

GARY N. FEDER, CPA, P.A.
CERTIFIED PUBLIC ACCOUNTANT

(305) 667-7100

Post Office Box 249177
Coral Gables, Florida
33124-9177

The Honorable Thomas D. Hall, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Comments Re: Mediator Rules Case No. SC 05-998 Circuit-Civil Mediator Qualifications

Dear Mr. Hall:

Please allow my comments to be added to the record or otherwise considered in this matter.

I wish to express my support for the pending proposal of the ADR Rules Committee that would allow non-attorneys to obtain certification as Circuit-Civil mediators and to, most respectfully, suggest the Court might provide for reasonable exception(s), if not inclined to grant the proposal in present form.

To my knowledge, there is, currently, no way to petition for an exception to the present Rules governing qualification for mediator certification.

As a Florida CPA (since 1978) holding a Masters degree, I became certified as a Family and County Court Mediator, in 1992, following prior changes in qualifications for certification.

- In 2005, I completed the currently required training for certification as a Circuit-Civil Mediator and have mediated numerous issues, including those that would be considered 'Circuit-Civil', and would benefit from proposed changes.
- When mediating Circuit-Civil level matters, I am subject to the same rules and standards as a certified Circuit-Civil Mediator, because of my certification as a Family and County Court Mediator.
- I am unaware of any rule or statute prohibiting the unlicensed practice of mediation.
- Unless appointed by a Court after consent of the parties, my understanding is that someone serving as a mediator who is not certified in any of the current four categories would not be subject to rules or standards, or the same potential consequences as a certified mediator.
- Others have already expressed that there may be qualified individuals with unique or valuable experience who may wish to become certified and join the pool of professionals eligible for appointment by the Court (without parties advance consent), and who would then be subject to the rules and related standards.
- While certification and licensure is not required to serve as a mediator, easing the requirements may encourage more qualified individuals to become trained and licensed for such service, and encourage uncertified/unlicensed practitioners, as well.

If Certified Family, Dependency and County Court Mediators are subject to the rules and standards when mediating a Circuit-Civil matter, perhaps, equitably, they should be deemed qualified and eligible for certification as a Circuit-Civil Mediator, whether or not an attorney for 5 recent years.

Allowing exceptions for otherwise qualified non-attorney mediators would be in similar spirit to the original certification rules which, as I recall, may have allowed certification of non-attorneys already performing mediation services, grandfathering them as Circuit-Civil mediators.

continued . . .

Comments Re: Mediator Rules Case No. SC 05-998 Circuit-Civil Mediator Qualifications

There is much art and skill that comes into play during a mediation that comes from the mediator's life and professional experiences, at least equal to, if not perhaps far more than, the significant talents learned in law school and during an attorney's first 5 years of membership in the state bar.

Certified Public Accountants, as one example, have passed a rigorous course of study and examination and the greater public interest may be served by the inclusion of (Florida) CPAs as a qualified profession eligible for certification as a Circuit-Civil mediator.

If the Court is not inclined to grant the Committee's entire proposal, then I, most respectfully, offer the following additional alternatives for the Court's consideration towards providing one or more exceptions for qualification to become a certified Circuit-Civil Mediator:

Allow Circuit-Civil certification of non-attorney and attorneys/judges not meeting present qualifications,

- (1) if applicant would have qualified for certification as a Family Mediator using the previous requirements temporarily in concurrent effect.
- (2) if applicant has already held certification in another mediation category (or Family) for 5 or 10 years.
- (3) if applicant has actively practiced for more than 10 or 20 (recent) years in their primary qualifying profession (one previously allowing qualification for Family certification, e.g., CPA).
- (4) if applicant has mediated more than some number of any type of matters, whether in suit or pre-suit, and whether or not Circuit-Civil matters.
- (5) if applicant can otherwise demonstrate qualification for reasonable exception to a committee (with or without further approval, and with ability of appeal).

Thank you for your consideration, and the continuing opportunity to be of service.

Sincerely,

December 1, 2006

Gary N. Feder, President
GARY N. FEDER, CPA, P.A.