FLORIDA SUPREME COURT

STANDING COMMITTEE ON

MEDIATION AND ARBITRATION RULES

FINAL REPORT

December 1, 1989

Florida Supreme Court Standing Committee on Mediation and Arbitration Rules

Supreme Court Building
Tallahassee, Florida 32399-1905

December 1, 1989

The Honorable Raymond Ehrlich
Chief Justice of the Supreme
Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399-1905

Re: Florida Supreme Court Standing Committee on Mediation/Arbitration Rules
1989 Report

Dear Mr. Chief Justice:

By Administrative Order of July 26, 1989, the Court appointed the Special Committee on Mediation and Arbitration Rules as a Standing Committee of the Supreme Court. With that appointment, the Court further directed the Committee to develop a report (a) recommending changes in procedural rules governing mediation and arbitration, (b) recommending standards of conduct governing mediators and arbitrators, and, (c) suggesting needed legislation to enhance alternative dispute resolution programs in Florida. It was requested the Committee's report be submitted on or before December 1, 1989. In the 127 days following that charge, the judges, attorneys, mediators, and court administrators selected to serve on the Committee have worked diligently to meet the goal. It is with deepest pride in their accomplishments that I now present this report.

A brief overview of the Committee's activities over the last four months may be helpful in putting their work into perspective.

Immediately following the July 26, 1989, Order, an organizational meeting was held with the liaison executives of the Supreme Court Administrator's Office and Dispute Resolution Center. The

Committee was organized into three Subcommittees - Rules, Standards, and Legislation. Subcommittee chairmen were selected and each Subcommittee was asked to conduct an in-depth examination of their respective areas in light of the experience gained from Florida's first year with court ordered mediation and arbitration.

Work priorities were then assigned calling for a focus on ethical standards and proposed rule changes before moving into consideration of needed legislative programs. It was the Committee's thinking that development of standards and rules would, in part, lead to recognizing areas of needed legislative action. Coupling that thought with the realization that rules and standards probably should be adopted in January or February of 1990, while new legislation would not be required until the Spring Session of 1990, our order of work became apparent.

The Committee then began the data collection portion of its work by seeking input from judges, mediators, and attorneys directly involved in alternative dispute resolution programs operating in Florida court systems. Although the collective ADR experience of the Committee would be difficult to match anywhere in the United States, the members nonetheless felt it important to have before them direct observations and experience of the professionals who have been dealing with alternative dispute resolution on a day-to-day basis.

To this end, a survey was prepared and distributed to each of the 384 circuit judges in the state. The sentiments and suggestions of the judges who responded to the survey are reflected in Exhibit "A". A similar survey was sent out to 987 mediators now certified and practicing in Florida. Their feelings are reflected in Exhibit "B" to this report. Through less formal, but equally informative channels, The Florida Bar's Standing Committee on Alternative Dispute Resolution and The Florida Bar Trial Lawyers Section's Executive Council, provided input from attorneys working with existing dispute resolution procedures as well. Finally, a public hearing was held to which over 75 individuals involved in ADR

programs throughout Florida were invited to speak. A summary of the comments from those accepting the Committee's invitation is reflected in Exhibit "C". Throughout the deliberative process, the Committee was also in constant contact with members of this Court's Committee on Mediation and Arbitration Training as well as a host of independent attorneys, judges and mediators now directly involved in ADR programs in Florida.

With this data base, and the benefit of their own considerable experience in the field, the Committee began its deliberations. The full Committee met on September 12 - 13 to gather data and organize its work, on October 11 to consider standards, and November 14 - 15 to consider rules. Each meeting began with a review of data collected from the field. The minutes of those meetings are attached to Exhibit "D". The Subcommittees met on an as needed basis between full Committee meetings.

The proposed standards were formulated following a survey and review by the Standards Subcommittee of similar compliations of ethical and professional considerations from other jurisdictions, along with a host of articles and treaties on the subject. After the Subcommittee thus gathered and selected the best of what had been done, the full Committee tempered that product with the unique characteristics of alternative dispute resolution as practiced in the State of Florida. In many instances, we found our state's relatively advanced experience in alternative dispute resolution mandated significant re-evaluation of existing concepts of professionalism in the field. The proposed standards are attached as Exhibit "E".

Notably absent from the recommended standards are both an enforcement procedure and comprehensive statewide certification process for mediators and arbitrators. While the Committee generally felt both were needed, these related topics present logistical and economic problems that simply could not be unraveled in the time available to produce this report. As will be discussed later, the question of enforcement and a uniform statewide certification process will present formidable challenges

to the Committee's ongoing work.

The Committee's proposed rule changes reflect a blend of three philosophical approaches. First, the Committee sought to take maximum advantage of the one year of practical experience Florida has had in court-sanctioned ADR procedures. Based on this experience, the Committee is recommending rather substantial deletions from certain parts of the old rules which, although originally implemented with the best of intentions, have proven to serve no real purpose as procedural guidelines. Second, the Committee sought to enhance the overall consensual atmosphere of ADR in Florida by putting more control of the process in the hands of the parties involved. Hence, suggested modifications of the rules have been made to allow more direct involvement by the parties in initiating mediation, selection of mediators, timing of the mediation conference, and initiating enforcement procedures. Finally, the Committee was keenly aware of the colloquial axiom, "If it ain't broke, don't fix it." Every effort was thus made to preserve the functions that are working. The proposed amendments to the rules are attached as Exhibit "F".

The Committee's recommended legislative program is still in the formative stages. From the data gathered during work to establish standards and reform procedural rules, it became clear a number of concepts warrant possible legislative action. Among the specific areas to be further investigated, in no particular order of importance, are:

(a) amendment of the offer of judgement statutes to allow utilization of this procedure during, or immediately following, a mediation session;

(b) creation of a statewide certification program and funding;

(c) enabling legislation to authorize an enforcement procedure for mediator/arbitrator standards and funding;

(d) enabling legislation for counties to create trust programs to support family mediation programs;

(e) reconciliation of existing conflicts in rules and statutes;

(f) providing for indigent mediation programs;

(g) more clearly defining the application of the confidentiality provisions of Ch. 44;

(h) establishing appellate mediation programs;

(i) establishing a voluntary binding arbitration system.

The Legislative Subcommittee will be refining these concepts further and presenting a final package to the full Committee in early 1990. We anticipate meeting our objective of having a fully approved program ready to present to the Court in time for the spring legislative session.

While the immediate objectives of this report are thus completed, the Committee's long-term work is, by no means, finished. There are a number of tasks yet to be done.

It became quite clear to the Committee during its deliberations that the entire area of family law mediation warrants not only ongoing separate study, but also customized rules and standards of conduct. The emotional and sociological issues involved in family law dispute resolution create unique problems requiring unique solutions. It is the Committee's feeling ongoing evaluation in family law rules and standards should be conducted by a separate subcommittee drawing on the experience of specialists in the field. Accordingly, we are suggesting future reorganization and possible expansion of the Committee for that purpose.

It is also suspected, at this point without confirming data, that county court alternative dispute resolution programs will also require a separate and unique section of rules and standards. The missing ingredient here, however, is more information on how county court mediation programs are faring

throughout the state. Little was done by the Committee in this area simply because data was unavailable concerning what needs to be done. The Committee has concluded there is a need to develop a program to monitor ADR in county court and build a data base to serve as a guide for any required action.

In that vein, and with the recognition the concept may not fall squarely within the province of the Committee's scope, it has become clear some method of gathering solid statistical data on ADR's impact on the judicial system should be developed. To those who have directly experienced it, there is no doubt Florida's bold step in expanding its judiciary to include mediation and arbitration programs has had a dramatic effect on our legal system. It is essential that we get an accurate and reliable picture of that effect as we seek legislative, administrative, and public support for the program in the future. We need to understand, and be able to accurately relate, exactly what part of the overload of work now burdening our judiciary these programs relieve, and, more importantly, what part of the overload still remains to be resolved. Alternative dispute resolution is a useful tool, but it is not a cure-all to replace the healthy, natural growth of the judicial system.

