O/a 12-3-87

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December 2, 1987

VIA FEDERAL EXPRESS

Mr. Sid J. White
Clerk,
The Supreme Court of Florida
Supreme Court Building
500 S. Duval Street
Tallahassee, FL 32301

Re: Proposed Rules Concerning Mediation and Arbitration

Dear Mr. White:

On behalf of the Orange County Bar Association and its Citizens Dispute Settlement Center, I write in regard to the proposed rules concerning court-ordered mediation and arbitration. We apologize for the informality of commenting in the form of this letter, but since we only became fully aware of the proposed rules a few days ago and learned only today that the oral argument on the proposed rules is scheduled for December 3, time does not permit a more formal submission. We would very much appreciate having our comments circulated to the Court. Seven copies of this letter are enclosed for that purpose.

In general we believe that the proposed rules provide a solid, initial framework within which the Florida court system can make substantial strides in promoting cost-effective resolution of disputes. We commend those involved in developing the proposed rules for the diligence with which they have undertaken their work.

We are nonetheless deeply concerned with the adverse effect the proposed rules will have on our program. The Orange County Bar Association Citizens Dispute Settlement Center has been nationally recognized for its effectiveness and success. Indeed, our program has been recognized as a model program by

the American Bar Association and The Florida Bar. In large part, the current movement in Florida towards alternative dispute resolution through mediation and arbitration has its roots in the report on alternative dispute resolution submitted to the Court nearly ten years ago by the committee chaired by former Justice Hatchett, which noted that our program was at the forefront of what could be accomplished through alternative dispute resolution.

Our concern is focused on one aspect of the proposed rules. The proposed rules would require mediators to have substantial classroom training in mediation, without regard to the experience of the mediator outside of the classroom. Our program is dependent upon attorneys who volunteer their time without compensation. These attorneys simply are not going to take the time from their busy practices to receive classroom training in order to be considered competent to volunteer their time. We believe that appropriate experience requirements should be deemed the equivalent of receiving classroom training.

As a part of our Citizens Dispute Settlement Center, we have a program entitled Family Law Mediation. This program has been widely recognized for its success in resolving difficult domestic disputes, including child custody, visitation and support modification matters. The program has been effective with minimal judicial time being required, thereby alleviating much of the burden placed on our busy circuit courts. We believe our success is attributable to the qualifications of our domestic dispute mediators. All of them are lawyers with ten or more years of experience handling domestic matters as a substantial part of their practice. Many of our domestic dispute mediators were "drafted" to serve, not infrequently with the assistance of circuit judges knowledgeable of the capabilities of the individual practitioners. Many of our mediators have over twenty years of experience practicing almost exclusively in the domestic relations field. Because our domestic dispute mediators are generally perceived as among the most highly regarded domestic practitioners in the vicinity, our program has gained a high degree of credibility. Our success rate is high, and the agreements reached through mediation have proved to be enduring.

Under the proposed rules, none of our domestic dispute mediators would be deemed qualified. All would have to complete a minimum of 40 hours of approved mediation training. Our mediators are simply not going to take that time from their busy practices. We are fortunate that 48 of the most highly regarded family law practitioners in our area volunteer their time to help resolve difficult disputes. We can likely cajole a few of them into taking the training, but we need a full complement of mediators to keep our program successful. We believe that an attorney who has ten or more years of experience handling domestic matters and who is deemed qualified by the Chief Judge of the Circuit, is more likely to be successful as a family dispute mediator than many of those who would qualify under the proposed rules. An attorney handling domestic matters for that many years has had to develop the skills needed to find the common ground necessary for an enduring agreement to be reached, and to allow the parties to deal with the emotional issues inherent in such disputes. Being on the firing line for ten or more years, being the shoulder clients have cried on for that long a time, and having been the catalyst for settlement of cases for that many years is the real world training no classroom can provide. Our mediators may not be familiar with the jargon of mediation, but they do not need to be. They have the nearly instinctive appreciation for the dynamics of the disputes they are called upon to help resolve from having been enmeshed in such disputes day in and day out for a decade or more. Such attorneys do not need 40 hours in a classroom to be excellent mediators. Our program's success proves that. The thousands of hours of training they have received in the real world is more than a sufficient substitute.

We urge the Court to modify the proposed rules to recognize ten or more years of experience practicing law in the relevant areas to be sufficient to exempt an attorney from the requirement of 40 hours of classroom training to be eligible for certification as a mediator.

Perhaps in the future the Court will find it beneficial to require classroom training even for experienced attorneys. At this time, imposition of such a requirement will not be an advance in the field of alternative dispute resolution in Florida. Rather, such a requirement will be a setback which reduces the availability of dispute resolution alternatives. The circuit judges of the Ninth Judicial Circuit have increasingly found our program to be of great benefit, and

increasingly direct parties to our program. Under the proposed rules they will not be able to do so.

Respectfully yours,

Michael P. McMahon
Chairman,
Citizens Dispute Settlement
Center, Orange County Bar
Association

MPM:clw

Encls.

cc: David U. Strawn, Esq.