

## ***Mock Mediation Workshop: Bridging Theory and Practice***

2024 FBA Annual Meeting, Kansas City, MO

### *Information for Participants*

#### **Overview:**

Using a comprehensive mediation scenario, the workshop will provide a forum for understanding current challenges and innovative solutions in the mediation process that will benefit all levels of practice.

Panelists: The Honorable Mark A. Beatty, Magistrate Judge, U.S. District Court, Southern District of Illinois; Jo Colbert Stanley, FBA ADR Section Chair and owner, Stanley Legal Services, LLC; Amy Coopman, Owner of Bridge Mediation, MO and KS.

Moderator: Laurel Stevenson, Director of Mediation and Assessment Program, United States District Court, Western District of Missouri.

#### **Hypothetical: Employment Mediation**

Participants (in addition to mediator):

Zella - African American female plaintiff

Cindy – Zella’s attorney

TCORP – Defendant Employer

Tom – Zella’s direct supervisor, a white male

Jay – lawyer for TCORP and Tom

Bob – adjuster for TCORP’s carrier

Plaintiff Zella, an African American female with extensive experience in HR, relocated in 2019 from Philadelphia, Pennsylvania to take a position in Lincoln, Nebraska with TCORP. Zella’s prior employers included substantially diverse workforces. TCORP has 1,000 employees, 80% of whom are white males over the age of 45, including Zella’s direct supervisor, Tom.

TCORP paid Zella’s relocation expenses of \$12,000. Though Zella was an at-will employee, her relocation package specified that she would be required to repay TCORP if she left employment within 12 months. Within three months of Zella’s employment at TCORP, Tom gave her a performance review in which he stated in part, “Zella is outspoken and pushy. She needs to do more to fit in to our culture. She was hired to help us with diversity, not

upend TCORP.” Zella provided a detailed response but did not make any mention of race or sex discrimination.

The next six months did not go well, and Zella was terminated for “poor performance.” Zella’s Charge of Discrimination stated in part that she was subjected to a hostile work environment and wrongly terminated due to race but did not allege sex discrimination. After receiving a right to sue letter, Zella filed a Complaint against TCORP and Tom for wrongful termination, alleging that she was subjected to a hostile work environment and retaliated against because of her race. TCORP and Tom had the same lawyer, Jay, who filed an answer denying the claims and stating as an affirmative defense only that Zella failed to state a claim upon which relief could be granted. Bob, adjuster for TCORP’s insurance carrier, hired Jay to represent both TCORP and Tom but said he did not believe the insurance company would pay anything to resolve the case and Jay should plan to take the case all the way through trial.

The mediation started with Zella demanding \$1.2 million. Defendants responded with an initial offer of \$500.

During mediation, Zella made clear that she was terminated because she was a successful African American woman and the “old white guys didn’t know what to do with me.” Toward the end of the mediation, she gave the mediator a copy of an e-mail Tom had sent to a vendor two days before she started at TCORP which stated in part, “I know you can feel my pain. It is bad enough that we have women taking our jobs, and now we have a black woman to deal with.” Zella had not previously advised Cindy of the e-mail, Tom had not told Jay or TCORP about the e-mail, and Jay and Bob were both unaware of the existence of the e-mail.

By the time mediation was concluding, the parties had made significant progress and agreed to several non-monetary terms. As they were getting ready to conclude, Bob told the mediator that Zella had to repay relocation expense for the carrier to settle. As they were getting ready to conclude, Cindy told the mediator that Zella’s termination must be classified as a resignation for settlement to be reached. Bob started to walk away, telling everyone the whole situation was a waste of time.

Some questions to consider, both as part of the workshop format and after the workshop:

- 1) What can and/or should the mediator do, considering the comments by Jay and Bob?
- 2) What obligations might the mediator and/or Zella’s attorney have regarding the e-mail presented by Zella toward the end of the mediation?
- 3) Does Jay have any practical and/or ethical issues?

- 4) Are there issues with the statement made by Zella's attorney regarding reclassification?
  
- 5) What other questions does the hypothetical present for mediation participants?

