

15th JUDICIAL CIRCUIT

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By  
Deputy Clerk

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RESPONSE TO:

PROPOSED RULES FOR THE

IMPLEMENTATION OF

FLORIDA STATUTES § 44.301-.306

Dated: November 30, 1987

Committee's Proposed Recommendations:

RE: 1.760(b) Mediator Qualifications: Family Mediators

For certification by the Supreme Court, a mediator of family and dissolution of marriage issues must

- (1) have a Masters Degree in social work, mental health or psychological sciences; or be a physician certified to practice adult or child psychiatry; or be an attorney; and
- (2) hold a current license in Florida in a mental health field or be a member in good standing of The Florida Bar; and
- (3) have at least five years practice experience in the licensed professional field; and
- (4) have completed a minimum of 40 hours in a mediation training course certified by the Supreme Court; or have received a Masters Degree in family mediation from an accredited college or university; and
- (5) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3).

15th's Proposed Recommendations:

We propose a more flexible set of standards, such as:

1. Have a Master's Degree in social work, mental health, sociology, psychological sciences or allied fields; or be a physician certified to practice adult or child psychiatry; or be an attorney; and,
2. Have at least 4 years of experience in juvenile and family counseling, family law, family mediation, or in a related area; and,
3. Have completed a minimum of 40 hours in a mediation training course certified by the Supreme Court; or have received a Master's Degree in family mediation from an accredited college or university; and,
4. Have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3).

5. Desirable additional qualification: Hold a current Florida license in a mental health field or be a member in good standing of the Florida Bar.

#### 15th Circuit's Rationale for Amended Recommendation

PHILOSOPHICAL: Good family mediators do not always come exclusively from the educational fields specified by the committee. Further, there is no definitive research indicating the need for such exclusivity. The national standard generally accepted for educational background is "Master's Degree in a Behavioral Science or a law degree."

5 years experience is unnecessary for a beginning mediator. The general consensus among Human Resource professionals suggests that 3-5 years experience as "considerable"; 5-7 years as "extensive". 4 years would then appear adequate for a beginning Family Mediator, with more required for program supervisors.

Although licensing may appear to be an added benefit, our experience in interviewing for our Circuit's program is that it does not play a major role in staffing nor does it offer any guarantee on the candidate's performance.

FINANCIAL: From a very practical standpoint any person who fully meet the committee's proposed standards would also be more apt to draw higher salaries from the private sector than those offered by Court sponsored/County sponsored programs. Unless the Supreme Court is prepared to augment salaries throughout the state, Court Family Mediation programs could be adversely impacted by the narrow qualifications proposed.

#### NOTE:

Members of our Court Committee also asked for clarification as to whether these proposals apply to private mediators, or to Court related programs only.

#### Committee's Proposed Recommendation: 1.720(d) Counsel

The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel for each party may attend the mediation conference and shall at all times be permitted to privately communicate with their clients.

#### 15th's Proposed Recommendations

We propose a separation here for Family Mediation as opposed to Circuit and County level Civil mediation. We recommend this Rule (1.720(d)) add a second paragraph:

"As the nature of Family Mediation stresses resolution of

the issues by the family members, counsel may attend only at the express request of both parties."

We also recommend adding:

"Where Family Mediation is offered as a free service of the County or Circuit, that attending counsel shall waive their fees to clients for attendance at such mediation conferences."

We make the above additional suggestion under the assumption that County Commissioners will look unfavorably with the continuation of funding a Family Mediation program when that program becomes a source of both information and revenue for private attorneys.

15TH CIRCUIT RATIONALE: Family mediation has traditionally been for the purpose of allowing the PARTIES to resolve their differences. Because the nature of the relationship between the parties is normally quite different than in other civil suits, the process of resolution is different. Family mediators often spend considerable time exploring family dynamics (including whether a divorce is inevitable) with the couple; and those dynamics underlie negotiations on parental responsibility, property settlement and support.

We are keenly aware of attorney concerns that their clients not negotiate property/financial matters without adequate representation; and we encourage all mediation clients to utilize legal counsel. We are concerned, however, that the process of negotiation will change markedly if counsel are present throughout discussion of family matters. Family members will be less willing to be open and frank and/or to spend the time necessary to thoroughly explore the decisions to be made.

We see discussions being truncated as the "clock ticks" and parties and mediator alike are aware of mounting attorney's fees during full discussion of the issues involved. As we are all aware, judges have expressed concern about the diminution of marital estates by attorneys who benefit financially from extensive litigation and who may magnify hostility on issues that might be better compromised.

The proposed rules do speak to attorney concerns in 1.740: "In cases in which there are complex or substantial tax, financial or property issues, the court shall refer such issues to a lawyer mediator."

Committee's Proposed Recommendations: 1.740 Family Law Mediation

Every effort should be made to expedite mediation of parental responsibility issues. In cases in which there are complex or

substantial tax, financial or property issues, the court shall refer such issues to a lawyer mediator. The court may refer parental responsibility issues to a non-lawyer mediator in such cases.

15th Circuit's General Comments and Alternate Verbage:

We understand that the Florida Bar may present a revision limiting non-lawyer mediators to "custody issues".

It is our position that persons with the basic educational and experiential background will possess a comprehension level adequate to ascertain the information needed to negotiate routine divorce cases.

One does not need a complete legal education to understand the basis of child support, or the issues involved in settling "a marital home, two cars and some debts." By the same token, we would not expect a lawyer mediator to have an advanced degree in family systems theory to explore alternate ways to share time with a child.

The Family Mediator training proposed offers good basic training for both lawyers and non-lawyers; and inclusion of an exam would delineate between those who cannot grasp the information from the other discipline.

To retain the trial court's right to refer cases to the appropriate trained mediator, we suggest revision of the second sentence of 1.740 as follows:

"In cases in which there are complex or substantial tax, financial or property issues, the court may refer such issues to a lawyer mediator."