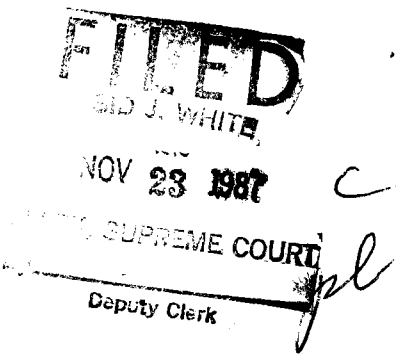
IN THE SUPREME COURT

OF THE STATE OF FLORIDA

CASE NO. 71,312



IN RE: Proposed Rules For Implementation Of Florida Statues Sections 44.301 - .306

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COMMENT BY THE STATE OF FLORIDA, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES ON PROPOSED MEDIATION AND ARBITRATION RULES

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COMMENT ON PROPOSED MEDIATION AND ARBITRATION RULES

The State of Florida, Department of Health and Rehabilitative Services, files this comment on the proposed mediation and arbitration rules for implementation of Sections 44.301 - .306, Florida Statutes.

The Department of Health and Rehabilitative Services is designated by statute as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act, 42 U.S.C. Section 1302, Section 409.2557, Fla.Stat. (1985). The Department seeks exclusion from mediation under proposed rule 1.710(b), and exclusion from arbitration under proposed rule 1.800(a) for all cases brought pursuant to Title IV-D. The reasons for the exclusions follow.

The Florida Legislature addressed the mediation of certain contested issues in family law matters pursuant to Section 61.183, Fla.Stat. (Supp. 1986). In setting forth those issues which the court may refer for mediation, the Legislature did not include child support related matters. It is a general principle of statutory construction that the mention of one thing implies the exclusion of another; expressio unius est exclusio alterius. Thayer v State, 335 So.2d 815 (Fla. 1976). Hence, where a statute enumerates the things on which it is to operate, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.

The Department is not stating that this Court is precluded from adopting the proposed rules without including an exclusion for child support matters because the Legislature did not include child support matters in Section 61.183. It is provided by statute that when a rule is adopted by the Supreme Court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision. Section 25.371, Fla.Stat. (1985).

However, the exclusion of any mention in Section 61.183 of mediation of child support related matters indicates the Florida Legislature's intent that such issues be resolved by the trier of fact and not by reference to a mediator. The proposed rules open the possibility that child support matters, including IV-D cases brought by the Department, will be included as issues which may be referred to mediation or arbitration.

The State of Florida, as the recipient of federal monies pursuant to the Title IV-D program, is required by federal law to enact procedures to expeditiously process IV-D cases through support enforcement masters. Florida's position with regard to this requirement was that it was presently expediting the process of IV-D cases through regular judicial processes. As a result, Florida sought an exemption from this requirement. However, Florida did not possess data which could be presented to the federal government demonstrating that Florida's court system

could expeditiously handle IV-D cases within federal time standards.

The Chief Justice of the Florida Supreme Court issued guidelines setting forth time standards within which child support cases were required to be processed. Based on these guidelines, Florida obtained a one-year exemption from the federal requirement that a state-wide mandatory support enforcement master system be implemented. The exemption began in October, 1986.

Pursuant to Chapter 86-220, Section 127, Laws of Florida, the Florida Supreme Court was to document and provide quarterly data on the court's compliance with the time standards previously set forth by the Chief Justice. Such data was to be provided to the federal government to demonstrate Florida's ability to process child support cases expeditiously through its court system without the need for a state-wide master system. The data compiled reflected Florida's ability to do so.

On the basis of the reports provided by the Supreme Court, Florida has requested an additional three-year exemption from the federal expedited process requirements. With this exemption, the proposed rules are unnecessary for IV-D cases.

If Florida cannot continue to expeditiously process child support cases through its court system, the Supreme Court has agreed to implement by rule a support enforcement master system

to meet federal IV-D requirements. See Chapter 86-220, Section 126, Laws of Florida. Such a system would be implemented if IV-D cases are not processed expeditiously.

Accordingly, pursuant to Chapter 86-220, Section 127, Laws of Florida, a system to meet federal IV-D requirements for handling the special area of IV-D cases is already to be provided by rule. Inclusion of IV-D cases in the proposed mediation and arbitration rules is not in accordance with the intent of Chapter 86-220 to meet federal IV-D requirements. Therefore, IV-D cases should be excluded from both the proposed mediation and arbitration rules.

If the exclusion of IV-D cases is not set forth in the proposed rules, funding problems regarding IV-D cases could arise for Florida which would otherwise not occur. The federal government funds a large portion of the State's IV-D program. Under the proposed rules, the possibility exists that Department program attorneys and child support enforcement personnel would be required by the trial court to participate in the mediation or arbitration process. Since neither process is a system meeting federal IV-D requirements, such participation by state IV-D personnel would not be funded by the federal government. Such participation would be considered a non-IV-D activity, and the costs incurred by Florida would be paid from the State's general revenue.

On the other hand, the support enforcement master program to be established and implemented, if state courts are unable to expeditiously process IV-D cases within federal IV-D requirements, would be eligible for federal funding.

Clearly, there would be a major impact upon Florida's IV-D program resulting from application of the proposed mediation and arbitration rules to IV-D cases. In order to ensure that Florida can continue to meet federal requirements relative to the administration of the IV-D program, the Department requests that IV-D cases be specifically excluded from the application of the proposed mediation and arbitration rules.

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