This report cannot be closed without appropriate recognition of the members of the Committee. It is extremely rare to encounter a voluntary public service group with individuals so willing to dedicate their time, their energy and their resources. While every member should thus be singled out for praise, I think the Committee would agree some members deserve special commendation - Professor Jim Alfini, Professor Robert Moberly, and Judge Robert L. Andrews for their exemplary work on the Standards Subcommittee; John Upchurch, Charles Rieders, and Judge Jack Cook for their work on the rules; Senator Helen Gordon Davis, Judge William Green, and Judge Dennis Alvarez for their work on the legislative program; Ailene Hubert, Linda Soud, and Mary Cadwell for their work in the family law area; John Lazzara, Henry Latimer, and Robert Cole for their solid contributions during the full Committee meetings; and Bill Lockhart for keeping us all aware of the pragmatic business of dispensing justice. A special note of thanks and commendation should also go to Arden Siegendorf, Chairman of the Florida

Bar Committee on Alternative Dispute Resolution, Norman Schwarz, Director of the Mediation and Arbitration Division of the Dade County Circuit Court, and James B. Chaplin of Mediation, Inc. for their generous collateral contributions of time, attention and support during the Committee's work. Finally, a very special vote of thanks is due for the tremendous professional support of the executives of the Dispute Resolution Center, Sharon Press, Mike Bridenback, and staff attorney, Charles McCoy. Their work was an essential element of the group's performance.

It has been a singular honor to have been provided the opportunity of working with these fine folks.

Sincerely, (S.P.)

Lawrence M. Watson, Jr.

Lawrence M. Watson, Jr.
Chairman
Supreme Court Standing Committee
on Mediation and Arbitration Rules

LMWjr:clh:ker

EXHIBIT A

CIRCUIT JUDGES' SURVEY RESPONSE

CIRCUIT JUDGES SURVEY REPORT

I. Background

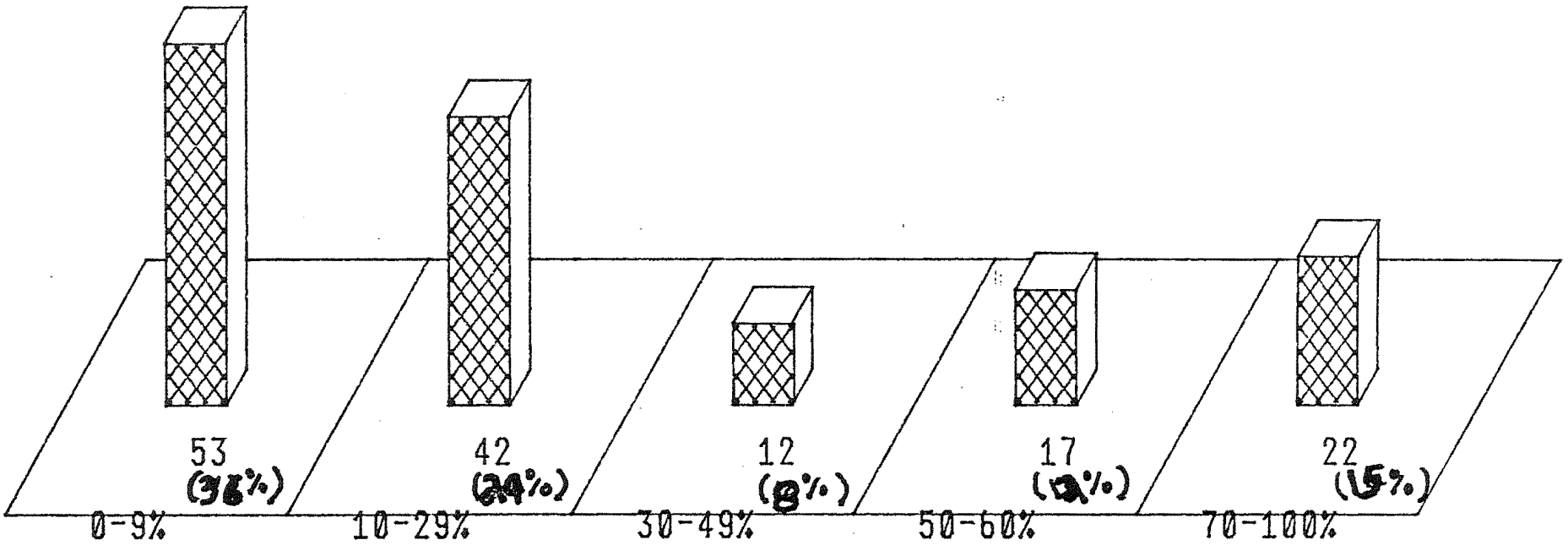
Surveys were sent to all 384 circuit judges. Just under 50% of the surveys were returned. The greatest numbers of surveys were returned from the 4th, 11th, 13th and 17th circuits with at least two surveys returned from each circuit.

