

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. SC09-1460

**Supplement to 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**

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (Committee) hereby files this supplement to its timely filed October 15, 2009 Comment, in which it stated that it hoped to formally adopt a proposed change to rule 1.720, Florida Rules of Civil Procedure, prior to the November 4, 2009 oral argument scheduled in this case, in response to the rule change proposed by the Task Force on Residential Mortgage Foreclosure Cases (Task Force). The Committee submitted its suggested changes to subsection (b) of Rule 1.720 in the Appendix to Comment 1 filed October 16, 2009. The Committee has now formally adopted replacement subsections (c) and (d) as follows:

(c) Certification of Authority. Unless otherwise agreed by the parties or changed by order of the court, each party wishing to appear through a representative, and each representative of an insurance carrier attending the mediation as required under subdivision (b), shall file a notice with the court, and

serve all other parties and the mediator, identifying the representative(s) who will be attending the mediation on the party's behalf, and certifying that each identified representative has the authority required by these rules.

(d) Sanctions for Failure to Appear. If a party or party representative fails to appear at a duly noticed mediation conference without good cause, the court, upon motion, shall impose sanctions against the party failing to appear, including an award of mediator and attorney's fees and other costs. A party who appears at mediation through a representative who fails to file the notice and certification required pursuant to subdivision (c) or who appears without the authority to settle shall be deemed not to have met the appearance requirements of subdivision (b).

In addition, the Committee notes that the Task Force, in its latest response, is recommending an amendment to the Model Administrative Order (on an interim basis in light of the emergency nature of the problem) to address the issue of parties or parties' representatives appearing without full authority. The Committee agrees with the proposed amendment to the Model Administrative Order, with the following minor exception:

The last sentence of the Task Force's suggested addition to the Model Administrative Order states: "The written roll and communication of authority is not a mediation communication." While the intent of this last sentence was to clearly state that communication of authority *to the mediation manager* is "not a mediation communication," the sentence could be confused to mean that any communication of authority, including to the mediator, is not confidential and privileged. The Committee suggests that the last sentence be amended to include the words "to the mediation manager" so that it reads as follows: "The written roll

and communication of authority to the mediation manager is not a mediation communication."

Respectfully submitted this 2nd day of November 2009.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail this 2nd day of November 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 Janet E. Ferris, Esquire, 525 Bobbin Brook Lane, Tallahassee, FL 32312.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Supplement to Comment of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy is submitted in Times new Roman 14-point font, in compliance with rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Judge William D. Palmer
Florida Bar No. 220361