



The Florida State University
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Institute of Science and Public Affairs
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644-2007

March 9, 1990

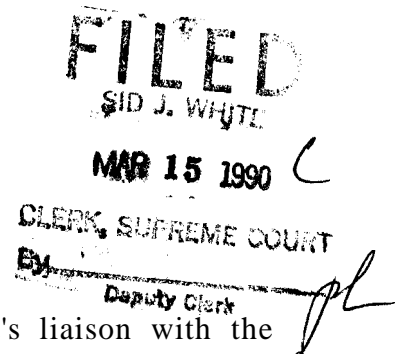
The Honorable Parker McDonald
Supreme Court Justice
Florida Supreme Court
Florida Supreme Court Building
Tallahassee, Florida 32399

Dear Justice McDonald:

It is my understanding that you are the Supreme Court's liaison with the committee that is reviewing the mediation/arbitration rules of the State of Florida. I have been the chairman of the Florida Growth Management Conflict Resolution Consortium since its inception and I would like to share with you some ideas regarding mediator qualifications. I am restricting my comments to land use and environmental and resource management disputes because those are my areas of expertise.

I understand the proposed majority rules limit mediators to Florida attorneys and retired judges. This is a mistake. Many of the top people in the fields of alternative dispute resolution or conflict resolution are not lawyers but have degrees and experience in environmental affairs, geography, urban and regional planning, government or public administration. This is a new field that has, and needs, expertise from many different subject matter areas, as well as the law. In the very successful Conflict Resolution Conference, our consortium held last March in Orlando, most of the instructors were not lawyers while many of the people who came to learn about the process were lawyers.

It is my understanding that under concurrent and proposed majority rules in land use and environmental cases the best mediators in Florida, indeed in the country, would not be able to assist the parties. I would comment that in many cases, co-mediation teaming a lawyer and a technical expert is a desirable approach. The Florida consortium has a mediator roster which could be very helpful to mediating disputes in Florida if they are allowed to do so. Of our roster of 52 people, only 18 are members of the Florida Bar. In fact, the most successful, those with the most experience and those with positive national reputation are not lawyers. An example is Timer Powers who has been very instrumental in disputes involving the Seminole Indians and the Kissimmee River situation. The Consortium has funds for



consultant mediators, in-house expertise, etc., for growth management litigation that might be referred to mediation.

An additional important point is that the freedom of parties to chose their mediators, a fundamental feature of the mediation process as it has been practiced nationally in public policy mediation. It is important to allow parties to select their own mediator(s). This builds trust, insures objectivity, and creates a positive track record at joint problem solving.

I hope this letter does not constitute "overkill" in your estimation, but I do feel my points are valid and would like to support the minority report and possibly go a bit further than that. If I may be of any further service to you regarding this matter, please call me at 904/644-2007.

Sincerely,

Edward A. Fernald

Edward **A.** Fernald