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JAN 29 1990

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IN THE SUPREME COURT OF FLORIDA

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By: \_\_\_\_\_

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IN RE: AMENDMENT TO FLORIDA )  
RULES OF CIVIL PROCEDURE )

CASE NO. 75,151

RESPONSE OF THE FLORIDA BAR'S SPECIAL COMMITTEE  
ON ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION

Pursuant to Administrative Order dated July 26, 1989, The Florida Supreme Court appointed a Standing Committee on Mediation and Arbitration Rules. The Committee was charged, inter alia, with making recommendations in the procedural rules which govern mediation and arbitration. The Committee filed its report on December 13, 1989. The Court set January 26, 1990, as the deadline for written comments thereto and February 5, 1990, was set as the date for oral argument.

After thorough review of the Standing Committee's report and recommendations, including participation in that Committee's deliberations, The Florida Bar's Special Committee on Alternative Dispute Resolution and Mediation, Arden M. Siegenorf, Chairman, met in Orlando, Florida, on January 19, 1990, and made the following recommendation to the Board of Governors:

RESOLVED that The Florida Bar approve the report and recommendations of the Florida Supreme Court's Standing Committee on Mediation and Arbitration Rules with the amendments and exceptions noted below and authorize the Bar's Special Committee to file a written comment consistent therewith and to participate at the oral argument scheduled on February 5, 1990, and at such future dates as the Florida Supreme Court may authorize.

On January 26, 1990, the Board of Governors of The Florida Bar concurred in the Committee's recommendations by a vote of 24 to 0.

The exceptions and amendments to the Supreme Court's Standing Committee on Mediation and Arbitration Rules report and the vote of the Bar's Committee as reflected in its Minutes appear below.

1. Rule 1.720(b)(1)(2)(3). Suggest Mediation Rules Committee prepare a Committee note indicating that intent of the rule is to have a representative having full authority to settle who is not the attorney of record be present, i.e. two separate individuals.

(b) Sanctions for Failure to Appear. The court, upon written notice from the mediator that any party has failed to appear after receiving written notice and without good cause, may apply appropriate sanctions as provided by the Florida Rules of Civil Procedure, including taxing of the fees and costs of the mediator. If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion, shall impose sanctions including an award of mediator and attorney fees and other costs against the party failing to appear: Unless otherwise stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

- (1) the party or its representative having full authority to settle without further consultation; and
- (2) the party's counsel of record, if any; and
- (3) a representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

2. Rule 1.720(f)(1). Change first sentence to read:

- (1) within ~~10 days~~ fifteen (15) days . . .

Reason: To be consistent with other time periods in these rules.

3. Rule 1.720(f)(1). New last sentence:

If the parties fail to agree on the appointment of a mediator, the plaintiff or petitioner shall submit

within fifteen (15) days of the order of referral an order in blank to the Court appointing a mediator.

Reason: Triggering mechanism which allows the Court to appoint a mediator when the parties fail to stipulate.

4. New Rule 1.720(f)(3). A retired judge may not mediate in the same circuit in which that judge continues to sit as a judge.

Reason: To prevent a chilling effect on the mediation.


5. Rule 1.740(c). Last sentence to be amended to read:

When appropriate, the Court shall apportion or reapportion mediation fees. . .

Reason: To specify that the Court may allow reapportionment of mediation fees at or after the final hearing.

The vote of the Bar Committee was unanimous as to 1.720(f)(1). The remaining proposed rule changes were adopted by a voice vote of the Committee.

The undersigned certifies that a copy of the foregoing has been furnished to the State Court Administrator; Henry P. Trawick, Jr.; and Bruce J. Berman, as Chairman of the Civil Procedure Rules Committee by mail on January 29, 1990.

  
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John F. Harkness, Jr.  
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