II. Index of Charts

PROPORTION OF CIVIL CASE LOAD SENT TO MEDIATION

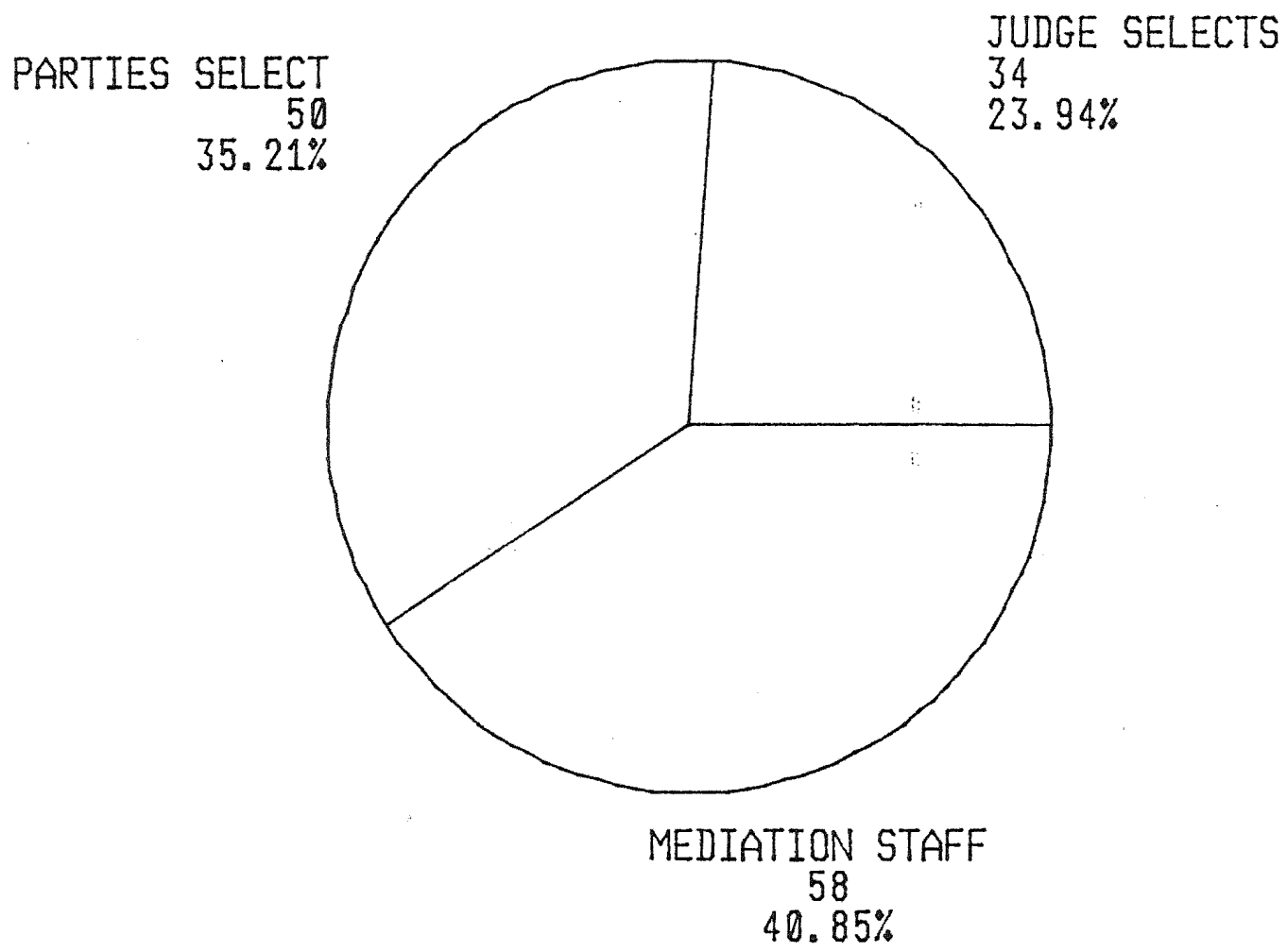
RESPONSES TO CIRCUIT JUDGE SURVEY

FREQUENCY BLOCK CHART



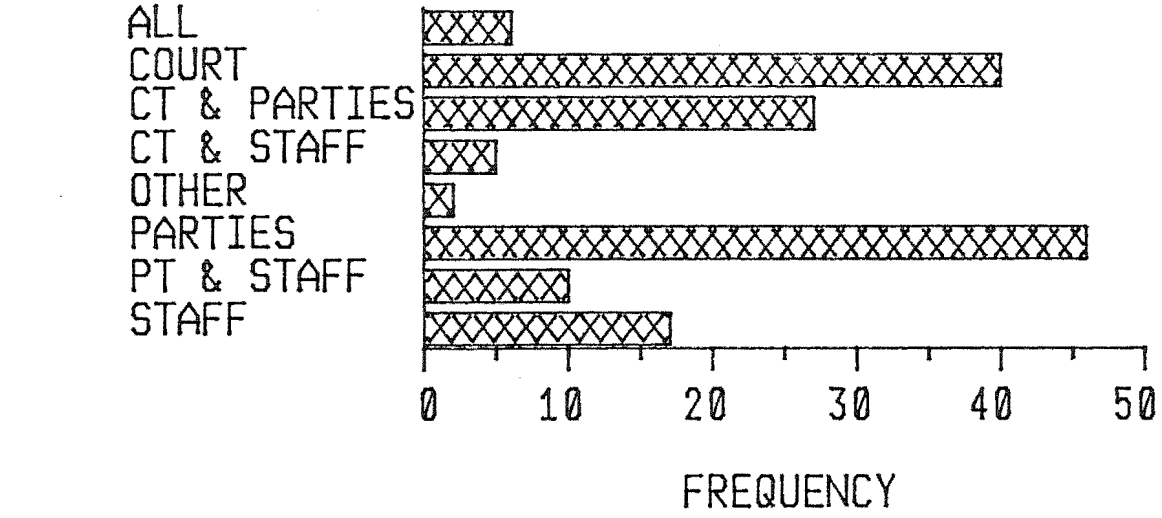
WHO ACTUALLY SELECTS THE MEDIATORS

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF II2



WHO SHOULD SELECT THE MEDIATORS

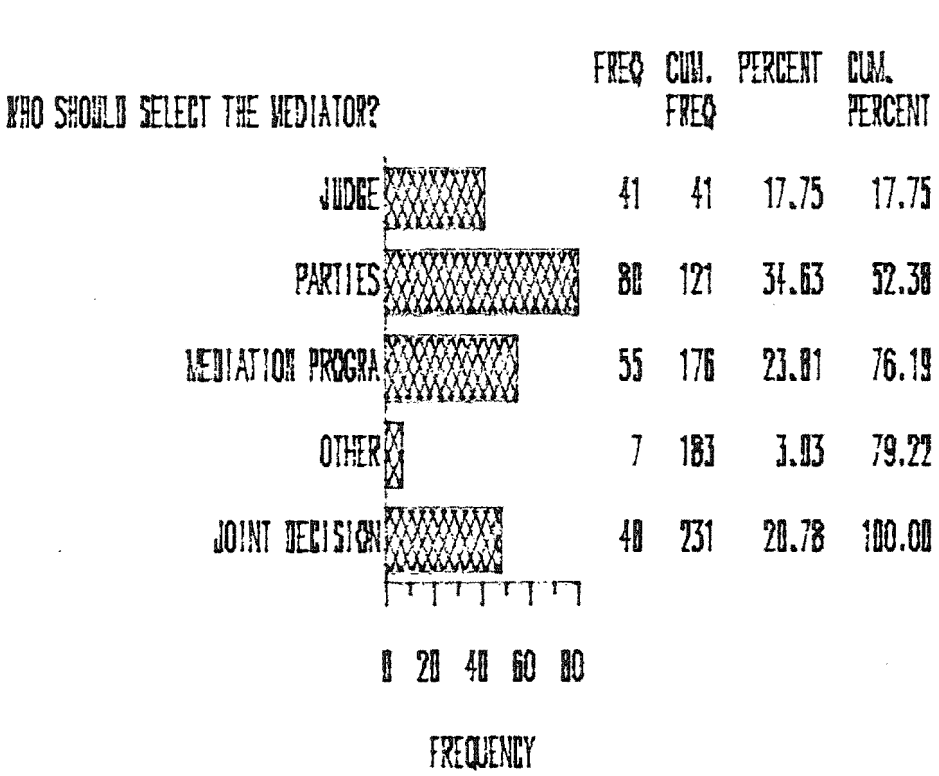
CIRCUIT JUDGE SURVEY RESPONDENTS



WHO SHOULD SELECT	FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
ALL	6	6	3.92	3.92
COURT	40	46	26.14	30.07
CT & PARTIES	27	73	17.65	47.71
CT & STAFF	5	78	3.27	50.98
OTHER	2	80	1.31	52.29
PARTIES	46	126	30.07	82.35
PT & STAFF	10	136	6.54	88.89
STAFF	17	153	11.11	100.00

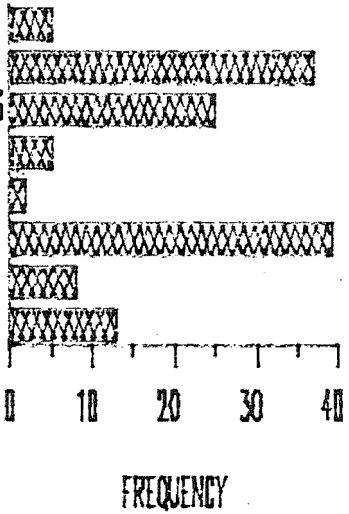
WHO SHOULD SELECT THE MEDIATOR? WHO SHOULD SELECT THE MEDIATORS

ALL MEDIATOR SURVEY RESPONDENTS



WHO SHOULD SELECT THE MEDIATOR?	FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
JUDGE	41	41	17.75	17.75
PARTIES	80	121	34.63	52.38
MEDIATION PROGRA	55	176	23.81	76.19
OTHER	7	183	3.03	79.22
JOINT DECISION	48	231	20.78	100.00

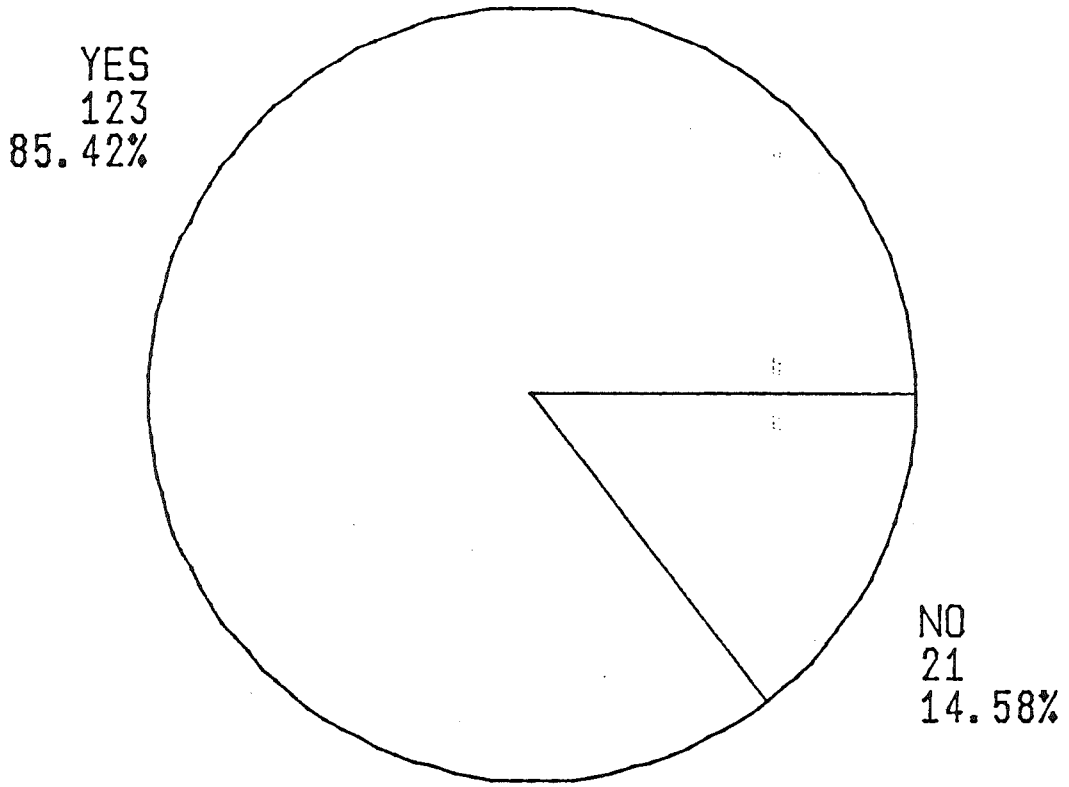
CIRCUIT JUDGE SURVEY RESPONDENTS



WHO SHOULD SELECT	FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
ALL	5	5	3.73	3.73
COURT	37	42	27.61	31.34
CT & PARTIES	25	67	18.66	50.00
CT & STAFF	5	72	3.73	53.73
OTHER	2	74	1.49	55.22
PARTIES	39	113	29.10	84.33
PT & STAFF	8	121	5.97	90.30
STAFF	13	134	9.70	100.00

