Fax: (850) 922-9290

Email: DRCmail@flcourts.org