

December 20, 2006

Thomas D. Hall, Clerk
Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399

Dear Mr. Hall,

As the mediator qualifications are reviewed, it may be beneficial to the court and to the public to focus on the legal training requirement for circuit civil mediators. Specifically, the present requirement mandates that circuit civil mediators must be either members of the Florida bar for five years or retired judges. The requirement is without merit.

First, there is no research that supports the claim that bar membership or number of years of legal practice creates competent mediators. Only specific training in the mediation process and development of requisite skills creates competent mediators. As a member of the National Judicial College faculty for 14 years, I can speak from experience when I say that a judge or lawyer is no more likely to be a good civil mediator than a non-legally trained person.

Second, I find it fascinating that as a Florida approved trainer of circuit civil mediators for over 15 years and as a civil mediator for nearly 28 years (handling civil cases from pre-suit through appellate), I do not qualify as a Florida circuit civil mediator either under the present rules or under the proposed point system method. I have trained over 5000 civil mediators nationally for courts, bar associations and private practice. At the National Judicial College I teach not only a 40-hour, Florida approved civil mediation course, but also advanced mediation, mediation advocacy for lawyers, and how to create a court-connected mediation program. I have served as faculty at three nationally recognized law schools, including Stetson University College of Law, teaching alternative dispute resolution and/or mediation courses. I have written extensively on mediation and related dispute prevention and resolution topics, and conducted the first national survey of state appellate ADR programs. I presently serve as an advisor to two court programs, and have reviewed mediation programs and mediator requirements, including the evaluation of the Nevada Supreme Court's mediation program. Yet, with all this experience, I am not eligible to become a Florida circuit civil mediator. How ironic that I am an approved Florida trainer of circuit civil mediators, but cannot serve as one! The legal training and bar membership requirement precludes extremely qualified individuals from becoming circuit civil mediators—a major loss to the courts and public they serve.

Third, mediators should not give legal advice. Once given, the question arises if the mediator is neutral or can be fair and impartial—hallmarks of being a competent mediator. If a mediator is an attorney and gives legal advice there is the inherent risk that the individual is guilty of dual representation. If the mediator is not an attorney, which is permissible under the Florida rules for county, family and dependency mediators, then the advice may be considered as the unauthorized practice of law. In either situation, giving legal advice is problematic. Since mediators should not give legal advice, it would appear that the implied requirement of being a lawyer (Florida licensed or not) and Florida Bar membership for 5 years seems unnecessary and exclusionary with no legitimate purpose served. To some, it may even appear a bit self-serving for such a membership requirement.

The original intent for creating mediator qualifications was to produce competent and proficient mediators. Bar membership, number of years in legal practice or judicial status do not guarantee mediator competency. Qualified, competent and skilled mediators evolve from specific training in the mediation process with hands-on roleplay experience developing the requisite skills. Florida has an excellent set of training requirements for all classifications of mediators.

Times have changed since the original rules were promulgated, and research is now available that did not exist 15 to 20 years ago. Lacking evidence to support the requirement, I urge you to delete the arcane and outdated circuit civil mediator educational requirement of being a lawyer with five years of Florida Bar membership or of being a retired judge from any general jurisdiction.

If you have any questions, I would be more than pleased to provide you with any additional information that would assist you in your discussion and deliberation. I know that Sharon Press and her very talented staff have similar data that support these points.

Sincerely,

Nancy Neal Yeend

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Enclosure: 9 copies