

0/a 2-5-90

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FILED
SID J. WHITE

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CLERK, SUPREME COURT

By _____
Deputy Clerk

January 9, 1990

75,15!

Sid J. White, Clerk
The Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Amendment to Florida Rules of Civil Procedure 1.700-1.780
(Mediation)

Dear Mr. White:

The Florida Bar News (January 1, 1990) solicited comments on the proposed changes to rules pertaining to mediation and arbitration.

Rule 1.700(2) Notice In my sole experience with mediation, the Circuit Judge included the following in his Order Appointing Mediator: "The attorney/party who has noticed this case for trial is responsible for the scheduling of this mediation conference. Failure to do so within 10 days of the date of this Order will result in a date being chosen for you by (NAMED MEDIATOR)"

Neither the attorney nor the named mediator took any action to set a mediation date. I do not believe attorney/party should unilaterally, as court designee, be given scheduling responsibility and authority. Rather the Rule should make it clear that only the Court, or by Court order, the designated mediator or arbitrator shall schedule the conference. I also believe a written copy of the notice should be filed with the Court so that the Circuit Judge can be aware of failure of the arbitrator/mediator to observe the time limitations dictated by the rule, thereby affecting his potential trial calendar.

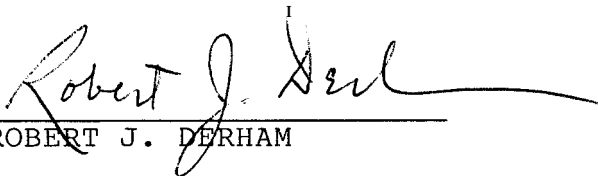
Rule 1.760 Mediation Qualifications At proposed sub-paragraph (c)(3), the candidate for certification must "observe two circuit court mediations conducted by a certified circuit mediator and conducted (sic) two circuit mediations under the supervision and observation of a certified circuit court mediator". However, proposed Rule 1.720(f) clearly indicates that only a certified mediator can be designated by stipulation or appointed by the court. When the candidate merely observes, his presence is not subject to disqualification; when the candidate conducts the conference, I assume that he is subject to disqualification for good cause and perhaps

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his supervising certified mediator also. I question whether supervised mediations by an uncertified mediator will appeal to contesting parties, who, in any event, can challenge his authority.

Finally, a uniform ORDER APPOINTING MEDIATOR would avoid the significant variances found in the orders of different judges.

Very truly yours,


ROBERT J. DERHAM