

## A NEW CHAPTER IN MULTNOMAH COUNTY MEDIATION

By: Judge Kristena A. LaMar, Circuit Court Judge

Consider the following time line:

1977: A group of eight professionals—4 lawyers and 4 mental health practitioners—formed the Family Mediation Center, whose goal it was to co-mediate custody and visitation (now parenting time) disputes. The Oregon State Bar forced cessation of the activity and the professional association, since mediation was a violation of the Rules of Professional Responsibility. [Some of us forged onward; Prof. Jay Folberg spearheaded an effort resulting in the Oregon Supreme Court's adoption of a rule permitting attorneys to mediate, whose 'skeleton' is now found in Oregon Rules of Professional Conduct §2.4.]

1987: The Multnomah County Circuit Court formed a Dispute Resolution Department, and one judge's sole assignment was to host judicial settlement conferences and oversee the court's Mandatory Arbitration program.

1997 (or thereabout): The Chief Justice of the Oregon Supreme Court authorized a waiver of the Code of Judicial Ethics, and appointed a liaison between the Judicial Branch and the Oregon Dispute Resolution Commission, an Executive Branch agency.

2007: The Presiding Judge of the Multnomah County Circuit Court signed an order creating the Mediation Commission, chaired by your author, and including members Judges Judith Matarazzo, (vice-chair), Adrienne Nelson and Christopher Marshall, Janice Ashe, (Director, Family Court Services), Sharon Williams, Josh Kadish, Alan McCollom and Sue McFadden (a volunteer mediator for the Small Claims and F.E.D. mediation program), staffed by Mediation Coordinators Jacqueline Abel and Judith Chambliss.

One might ask why we need a Mediation Commission. The answer is that Multnomah County wishes to comply with the requirements of Chief Justice Order (CJO) 05-028 signed on August 1, 2005. This is the rule which defines the requirements for designation as a court-connected mediator: one who has the requisite training and experience to be so designated. The rule is at

[http://www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/\\$File/05cER001sh.pdf](http://www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/$File/05cER001sh.pdf)

These requirements were developed by the Oregon Dispute Resolution Commission (now defunct), first became a part of the Uniform Trial Court Rules, and are now in a format changes to which would be less cumbersome than the prior iterations.

Since 1977, the number of persons statewide holding themselves out as mediators has ballooned. In Multnomah County, for almost two decades, attorneys who qualified as arbitrators have been able to designate themselves as mediators by checking the appropriate box on the arbitrator application. Undoubtedly, many of those arbitrators were proficient as mediators, but the court's dissemination of them as mediators was undoubtedly not in compliance with the CJO, since no qualifications were scrutinized nor verified. Other organizations have lists of mediators, but no group (to this author's knowledge) has either a mechanism or a standard to evaluate their qualifications.

The Mediation Commission has as its charge (1) to design application forms for qualified mediators, (2) design rules to evaluate, if necessary, qualifications of applicants, and (3) recommend to the Presiding Judge applicants who have met the requirements, in order that they be listed on the court's website and other repositories available to the bar and the public.

Mediators will be divided into two general groups: civil and domestic relations mediators. Domestic relations mediators are subdivided into two sub-categories: custody and

parenting mediators, and financial mediators. Each of these types of mediators have different education, training and experience requirements, although there are overlapping training curricula. Unlike court-connected arbitrators, mediators under the CJO are not required to be attorneys.

Who will utilize this list? Staff of the Department of Family Services are often asked for a referral to mediators to handle financial disputes, an area not handled by those mediators. Attorneys may wish to refer clients to qualified mediators, particularly if the area of law is not one with which counsel is familiar. And more and more, litigants are seeking mediation, often in advance of commencement of litigation, to have the controversy resolved prior to or in lieu of filing a lawsuit.

The Mediation Commission has the goal of having application forms on line at the Circuit Court's website (accessed through [www.ojd.state.or.us](http://www.ojd.state.or.us)) by January 1, 2008. Input to any of the Commissioners is welcome. The next meeting of the Commission is at noon on November 1, 2007, in Room 1520, The Portland Building, 1120 SW. Fifth Avenue, Portland.