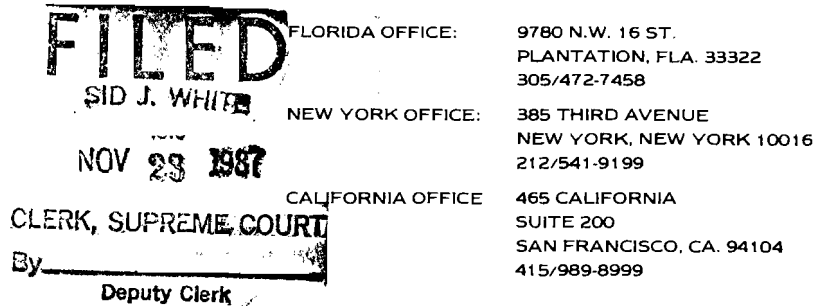


GERALDINE LEE WAXMAN, J.D.

AMERICAN BAR ASSOCIATION CERTIFIED  
FAMILY MEDIATOR



November 20, 1987

The Supreme Court of Florida  
Supreme Court Building  
Tallahassee, Florida 32301  
Attn: Chief Clerk: Mr. Sidney White

Re: Proposed Rules Florida Statutes Sections 44.301-.306  
November 23, 1987 deadline for letters in opposition  
and December 3 oral argument

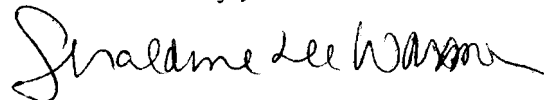
Dear Mr. White:

On November 13 I spoke with you and you were kind enough to supply me with the information necessary to submit the enclosed documents. I sincerely hope that the various documents are in proper form so that the letter will be filed and that I will be permitted to appear for oral argument on December 3rd.

If there are any problems with procedure please call me collect. I will be calling you shortly to inquire as to my eligibility to appear on December 3rd.

Thank you.

Sincerely,



Geraldine Lee Waxman

GLW:ag  
enclosures

0/a 12-3-87

GERALDINE LEE WAXMAN, J.D.

AMERICAN BAR ASSOCIATION CERTIFIED  
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**FILED**  
SID J. WHITE  
NOV 28 1987  
CLERK, SUPREME COURT  
By *[Signature]* Deputy Clerk November 18, 1987

Justices of Supreme Court of Florida  
Supreme Court of Florida  
Supreme Court Building  
Tallahassee, Florida 32301

Re: Proposed Rules Florida Statutes Sections 44.301-.306  
Case #71,312  
Proposed Mediation and Arbitration Rules

Honorable Sirs and Madam:

I am a mediator who comes to the new profession of mediation from a previous career in the law. I have been certified by the American Bar Association's Mediation Institute at Harvard as a mediator. In addition, I am on the legislative committee of the Academy of Family Mediators which has been invited by the American Bar Association to formulate model legislation on mediation, including mediator qualifications. Further, I am currently working with the American Arbitration Association in organizing and planning an Advanced Training Program for Mediators throughout the nation. I am one of only a handful of "pure" mediators in that I restrict my practice in three States (New York, Florida and California) solely to the new profession of mediation.

I am compelled to write to you about the proposed implementation of new rules in Florida regarding certification by the Supreme Court of court approved mediators and have taken exception to three points regarding family mediator qualifications. These are: (A) the need to be a member in good standing of The Florida Bar or hold a current license in Florida in a mental health field (Sec.1.760(b)(2)); (B) the necessity of at least five years practice experience in the licensed professional field (Sec.1.760(b)(3)); and (C) the necessity

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of successful completion of an examination subsequent to a mediation training program (Sec.1.770(b)(5)).

Exception A: The need to be a member in good standing of The Florida Bar or hold a current license in Florida in a mental health field. (Sec.1.760(b)(2))

Mediation is a new, vital and growing profession in its own right. However, to encourage the finest, most dedicated and qualified of the legally trained professionals and mental health professionals to give over their time, knowledge and energies to court ordered mediation requires recognition by the State of certain facts. Mediation is neither the practice of law nor the practice of therapy. Many of those who would be mediators would already be coming to Florida with years of prior professional training in law or therapy as well as bar memberships and licensure in other states. The requirement for holding Florida licensure or being in good standing as a member of the Florida Bar is detrimentally restrictive and discouraging to the best personnel for the profession of mediation. Why should a presently practicing mediator, attorney or mental health professional, devote weeks of review and thousands of dollars in expenses and lost client time to take an additional licensure exam in therapy or law solely for the State of Florida? Already qualified legal professionals and mental health professionals are being forced to seek additional standing as members of professions in which they will not actually be practicing. They are, in fact, to be mediators building upon their existing knowledge, experiences and predisposition for this new profession, not attorneys or therapists.