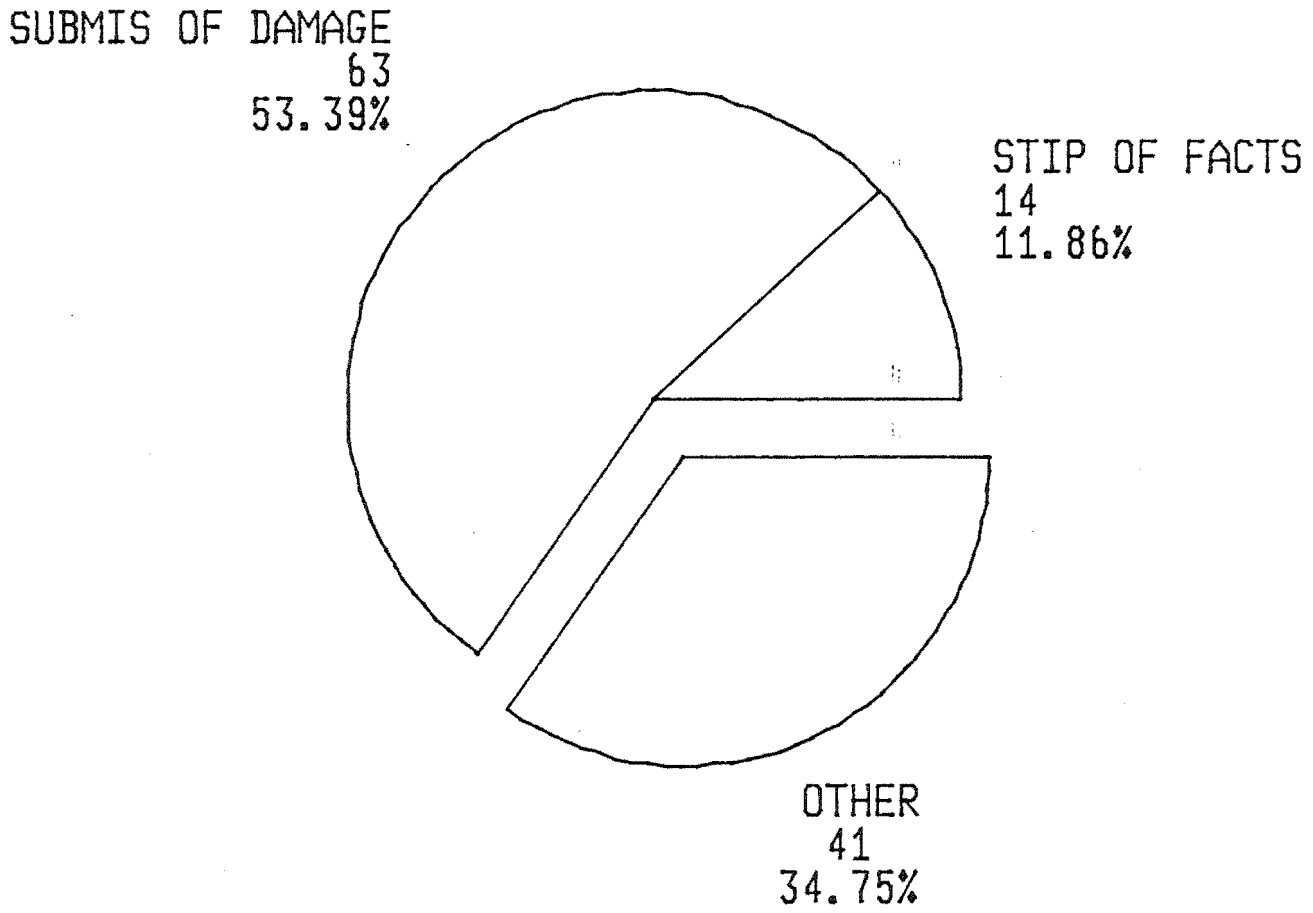
HELPFUL TO HAVE A STANDARD MEDIATON CONFERENCE ORDER?

CIRCUIT JUDGE SURVEY RESPONSES
FREQUENCY OF II5A



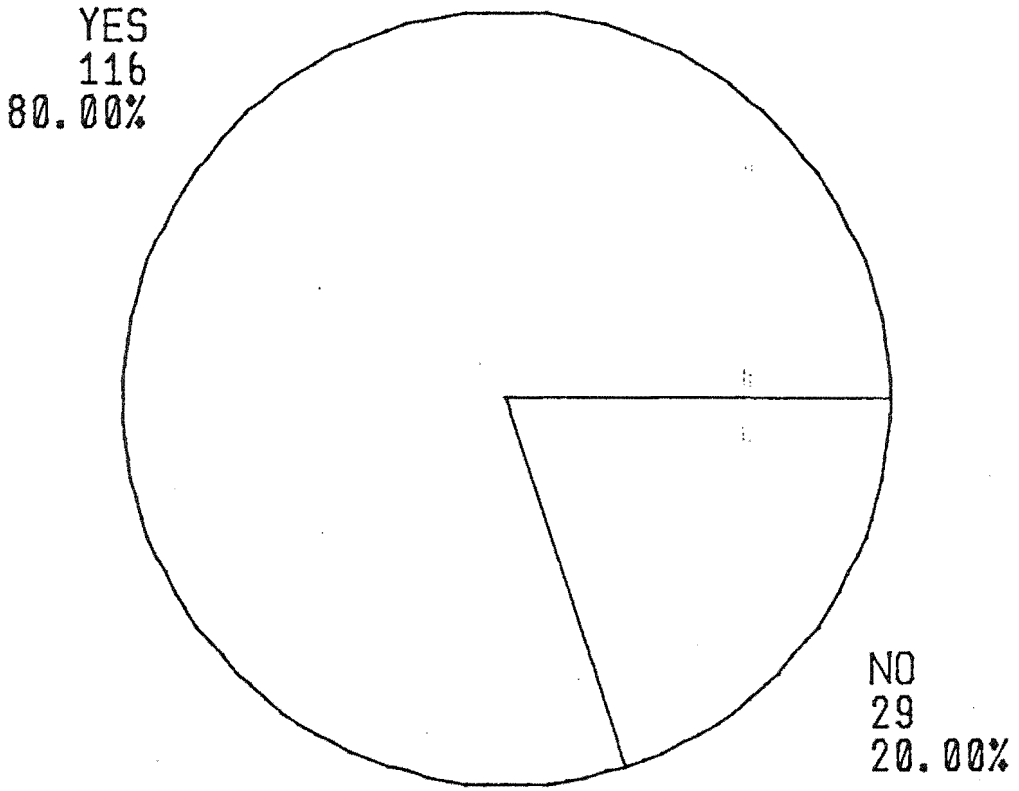
WHAT A STANDARD ORDER SETTING MEDIATION SHOULD REQUIRE