**Presenter and Moderator bios:**

**Judge Mark A. Beatty** was sworn in as a United States Magistrate Judge on January 2, 2019. He is a graduate of the University of Missouri and the University of Dayton School of Law. He previously worked as an Assistant State's Attorney in Madison County, Illinois and served as a law clerk to U.S. District Judge G. Patrick Murphy in the Southern District of Illinois. Judge Beatty then entered private practice where he focused on civil litigation and represented businesses of all sizes as well as individuals at all stages of litigation, including through trial. In 2021, Judge Beatty along with Chief Judge Rosenstengel worked to develop and implement the Southern District of Illinois' first formal mediation program. Since its implementation, the Court has seen measurable benefits of early resolution and continues to look for ways to broaden the reach of its program. For example, Judge Beatty has worked closely with various stakeholders to expand opportunities for mediation in Section 1983 cases involving incarcerated persons (which comprise nearly half of the Court's docket) and has seen an increase in the willingness to discuss resolution. Judge Beatty continues to conduct settlement conferences on a regular basis and works closely with the Court's ADR Coordinator to further develop ADR in the Court.

**Jo Colbert Stanley** is an independent neutral and legal consultant, a Florida Supreme Court qualified arbitrator and certified mediator, and holds a Diploma in International Maritime Arbitration from the Chartered Institute of Arbitrators where she is a Fellow. Jo is the Conflict Facilitation Ombuds at the law firm of Colodny Fass where she was also recently appointed Director of Maritime Affairs.

Jo also serves as a Public Arbitrator, hearing financial services-related matters for FINRA, and is a Registered Mediator for Florida's Department of Financial Services where she handles a heavy case load of property insurance disputes. During her 20-plus years as a litigator in private practice, Jo focused on commercial litigation, employment, and insurance law. In that continued capacity, Jo offers legal consultant services and is Of Counsel at Colodny Fass, a leading insurance defense firm in Florida, working with their litigation and employment departments. Rostered on the International Yacht Arbitration Council, Jo was recently appointed by the Broward County Government Commissioners to serve on the county's Marine Advisory Committee. In 2023, Jo was also honored by being selected as an Associate of the College of Commercial Arbitrators.

Jo is active in numerous national and local volunteer Bar associations, currently serving on the Admiralty Law Committee of The Florida Bar and as Chair of the Broward County Bar Association's Admiralty/Maritime Law Section. Jo is also heading up the FBA's Admiralty Law Section's Diversity & Inclusion Committee, and is the ADR Section Chair for the FBA.

Jo is currently working on her Ph.D. in Conflict Analysis and Resolution at Nova Southeastern University in Florida. In her "spare" time, Jo co-owns and operates Stanley Yacht Services (a yacht management and maintenance company based in Fort Lauderdale). She also endlessly practices her golf swing, to no avail.

**Amy Coopman** has nearly thirty years of state and federal litigation and dispute resolution experience. She has a track record of national leadership on employment law issues. She developed a wide range of experience on the defense and insurance side of business and personal injury matters while working for 15 years at a prominent Kansas City law firm that represented individuals, businesses and insurance companies in complex litigation throughout the United States.

Amy is involved in multiple boards and organizations, including the The M.R. & Evelyn Hudson Foundation, The Kansas City Metropolitan Bar Foundation, and the Association of Missouri Mediators. She received her law degree in 1995 from the University of Kansas School of Law. She is approved as a mediator in Missouri and Kansas, is an approved FINRA Arbitrator, and is a member of the National Academy of Distinguished Neutrals.

**Laurel Stevenson** is the Editor of *The Resolver*, a publication of the FBA's ADR Section; Co-Chair of the ABA's Court ADR Committee; and the Director of the Mediation and Assessment Program (MAP) for the United States District Court, Western District of Missouri. In her role as MAP Director, Laurel oversees approximately 1,000 civil cases annually and serves as a mediator and facilitator. Laurel has conducted hundreds of mediations, including more than 300 via Zoom. She has resolved a wide variety of cases, including class actions, FLSA, employment, civil rights, wrongful death, transportation, medical malpractice, and commercial disputes. Several resolutions have resulted in institutional policy changes.

Prior to becoming the MAP Director, Laurel tried more than eighty jury trials to verdict, served as appellate counsel, was lead trial counsel in numerous bench trials, and taught trial practice in Missouri and Texas. She served more than a decade as a Facilitator for the Missouri Bar Complaint Resolution Program and the Fee Dispute Resolution Program. She also served as a mediator, arbitrator, and facilitator during her last twelve years in private practice.

Outside of work, Laurel writes under her pen name, Alysén Bayles. She teaches reading and literacy workshops and has a weekly blog and newsletter, *Winston Weekly*. She has published three children's books and is working on additional children's books, a picture and poetry book, and novels.