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SUPREME COURT OF FLORIDA

Case No. 75,151

IN RE: AMENDMENT TO FLORIDA RULES OF CIVIL PROCEDURE 1.700-1.780 (MEDIATION)

EXCEPTIONS AND COMMENTS TO PROPOSED RULES

W. E. Grissett, Jr. and Bruce W. Talcott are both certified mediators and have acted as such for the last year or more in Florida and have the following comments and exceptions to the proposed amendments to the Florida Rules of Civil Procedure 1.700-1.780 (Mediation).

In Rule 1.700(a)(1) the *60* day provision is honored more in the breach in some Circuits than in its observation. At least in the Fourth Circuit and in others, the matter is referred to mediation at the same time that the Court enters an order setting the case for trial. The best time for mediation is a period of time just prior to the pre-trial conference and if the Order of Referral and order setting case for trial and pre-trial is entered in January and the trial and the pre-trial are in July, there is no way that an optimum time will comply with the *60* day provision. As a result we would suggest that the *60* days provision be eliminated as to civil matters, but could still be valid as to family matters.

Rule 1.720(f) dealing with the appointment of the mediator, allows 10 days after the Order of Referral in which the parties may file a stipulation naming a mediator. This creates more paper work and certainly delays the process. We would suggest

that the provision 1.720(f)(1) dealing with the parties agreeing upon a mediator and filing a stipulation be eliminated and that Rule 1.720(f) thereof be changed to read as follows:

> (1) The Court shall appoint a certified mediator selected by such procedures as may be adopted by administrative order of the Chief Judge in the Circuit in which the action is pending.
>
> (2) Within 10 days of the order of referral the parties may jointly stipulate to a change of the mediator.

This puts the burden upon the parties if they want to change the mediator. Otherwise it will proceed as the Court ordered in the first instance and certainly will speed matters along and at the same time allows a local administrative order to set up such procedures as may work best in that particular Circuit.

In Rule 1.760(c)(2) it seems illogical to have a Florida practice requirement for attorneys and neither a Florida practice nor a Florida Bar requirement for out of state retired judges. Is knowledge of Florida law required or is it not? In spite of some views to the contrary, the fact that a person has served as a judge does not necessarily make that person a good mediator.

In Rule 1.760(d) there is a grandfather provision for Circuit Court Mediators, but the grandfather provision is apparently not applicable to county court or family mediators. It should be applicable to both.

We believe also that the Court should give some consideration to a renewal of certification of mediators. Just

because someone has been through the training and has been certified, if they do not actively work at it they probably should not remain certified. We would suggest that every two years each mediator who has been certified file with the appropriate court agency a request to continue the certification and advising the Court at that time how many cases have actually been mediated in the previous 2 year period. To continue the certification there should be a minimum number of cases in which the mediator has participated as a mediator during that 2 year period. We would suggest that this minimum number of cases be set at 18 to 24 cases mediated during that 2 year period.

Respectfully submitted,

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