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF II5B



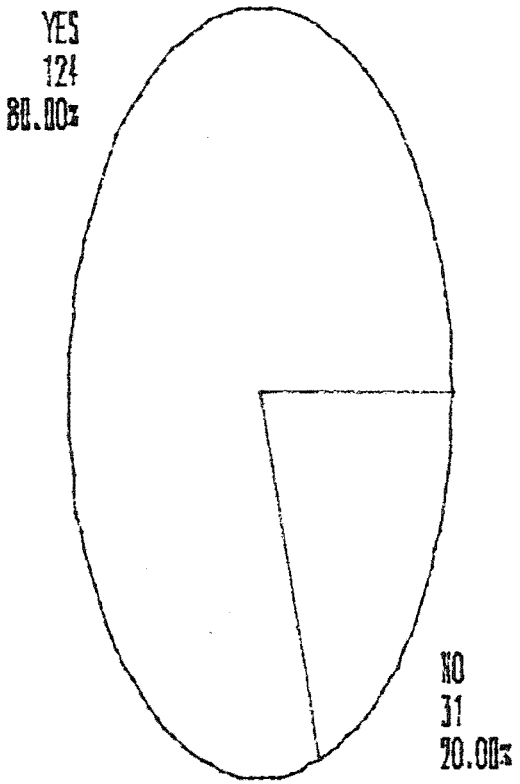
SHOULD SANCTIONS BE MADE AVAILABLE IN MEDIATION

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF II6A



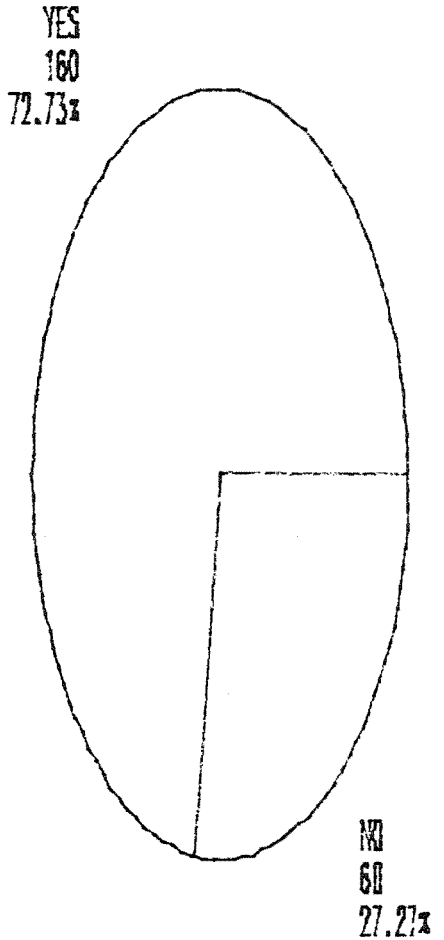
SHOULD SANCTIONS BE MADE AVAILABLE IN MEDIATION

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF 116A



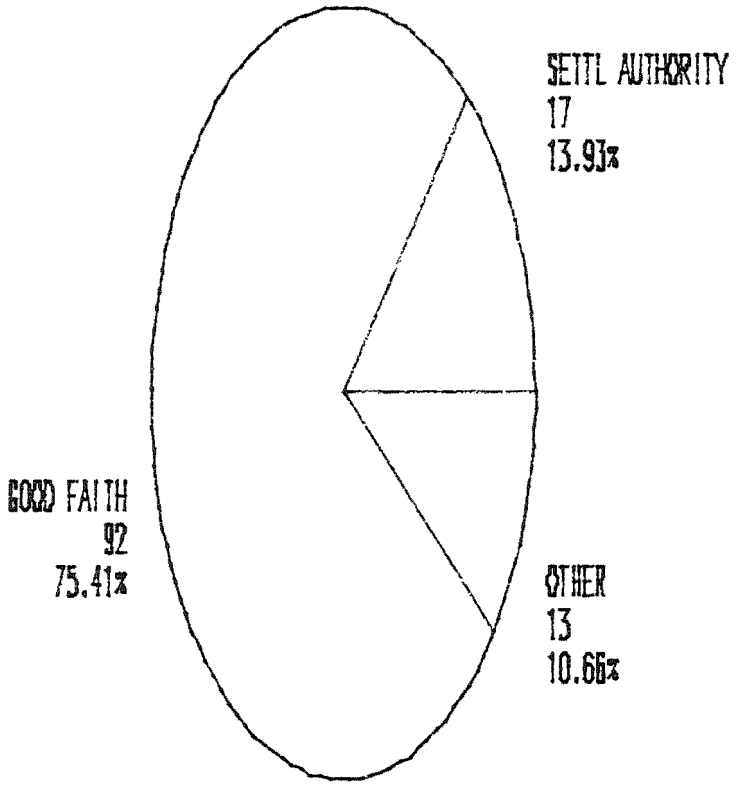
SHOULD SANCTIONS BE MADE AVAILABLE IN MEDIATION

