December 30, 2002

Honorable Justices of the Florida Supreme Court

Re: Comments to Proposed Amendments to Rule 12.610

On behalf of the Florida Coalition Against Domestic Violence (FCADV), thank you for the opportunity to comment on the referenced proposed amendments. FCADV has observed and provided information to the members of the Family Court Steering Committee and its Domestic Violence Subcommittee, who worked on this proposed rule. This has been a fair process and we commend the Family Court Steering Committee for its full and careful consideration of this proposed rule.

Our comments to the proposed rule are as follows. First, mediation is generally not favored in domestic violence cases at all. Mediation presupposes a level playing field, a mutual desire to reach a certain result, lack of coercion and threats, good faith efforts at negotiation and a willingness to comply with the results of the mediated settlement. In domestic violence cases, none or few of these characteristics apply. The field is not level in these cases: the abuser has physically threatened and most likely harmed the petitioner, the abuser is set out to manipulate both the court, the process and the victim, the abuser does not want an injunction against him and will try to make the terms such that he will continue to use it as a tool of harassment and intimidation of the victim. Moreover, few mediators are fully trained in recognizing and appropriately dealing with these cases there should be.

Our preeminent concern with the proposed rule has been that it must provide a fair and safe hearing for the domestic violence survivor. As this rule now currently proposed, we believe there will be such a fair and safe process. Unlike the unsafe and unfair processes of "facilitation" and mediation of injunctions for protection against domestic violence that occur in several circuits in Florida, this rule would require a judge to make determinations regarding all of the elements of the injunction, as described at subsection (C). These are: contact between the parties, exclusive use of the residence, temporary custody of minor children, whether visitation will occur and if it will be supervised whether there will be temporary child support and other relief the court deems necessary.

Our advocates observe and continue to receive reports of disturbing incidences where *court personnel* and *not the judge* have effectively determined these terms listed in (C), through a negotiation or facilitation process, outside of the presence of the court. Petitioners in crisis are often being forced to be in the same room with the respondent who may have threatened, beaten, raped, or stalked them. The law requires, and the victims deserve, to have their petitions heard and decided by a judge. In fact, some of this proposed rule is based on the Eighth Circuit Guidelines for use of Mediation in Domestic Violence Docket Cases, a process that we have observed, generally, to be safe and fair. In that circuit, the judge is, and remains, in charge of these crucial matters.

What occurs now in circuits, primarily in the southwest portion of Florida, is not only improper, but we believe it is dangerous for petitioners who are asking *the court* for relief. These petitioners, instead, are effectively forced to "work out the details" of a protection order with court staff, whose

singular and sole concern is *not* the safety and well-being of the petitioner, but who is also considering his or her duties to help the court manage cases, control dockets, and theoretically be fair to both sides. Petitioners are coerced by court staff who may be well-meaning, but nonetheless do not have the education, experience and authority of a judge. Unlike court staff, a judge who "lays down the law" regarding violence and the terms of the court's order can deter further violence.

Pro se petitioners, in particular, may be greatly intimidated by the courts and its processes and they will be helped by this proposed rule. Unlike what some have argued, this rule is much fairer to *pro se* litigants than the current rules that allow "facilitation" or other alternative dispute resolution processes by "facilitators" or other court staff. The majority of domestic violence centers around the state provides petitioners with non-lawyer advocates and may also provide legal representation to petitioners. Unlike the court staff, these advocates are representing the petitioner/client's interests. Court staff should be used to help the parties and the court with ministerial tasks such as case management. They should not mediate and negotiate the terms of injunctions for protection.

We believe that this rule strikes a fair balance between allowing certain logistical and minor details of a court's determination to be worked out by a certified mediator with the parties, and requiring the court to the above determinations so critical to a petitioner's safety and a just result. Otherwise, abusive persons would be able to control and manipulate both the process and the petitioner, outside the presence of the judge.

The mediators who will hear these details regarding the courts rulings must be trained in domestic violence and must be certified family mediators. While current rules require three hours of domestic violence training upon re-certification of certified family mediators, that is an insufficient amount of training and should be increased to at least eight hours. Local certified domestic violence programs in Florida and FCADV could assist in the development and more extensive training of these mediators.

Finally, the comment to this proposed rule specifically states that the court should not refer the aspects of any case to mediation if there is a high degree of past violence, a potential for lethal violence or other factors that would compromise the mediation process. This important proscription should be in the rule itself, not in the commentary, as it provides the court with specific direction and authority to hear these cases.

Sincerely,

Tiffany Carr
Executive Director