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January 26, 1988

FILED
SID J. WHITE
FEB 1 1988
CLERK, SUPREME COURT
By _____ Deputy Clerk

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

Dear Mr. White:

As a member and former chairman of the Civil Procedure Rules Committee of the Florida Bar, I have been following the progress of the arbitration mediation rules recently passed by the Court. I know that time was given for public response, but my understanding from a recent conversation with Justice Ehrlich is that the Court will still consider comments from the public with regard to these Rules. I would appreciate your forwarding this to the appropriate Justice.

In my experience as a medical malpractice lawyer in Palm Beach County, I have had occasion to utilize the mediation process. I find it very effective and helpful in most cases. The way the Rules are currently set up however, there is a serious flaw. The problem is that the current Rules do not provide that the case may be placed on a jury docket and remain on the docket during the time that mediation takes place. In my experience, major cases are not settled unless the company is aware that the potential for a jury trial is imminent. In Palm Beach County, the case is set for trial and remains on the docket despite the fact that mediation is ordered. Without that safeguard, I am convinced that insurance companies would tend to treat mediation as merely another way to delay litigation rather than dispose of it in an efficient manner.

I strongly suggest that the Rules be modified to include a sentence which makes it clear that an Order directing the parties to mediate or to participate in non-binding arbitration does not prevent any party from moving to set the cause for trial and is not grounds for striking a cause from the docket.

Respectfully submitted,

THEODORE BABBITT

TB/kas