MEDIATOR SURVEY RESPONDENTS
FREQUENCY OF SANCTION

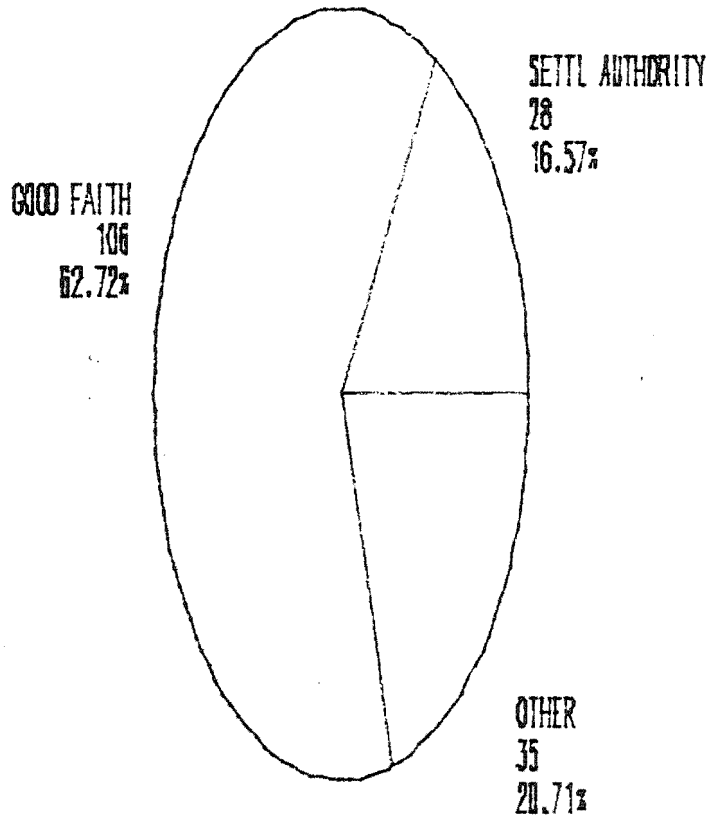


WHAT SANCTIONS SHOULD BE USED TO INDUCE WHAT SANCTIONS SHOULD BE USED TO INDUCE

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF SANCTIONS

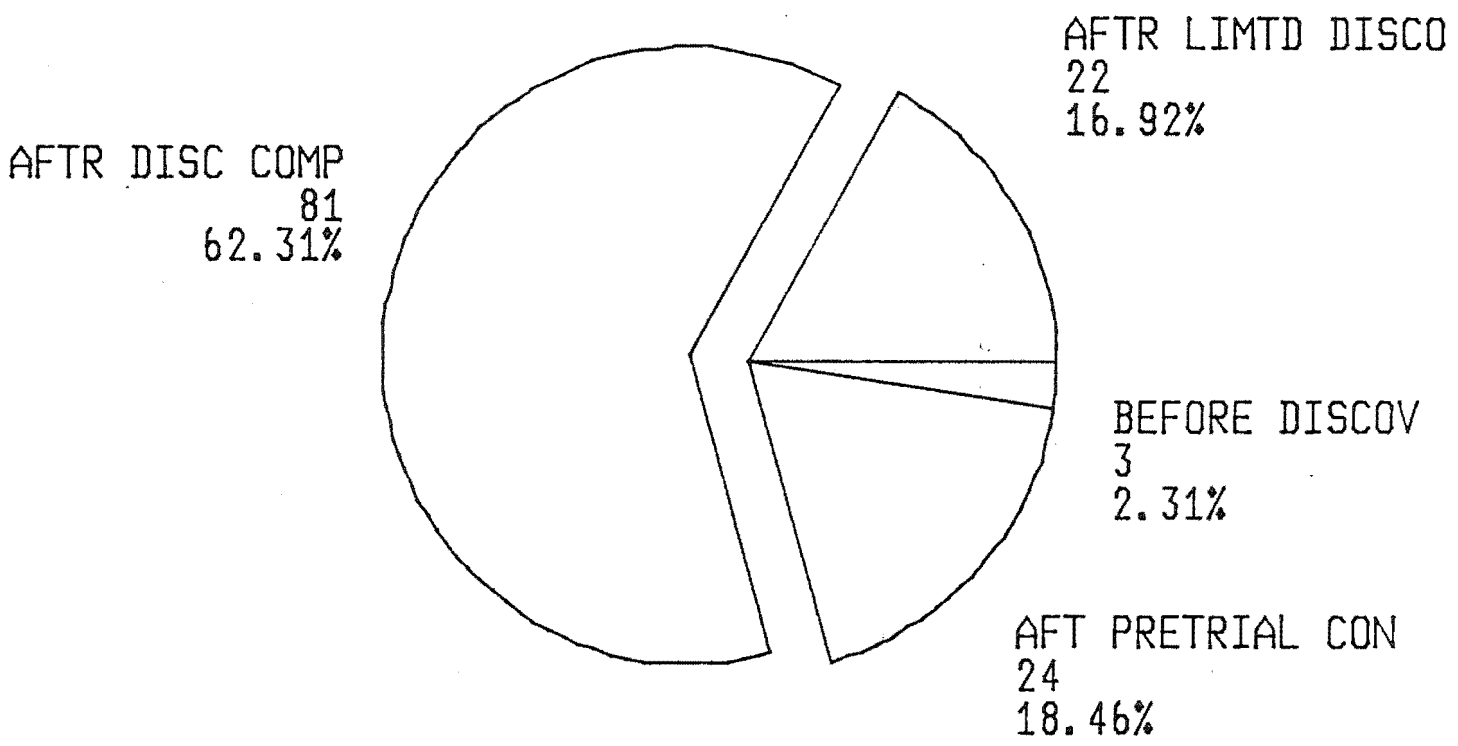


MEDIATOR SURVEY RESPONDENTS
FREQUENCY OF SANCTIONS



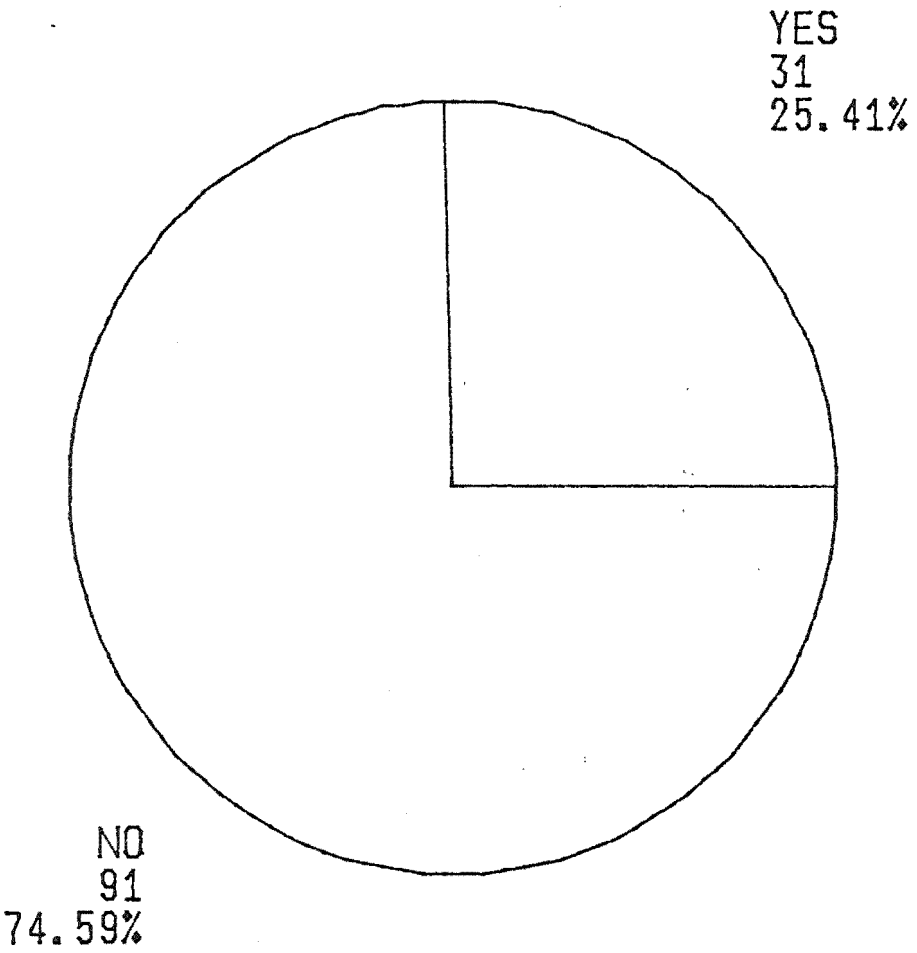
TIME IN PROCEEDINGS WHEN MEDIATION MOST SUCCESSFUL

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF II11A



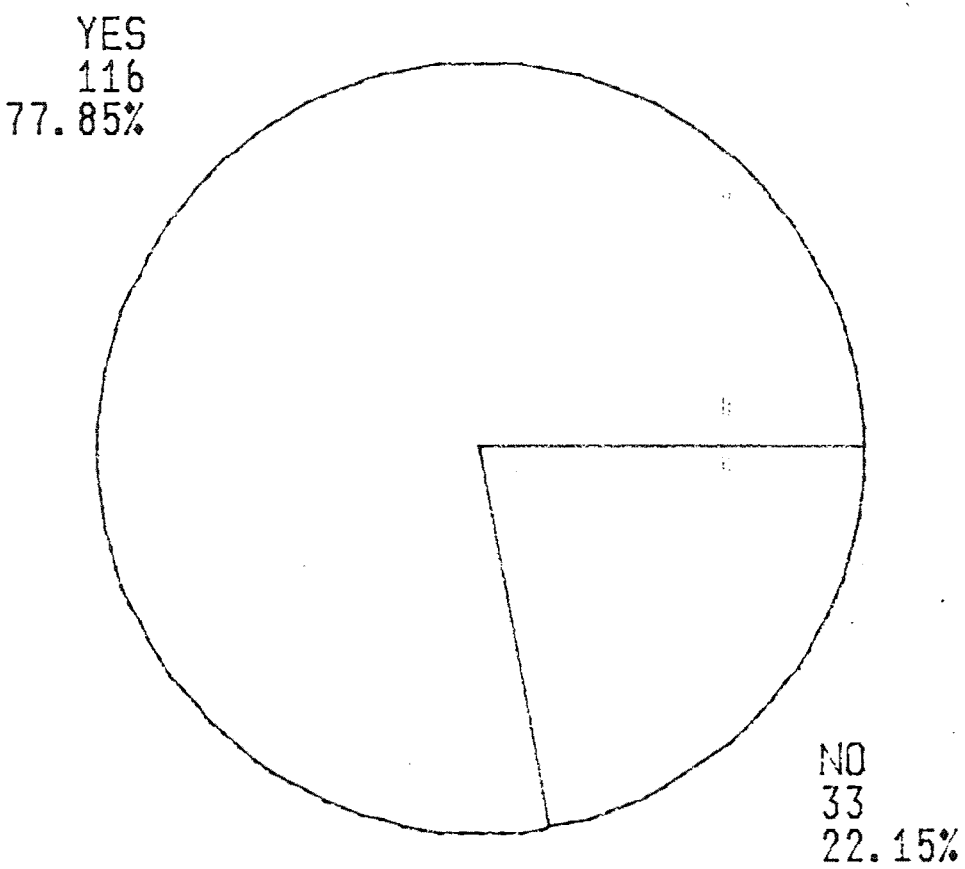
SHOULD MEDIATORS REPORT BE MORE DETAILED

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF II8A



SHOULD MEDIATORS FACILITATE A PARTIAL AGREEMENT?

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF II7



17 A

JUDGE'S SURVEY

Problems with the mediation process which should be addressed by the Committee

SETTLEMENT/AGREEMENT

Settlement at mediation conference to be binding, not subject to review.

There are too many agreements and time periods between mediation and final judgement. Mediation agreements should be enforced as if it was a common law settlement between counsel.

