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The Honorable Parker Lee McDonald
Chief Justice, The Supreme Court of Florida
Supreme Court Building
Tallahassee, FL 32301

Dear Mr. Chief Justice:

As requested by the Court, the Mediation & Arbitration Rules Committee met in Orlando on Friday evening, December 19, and on Saturday, December 20. Our purpose was to review the previously proposed Rules in the light of comments and concerns which had been expressed to the Court, and to members of the Committee.

Members of the Committee had been provided with a summary of the concerns expressed. We had the full text of each document submitted to the Court regarding the Rules, should further, more detailed reference had been desired by a member.

Our first order of business was to agenda those items which any member of the Committee felt we should revisit. We had engaged in intense, thorough and detailed discussions during our previous meetings, and we did not feel that there were a large number of items which should be reconsidered or revised.

The balance of this letter will take up the changes which were made, stating briefly the reasons for each change.

Rule 1.700(b) was altered to provide that if an issue had been previously mediated or arbitrated "between the same parties," it would be grounds to dispense with further mediation or arbitration. Waiving mediation or arbitration remains the court's decision.

Rule 1.700(e) was modified to add a sentence which required that mediators and arbitrators disclose any fact which would be grounds for disqualification of a judge. It should be noted that Rule 1.780(b) specifically requires that mediators advise all parties of any fact or circumstance bearing on possible bias, prejudice or impartiality. It may be that the Court will wish to apply this standard to arbitrators as well. To do so would require modification of Rule 1.810, to add an additional subparagraph with language similar to that just mentioned.

Rule 1.710(a) was modified to provide that the mediator's report would only be filed with the Court "upon becoming binding on the parties . . . " This modification was made to avoid a possible hiatus which could be created by the previous language, which provided that the report would be submitted within "five days of completion of mediation." Upon analysis, we became aware that more than five days from completion of mediation might pass before a report became binding, and we did not believe that reports which had not yet been accepted by the parties, with finality, should be submitted to the Court.

Rule 1.720(d) was modified by adding language which made it clear that the presence of counsel is not required, and that mediation might proceed in the absence of counsel should the mediator wish to do so. This language is not intended to exclude counsel, but merely to provide that, should counsel not attend, the mediation should proceed.

Rule 1.720(f) was modified to add language making it possible for the presiding judge to appoint non-mediator specialists to assist a court-certified mediator. For example, a certified public accountant, not otherwise qualified to mediate in Circuit Court, could be appointed to assist a lawyer mediator in complex family law mediation.

Rule 1.730(a) was modified to require that the mediator should "immediately" report the lack of an agreement to the Court. Such a report would only be made when a mediator determined that there was little likelihood of settlement.

Rule 1.730(b) was modified to change the manner in which a report might become final, and the manner in which attorneys were given an opportunity to advise a client to accept or reject a mediated settlement. In addition to simplifying the rule, the Committee added in the next sentence after the two deleted sentences that the 10-day period would be measured from "service on counsel." The word "service" has a well-defined meaning within the Rules of Civil Procedure.

Rule 1.730(c) was modified to make it clear that the Court might disapprove a mediated settlement only when there was a

finding that it was not lawful, or was not within the jurisdiction of the Court to enforce, or was not in the best interest of all parties, including the interests of minor children, in situations in which the law required the judge to determine whether the settlement was in the best interests of some or all parties.

Rule 1.740 was modified to provide that in addition to lawyers, certified public accountants might act as mediators in complex family law matters.

Rule 1.760 was modified to broaden the training of county court mediators to a minimum of five mediation conferences conducted under observation by a court-certified mediator, and a minimum of three additional mediation conferences co-mediated with a court-certified mediator.

Rule 1.760(b) finds the Committee reducing the qualifications required for family mediators. The Rule would now permit those having a Masters Degree in Social Work, Mental Health, or Behavioral or Social Sciences who met the other qualifications, to mediate. The requirement of state licensing has been removed, except for attorneys and CPA's. CPA's and attorneys licensed to practice in any state were deemed qualified, upon meeting the other requirements of this Rule. Finally, the practice experience requirement was lowered to four years from five years, and, the practice experience need only be in the field of professional work for which the mediator qualified.

Rule 1.760(c)(1) was modified to read, "Be a former judge of a trial court who was a member of the bar in the state in which the judge presided." This modification was intended to make it possible for special jurisdiction judges from other states, now living in Florida, to be otherwise qualified to seek status as a certified mediator.

Rule 1.760(d)(2) which dealt with "grandfathering" certain practicing mediators, was expanded. The expansion was accomplished by addition of the following language, "Such mediators may continue to practice mediation in the field of prior practice after such period if during such period they

satisfactorily complete the requirements of such training program, including successful completion of a form of examination approved by the Florida Supreme Court." This language was intended to clarify the Committee's intention that those presently practicing mediation might be given a period of time, after an approved course and exam is made available, within which to take the course and exam, while continuing to practice mediation before the Courts.

In Rule 1.770, the requirement of "successful completion of an examination" was modified in recognition of the fact that the requirement could not be imposed until an approved form of examination existed. The Committee therefore suspended the requirement, until such time as the Court has approved a form of examination for mediators practicing before the county and circuit courts, and for family mediators.

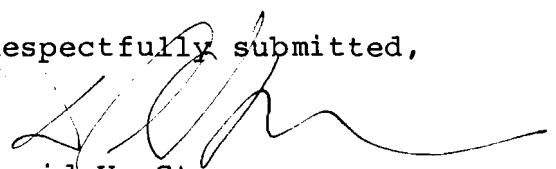
A new subsection, 1.770(d), was added to provide for yet another possible confusion. There are presently practicing mediators who have completed courses which may hereafter be approved by the Supreme Court. However, it is not reasonable to anticipate that the Court would go back into the curricula of these earlier courses to determine whether they were, at the earlier time, worthy of certification. To the Committee, a better solution seemed to be approval of a form of examination which would simply determine whether the mediator's knowledge of mediation was sufficient to satisfy the Court's standards for mediators matriculating from currently-approved, similar courses. This transitional rule provides an opportunity for practicing mediators simply to take the examination, and upon successful completion, have the course requirement waived.

Rule 1.780(b) has been discussed earlier. It now imposes an active duty on mediators to disclose facts related to their possible disqualification.

The Committee believes these changes should be made, and has provided both a "clean" draft incorporating these changes, and a "marked-up" draft of our earlier submission for the Court's consideration.

The Committee is concerned that the Court should continue to utilize an advisory committee on rules for mediation and arbitration, the qualifications of mediators and arbitrators, and the standards which should be applied to mediation and arbitration. Mediation and arbitration are very different from traditional adversary practice. The provision of mediation and arbitration as additional dispute resolution procedures for use by our Courts will require sensitive and dedicated oversight and guidance by knowledgeable people. The members of the Committee believe that it is in the best interest of the success of the implementation of these ideas that, for the first few years of the program at least, the Court maintain close supervisory control over development of this body of law. The Committee has accumulated considerable knowledge of the workings of successful programs, and is willing to continue in its service to the Court, should the Court wish to employ its members for this purpose.

Respectfully submitted,



David U. Strawn
Chairman, Mediation and
Arbitration Rules Committee

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