This clear separation of mediation from the practice of law or therapy is an integral part of the ethics every mediator must follow. It must consistently be made clear before and during the mediation process that separate legal advice should be sought as well as any necessary therapeutic counseling. Therefore, I submit that anyone who intends to practice mediation in Florida should not have to seek admission to the Florida Bar or obtain mental health licensure in this State if they are already duly recognized in their professions in any other state nor should they be held accountable to a board of qualifying attorneys or therapists.

#### Alternatives:

1. It must be acknowledged that proper and thorough training is essential to good mediation. Florida's review of existing training programs as well as structuring of future ones is critical to success.
2. A governing board of mediators should be formed to enact quality control and determine the future directions of the profession by "policing" itself. The legal, medical and mental health professions

all have such programs and so should mediators. Mediation should not be forced to become the "stepchild" of the law or therapy or be governed by them or their procedures.

3. Florida can look to a few other states in which mediator selection and mediation procedures have been innovative and successful. In this regard, Oklahoma has taken the enlightened approach that "(m)ediators are not restricted to persons with prior training in the law or social services. They may have varied backgrounds, but should possess a tolerance for structure, flexibility, and a belief in the capability of an individual to suggest and jointly negotiate and agree to solutions to his or her own problem." (12 Okl.St.Anno.Sec.1801,et seq.) Oklahoma has decided that the key to a good mediator is training, not whether they are lawyers or therapists, since, after all, mediation is neither practice.

4. An approach for qualifying those who are already legally trained would be to require a J.D. degree from an accredited school as a prerequisite to mediation training that is recognized by the State of Florida. This would take the Oklahoma method one step further and would not necessitate someone who intends only to practice mediation for having to spend time and money while taking an unnecessary examination as a prerequisite to practicing a different profession.

Exception B: The necessity of at least  
five years practice experience in the  
licensed professional field (Sec.1.760(b)(3))

This clause clearly attempts to restrain mediation and its growth in Florida as a viable alternative to couples in crisis. Without mediators it matters little whether the public is interested in this alternative for there will be too few mediators to assist them.

The hope for the future in alternative dispute resolution lies in the young professionals of tomorrow who understand that negotiation and oftentime litigation is not the answer for dispute. At this time, many professionals interested in mediation are law school graduates. Why should these young professionals, who are as yet unclouded by years of adversarial practice, be forced into five years of practicing a profession that is not their first choice? How many of these professionals after five years would still prefer to enter another field? And who can strictly say that they would not be tainted by that very five year prior training?

Just such thinking has gone into the State of Maine's approach to the hiring of mediators. That State wishes no attorneys as its mediators. Their thinking is that attorneys because of their adversarial training may become suspect as a neutral party to a process such as mediation and therefore may not be good mediators. While I do not subscribe entirely to the Maine approach it is certainly worthwhile considering certain aspects of its rationale.

Exception C: The necessity of successful completion of an examination subsequent to a mediation training program (Sec.1.770(b)(5))

A good thought untimely considered. Mediation is a relatively new profession and certainly one where organized training is very new. For example, the American Bar Association, in conjunction with Harvard University extensively trained 67 mediators but did not think it necessary to have these 67 submit to an exam as a pre-requisite to certification. Nor, for that matter, does any local training course currently approved by the Academy of Family Mediators request an exam of its graduates. If this rule were to go into effect there are no mediators in Florida at this time who would be able to perform mediation for the court system.

Alternatives:

1. A date beyond which any mediator must have taken a course that gives an exam for completion of the course. This would result in (a) the exam desired by Rule 1.770(b)(5) and (b) would permit those mediators who have already been trained but have not taken exams, since there are none at present to be taken, to be "grandfathered" under the rule. Two problems exist with the "grandfathering" of some mediators. First, new mediators may feel unduly burdened by an exam that others have not had to take. Second, the inability of the State of Florida to control the quality of all exams from all training programs.
2. If there were a state exam for all mediators the above question of unfair prejudice to earlier trained mediators would be eliminated. The question of the quality of the exam would also be removed. No particular course exam but rather a state approved, uniform exam for mediators would be administered, as we have for lawyers and therapists. If this method were deemed the workable solution, I would suggest in its implementation that the State look not to local mediators for formulating exam guidelines but to the Academy of Family Mediators and, as well, mediators known nationwide for their experience and standing in the field. This will insure ultimately an exam of such quality that anyone passing it will indeed be a mediator of which Florida can be proud.

I respectfully submit these thoughts with the firm belief that any legislation regarding this new profession of mediation must be given the utmost care and consideration. Although we are presently talking about court appointed mediators the ramifications of any initial

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legislation are far reaching for not only the State of Florida but for other States as well. Literally the "eyes of the country" and of this growing profession will be on your decisions and the future success of mediation and dedicated mediators could lie in the balance. While regulation is important we should also be exploring ways to expand and open a valuable field to dedicated and qualified people. We must be sure above all else not to restrict and be over insular in our attempts to regulate.

Respectfully,

A handwritten signature in cursive script that reads "Geraldine Lee Waxman". The signature is written in dark ink and is positioned to the right of the typed name.

Geraldine Lee Waxman