Specific sanctions for failure to follow the terms of the mediation rule.

ROLE OF MEDIATOR

Insurance companies, stonewalling.

Sanctions are needed to create an "honest" atmosphere.

After mediation fails, mediator should be encouraged to state opinion on issues.

The litigants should be well apprised of the fact that the "Mediator" is NOT the judge.

Mediator should be allowed to specify party not mediating in good faith or otherwise frustrating the process, so court can impose sanctions (cost of mediation, attorney fees) against offending party.

Certain private mediators seem more concerned about gaining a large share of the market then in performing a valuable service to the courts. This seems to be especially the case with private lawyers who now supposedly do nothing but mediations. It seems to me the process was designed to be a service to the courts, as well as the parties. This private competition, if allowed to go on, will eventually result in destroying, or adversely impacting on, this otherwise important service.

Lack of good faith settlement efforts - some use mediation as a method of delay.

The mediators should be practical for mediation times since parties and attorneys do not like waiting sometimes an hour or more. Generally retired or former judges make better mediators. However, ther are excellent attorney mediators.

Mediators aren't bench officers - they solicit cases from parties - the facuet of the old arbitration process. Parties must have no choice - a disinterested mediator - by blind assignment.

ATTORNEYS

Attorneys will not submit realistically to mediation if they feel impartial information will be used against them, if mediation is not successful.

Better pre-mediation preparation by attorneys.

The principal problem - and it is rare - seems to be th un-cooperative attitude of the process as indicated by some attorneys.

Education of lawyers as to their roles and suggestions as to how lawyers can encourage their clients to participate.

Help attorneys because more familiar with and more acceptable towards mediation.

RULES

State if any, which public state, or county agencies should be able to avoid mediation.

The Rule (1.700(a) should include probate and guardianship cases as well as "any contended civil matter" so more probate division judges are made aware of its availability!

Waiver of ten day rule.

All mediation should be thru a centralized arm of each circuit with sufficient personnel to cooperate and work with the judges. Without this the judge has no control over his docket and cases.

Recommend change in rule to allow referral to mediation of additional issues of equitable distribution.

Be sure to allow for volunteer - court annexed programs in rules.

QUALIFICATIONS

Define who should mediate family law cases (special center is working on it) Encourage attorneys to use mediation even before they file suit.

Just because a person is a certified mediator does not mean that he/she is good. The "market place" should be allowed to operate. Litigants/attorneys should be allowed to have the 1st opportunity to choose the mediator.

Uneven quality of mediators; mediation should happen or be ????? in first 6 months of case.

Lack of recertification and continuing education requirements.

Mediation may become an industry that may run amok and be at times contrary to the practice of law. No one should be mediating any case unless they have ten (10) years minimum in the practice.

Like any other procedure it is only as good as the parties participating and practicing the experience of mediation.

Some counsel have complained about retired judges from other states (unclear word) as mediators because they have to educate them on Florida law and then pay $125/hr to do so. Suggest closer scrutiny of knowledge of law or require that mediators have practiced in Florida a minimum of 3 -5 years. Encourage non-lawyers in specialties such as CPA's, RE appraisers mediate "partial issues". So that parties can come to agreement on an important factual issue and still leave disputes legal issues for court to resolve. Can greatly reduce trial time.

CASES

The problem of Insurance Carrier not sending person with authority to mediator.

ROLE OF JUDGE

I never require mediation unless at least one party wants it.

Judge should be permitted to order mediation and enforce complaince without stipulation of parties.

IMPORTANT: Prohibit judges sending every case to mediation.

Chief Judge responsibility for certification of mediators without any standards.

MONEY

Billing protion of mediation.

Cost for indigent litigants in domestic cases.

Cost of mediation to individual

Funding, particularly in domestic relations cases.

OTHER

Constitutional "access to court ????????

The Supreme Court should only supervise mediation on case in the Supreme Court - Appellate should supervise their case -- T.J. should supervise. The Supreme Court should stay out of mediation. They are turning it into a political football. The 15th Circuit use of retired judges ??????? the TJ well by mediation technique and case dispostion appraoch. It may not be pure mediation but it works well.

The committee should not be too quick to make changes, and could best serve as a cleaning house of what does or doesn't work.

None yet other than acceptance of concept by judges.

Parties to ????? are usually required to attend mediation. I have found that very few issues are resolved or agreements reached through this process. It appears to be a waste of time to the parties and mediators. As far as I know, mediation or arbitration has not as yet been utilized in other types of actions.

GOOD COMMENTS

I see none; we have a 75% success rate in Orange County.

About 75% of the cases mediated have settled as a result.

Its working quite well here

Mediation seems to be working well

None. It is working well in this circuit

EXHIBIT B

CERTIFIED MEDIATORS' SURVEY RESPONSES

MEDIATORS SURVEY REPORT

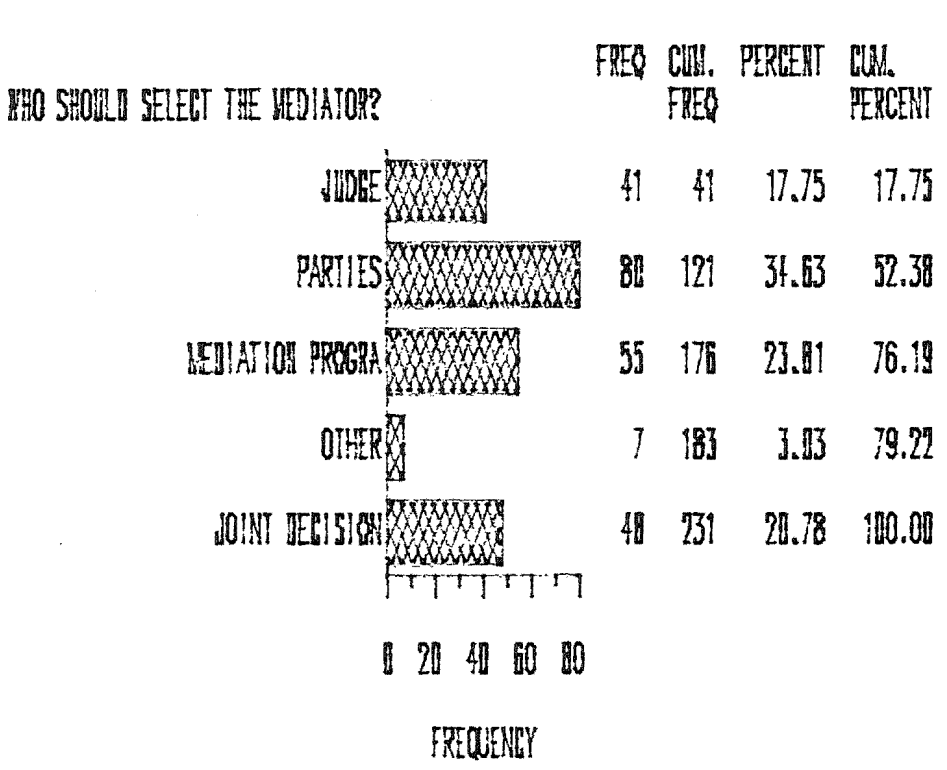
I. Background

987 surveys were sent to individuals who completed certified training courses. After the first mailing, we achieved approximately a 35% response rate. While the surveys are still being returned, the total response rate is at approximately 60%.

