

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

**RESPONSE OF THE TASK FORCE ON
RESIDENTIAL MORTGAGE FORECLOSURE CASES
TO THE ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY
COMMITTEE'S COMMENT ON THE BATEMAN-FERRIS PROPOSAL**

The Honorable Jennifer D. Bailey, Chair of the Task Force on Residential Mortgage Foreclosure Cases (Task Force), files this response to the Alternative Dispute Resolution Rules and Policy Committee's October 15, 2009 comment on the Bateman-Ferris proposal. By order dated October 15, 2009, the Court extended the comment period in this matter for the sole purpose of allowing the Committee on Alternative Dispute Resolution Rules and Policy (ADRRP) to consider the proposal submitted by former Judges Thomas H. Bateman III and Janet E. Ferris relating to proposed changes to Florida Rule of Civil Procedure 1.720(b). The rule addresses sanctions for failure to appear at mediation. The ADRRP having timely submitted its comment, the Task Force responds as follows:

The Task Force generally agrees with the spirit of the ADRRP's October 15, 2009 comment. The comment notes that the issue of reporting the non-appearance at mediation of a party or representative who does not have full authority to settle a

case has been debated for an extended period of time within the ADRRP, with particular regard to the confidentiality and privileges provided in Chapter 44 of the Florida Statutes. The ADRRP is working on a draft rule. In keeping with the Task Force's general approach to avoid significant rule changes or statutory changes to deal with this foreclosure emergency which could have unintended consequences, we recommend to the Florida Supreme Court that the Bateman/Ferris rule proposal be referred to the Committee on Alternative Dispute Resolution Rules and Policy for further study.

The ADRRP comment indicates its approval in concept of the approach requiring parties to sign a statement prior to mediation identifying the person who will be attending the mediation and providing an attestation that the person has full authority to settle the case. This requirement is substantially similar to that of the required Form A in the Task Force proposal. The comment still fails to address the fundamental confidentiality issue of how the failure to comply with the representation of settlement authority can be reported to the court as a non-appearance.

The Task Force originally split on this issue in a vote as reflected in the ADRRP comment. Since the Task Force's work has been distinguished by efforts at diplomacy and consensus, we continued to work on the issue and ultimately arrived at a consensus solution. The following suggestion from the Task Force

was supported by nine members of the task force, opposed by two members of the Task Force, and two members abstained.

The Task Force proposes in the interim, in connection with this emergency mediation program to deal with foreclosure cases alone, the model administrative order should be amended as follows:

At the time that the mediation is scheduled to physically commence, the mediation manager shall enter the mediation room, prior to the commencement of the mediation conference and prior to any discussion of the case in the presence of the mediator, and take written roll. That written roll will consist of a determination of the presence of the borrower, the Plaintiff's lawyer, and the Plaintiff's representative with full authority to settle. If the mediation manager determines that anyone is not present, that party shall be reported by the mediation manager as a non-appearance by that party on the written roll. If the mediation manager determines that the plaintiff's representative present does not have full authority to settle, the mediation manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by the Model Administrative Order. The written roll and communication of authority is not a mediation communication.

Respectfully submitted this 22nd day of October 2009.

Jennifer D. Bailey
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Chair of the Task Force on Residential Mortgage
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail this 22nd day of October 2009, to the Honorable William D. Palmer, Chief Judge, Fifth District Court of Appeal and Chair of the Committee on Alternative Dispute Resolution Rules and Policy, 300 South Beach Street, Dayton Beach, FL 32114, Thomas H. Bateman III, Esquire, Messer, Caparello & Self, P.A. 2618 Centennial Place, Tallahassee, FL 32317, and Janet E. Ferris, Esquire, 525 Bobbin Brook Lane, Tallahassee, FL 32312.

Judge Jennifer D. Bailey