

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF CIVIL PROCEDURE; AMENDMENTS
TO THE FLORIDA FAMILY LAW RULES OF
PROCEDURE; NEW FLORIDA RULES FOR
QUALIFIED AND COURT-APPOINTED
PARENTING COORDINATORS; NEW FLORIDA
RULES FOR OTHER COURT-APPOINTED
ALTERNATIVE DISPUTE RESOLUTION
NEUTRALS**

CASE NO. SC11-1454

**COMMENTS OF THE SIXTH JUDICIAL CIRCUIT IN OPPOSITION
TO PROPOSED AMENDMENT TO FLORIDA FAMILY LAW
RULE OF PROCEDURE 12.740(f)**

Pursuant to the Court's invitation for comments on proposed amendments to the Florida Family Law Rules of Procedure, the Honorable J. Thomas McGrady, Chief Judge of the Sixth Judicial Circuit, files these comments in opposition to the proposed amendment to Rule 12.740(f). This amendment would eliminate the 10-day period to file objections to a mediation agreement when the agreement is reached without counsel present. The Committee on Alternative Dispute Resolution and Rules and Policy (ADR Committee) sees no strong rationale for retaining this provision. The 10-day review period is beneficial in family law cases. Allowing parties in dissolution proceedings to consult with an attorney before an agreement is finalized promotes a greater likelihood of a fair and lasting agreement beneficial to the parties and any children involved.

In family law, the 10-day review period helps achieve mediation agreements that serve the best interests of the parties and children involved. Understandably, mediation sessions are stressful for the parties, and financially burdened litigants often attend without their attorneys to conserve financial resources. Some of these parties have commented to the court that they felt pressured to reach an agreement they did not really understand and were relieved they had an opportunity to consult with their attorneys and file objections.

If the review period is eliminated in family law proceedings, the result is likely to be more protracted litigation as parties seek to set aside agreements they failed to comprehend fully in the unfamiliar and possibly emotional setting of mediation. Also, contempt motions may increase as parties resist compliance with agreements they felt pressured to accept.

The ADR Committee maintains that parties in family law mediation will still be protected because they can agree to incorporate a provision for attorney review and Rule 12.740(f) already requires positive consent by the parties to proceed in the absence of counsel. However, financially struggling parties who have limited understanding of mediation may agree to proceed without attorneys, only to find themselves confused and frustrated by the process. Also, unrepresented parties may not even understand that they can incorporate a provision for attorney review.

Thus, the review period continues to benefit the parties in family law proceedings. It promotes fair agreements that can be reached expeditiously and at a lower financial cost to the family.

While the ADR Committee raises concerns about retaining the review period in family mediation but not adopting one in dependency mediation, this difference is justified by the distinct character of dependency matters. By their very nature, dependency proceedings involve children in crisis situations, and a 10-day review period could cause detrimental delays in addressing immediate needs. However, no such urgency can be presumed in family law cases, many of which do not even involve minor children. Also, unlike financially struggling parties in family proceedings, indigent parties in dependency proceedings are statutorily entitled to court-appointed counsel at mediation. See § 39.013(1), Fla. Stat. (2011).

Finally, even the ADR Committee concedes that despite the desire for uniformity in court procedures, differences between dependency and family matters may simply require different approaches to best serve all involved. One of the Committee's major proposals is to create an ADR systems approach—i.e., “a single set of procedures for all ADR processes in family law as well as in general civil law” to promote uniformity and consistency. Petition p.13. However, “given the unique nature of dependency proceedings” and its belief that ADR methods

other than mediation are rarely used in dependency proceedings, the Committee does not recommend the ADR systems approach for dependency. Id.

Thus, while uniformity of court procedures is desirable, different dynamics warrant different approaches. The dynamics of family law mediation present such a situation. To promote fair and lasting mediation agreements in a cost-effective and expeditious manner, the 10-day review period in Rule 12.740(f) should remain in effect.

Respectfully submitted this ____ day of December, 2011.

The Honorable J. Thomas McGrady
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to The Honorable William D. Palmer, Chair, Committee on Alternative Dispute Resolution Rules and Policy, Fifth District Court of Appeal, 300 S. Beach Street, Daytona Beach, FL 32114; Ashley J. McCorvey Myers, Chair, Family Law Rules Committee, 1912 Hamilton Street, Ste. 204, Jacksonville, FL 32210-2078; John F. Harkness, Jr., Executive Director, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300; Kevin D. Johnson, Chair, Civil Procedure Rules Committee, 201 N. Franklin Street, Tampa, FL 33602; Joel M. Silvershein, Chair, Juvenile Court Rules Committee, 201 S.E. 6th Street, Ste. 660, Ft. Lauderdale, FL 33301; Dana Dowling, Staff Liaison, Families and Children in the Court Steering Committee, 500 S. Duval Street, Tallahassee, FL 32399; and Elena Rodriguez, 10420 SE 140 Road, Miami, FL 33168 on _____ day of December 2011.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule of Appellate Procedure 9.100(l) I certify that this computer generated response is prepared in Times New Roman 14 point font and complies with the Rule's font requirements.

B. Elaine New