

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULES  
OF CIVIL PROCEDURE AND FORMS  
FOR USE WITH RULES OF CIVIL  
PROCEDURE.

CASE NO. 09-1460

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**Comment of the Supreme Court Committee on  
Alternative Dispute Resolution Rules and Policy to the  
Rules Proposals of the Task Force on Residential Mortgage Foreclosure Cases  
and the Bateman-Ferris Comment Thereto**

By motion filed October 9, 2009, the Chair of the Task Force on Residential Mortgage Foreclosure Cases (the “RMFTF”) asked the Court to extend to October 15, 2009, the time for comment on the RMFTF’s rule proposals to allow the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (the “Committee”) to comment on the proposal submitted by former Judges Thomas H. Bateman III and Janet E. Ferris. Subject to the Court’s granting the motion of the RMFTF, the Committee hereby files its Comment on the Bateman-Ferris proposal.

The Bateman-Ferris Comment discusses proposed changes to Florida Rule of Civil Procedure 1.720(b), which addresses sanctions for failure to appear at mediation. The specific issue addressed is whether a mediator can report to the court --without violating the confidentiality and privileges provided by Chapter 44 of the Florida Statutes-- the non-appearance at mediation of a party or

representative who does not have full authority to settle the case. We understand that, by a vote of 7 to 6, the Task Force recommended that no such report could be made to the court, while a minority of the Committee members favors the proposed rule set forth in the Bateman-Ferris Comment. The Bateman-Ferris Comment provides that the mediator shall report to the court if a party or representative has not complied with the appearance requirement of the rules and that "an appearance by a personal representative without full authority to settle without further consultation shall be considered a failure to appear under this subdivision."

The Committee has been studying this same issue for an extended period of time. It has approved, in concept, a somewhat different approach to the problem, proposing that the parties be required to sign a statement prior to the mediation identifying the person who will be attending the mediation and providing an attestation that the person has full authority to settle the case. A draft of the proposed rule to accomplish that purpose was included in the May 2009 Resolution Report published by the Florida Dispute Resolution Center in order to receive comments thereon. A copy of the draft proposed rule is attached hereto as Exhibit "1". The Committee has not finalized the proposed rule for submittal to the Supreme Court, but expects to do so in the very near future. The Committee recognizes the competing interest of protecting the confidentiality and privilege of communications which occur during a mediation and the need for disclosure in the

event sanctions are appropriate to be imposed pursuant to the rule. The Committee is seeking to arrive at a proposed rule which adequately balances those competing interests.

This issue was not brought to the Committee's attention until a few days ago and, accordingly, the Committee was unable to hold a meeting with a quorum present in order to take an official position on the Bateman-Ferris Comment. However, it is the intent of the Committee to provide the Court with a final version of the draft rule as soon as possible. The Committee also intends to advise the Court of any official position it takes on the Bateman-Ferris Comment, hopefully by the time of the oral argument in this matter.

Respectfully submitted this 15<sup>th</sup> day of October 2009.

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Judge William D. Palmer  
Florida Bar No. 220361  
Chair of the Committee on  
ADR Rules and Policy  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, Florida 32114  
Telephone: 386-947-1502

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished United States mail this 15<sup>th</sup> day of October 2009, to the Honorable Jennifer D. Bailey, Chair of the Task Force on Residential Mortgage Foreclosure Cases, Dade County Courthouse, 73 West Flagler Street, Suite 1307, Miami, FL 33130, Thomas H. Bateman III, Esquire, Messer, Caparello & Self, P.A. 2618 Centennial Place, Tallahassee, FL 32317, and Jane E. Ferris, Esquire, 525 Bobbin Brook Lane, Tallahassee, FL 32312.

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Judge William D. Palmer  
Florida Bar No. 220361