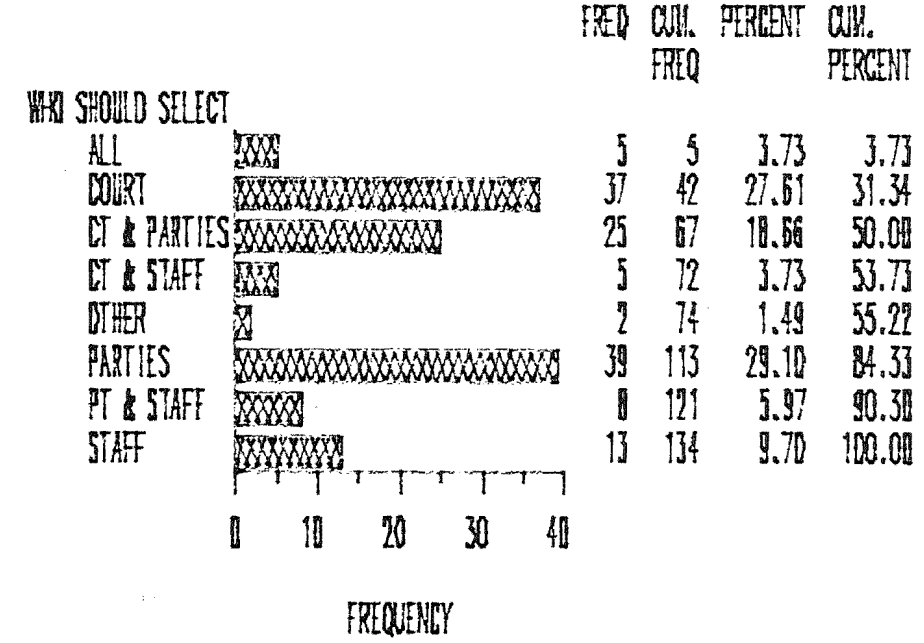
II. Index of Charts

WHO SHOULD SELECT THE MEDIATOR? WHO SHOULD SELECT THE MEDIATORS

ALL MEDIATOR SURVEY RESPONDENTS

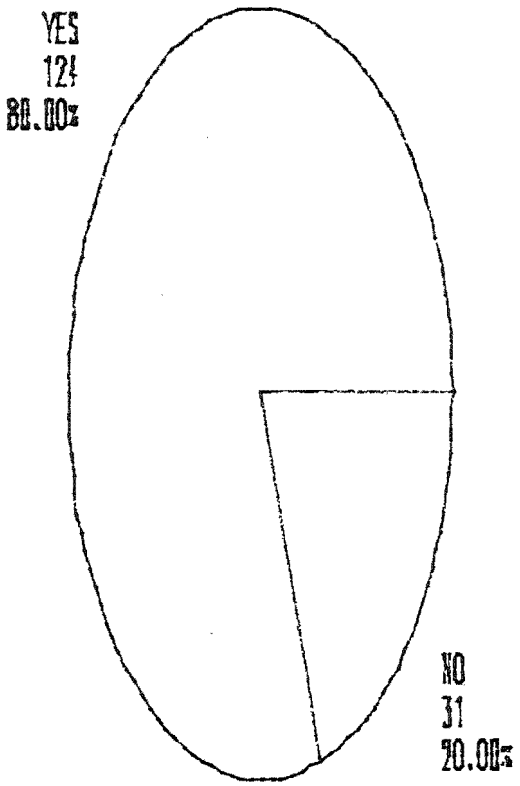


CIRCUIT JUDGE SURVEY RESPONDENTS



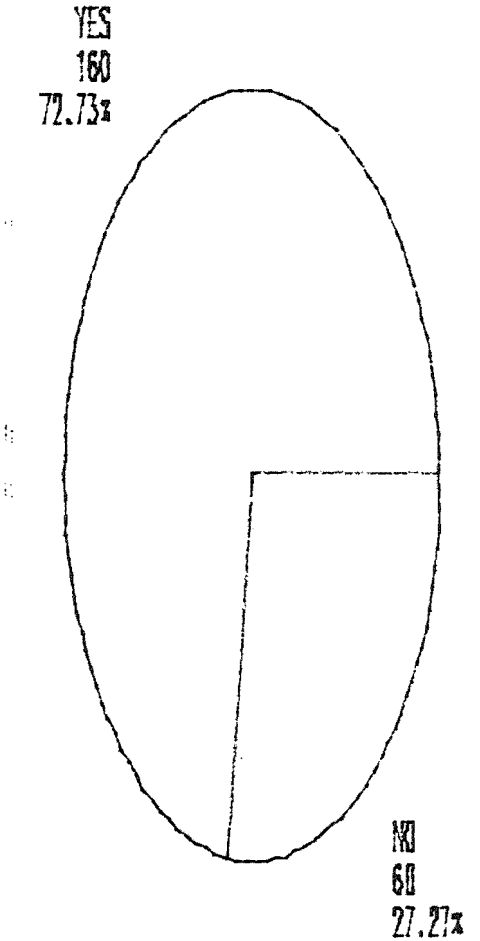
SHOULD SANCTIONS BE MADE AVAILABLE IN MEDIATION

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF 116A



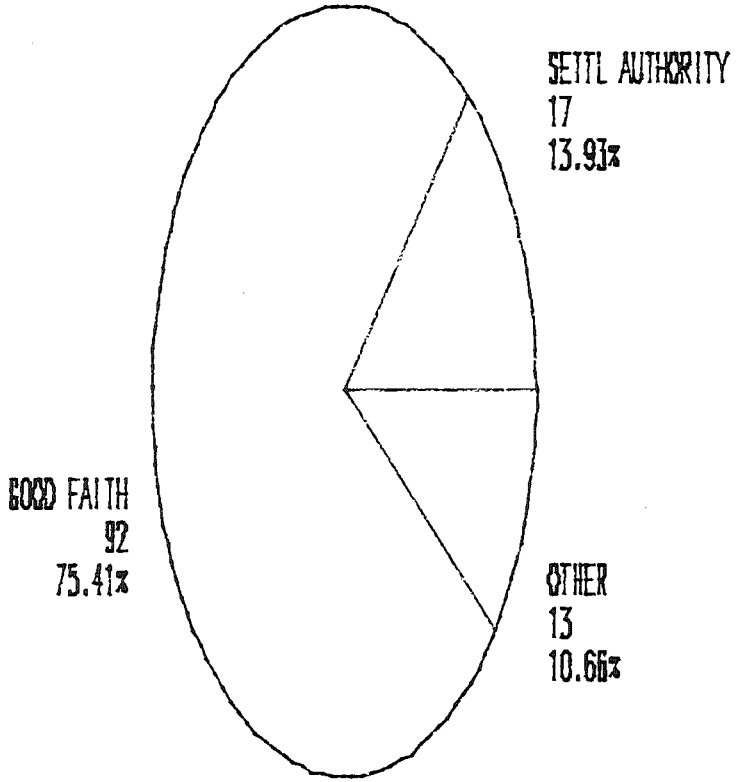
SHOULD SANCTIONS BE MADE AVAILABLE IN MEDIATION

MEDIATOR SURVEY RESPONDENTS
FREQUENCY OF SANCTION

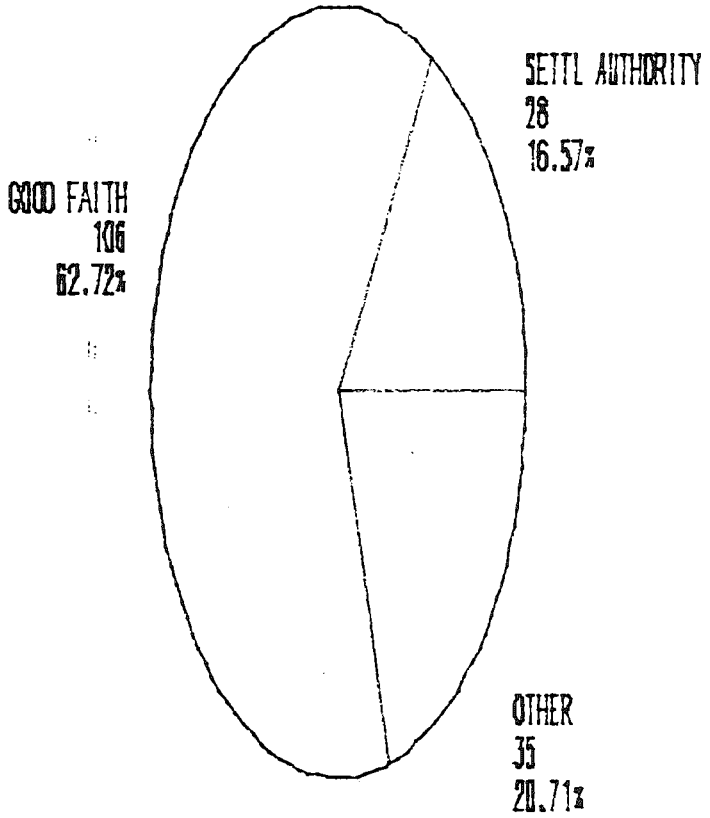


WHAT SANCTIONS SHOULD BE USED TO INDUCE WHAT SANCTIONS SHOULD BE USED TO INDUCE

CIRCUIT JUDGE SURVEY RESPONDENTS
FREQUENCY OF SANCTION

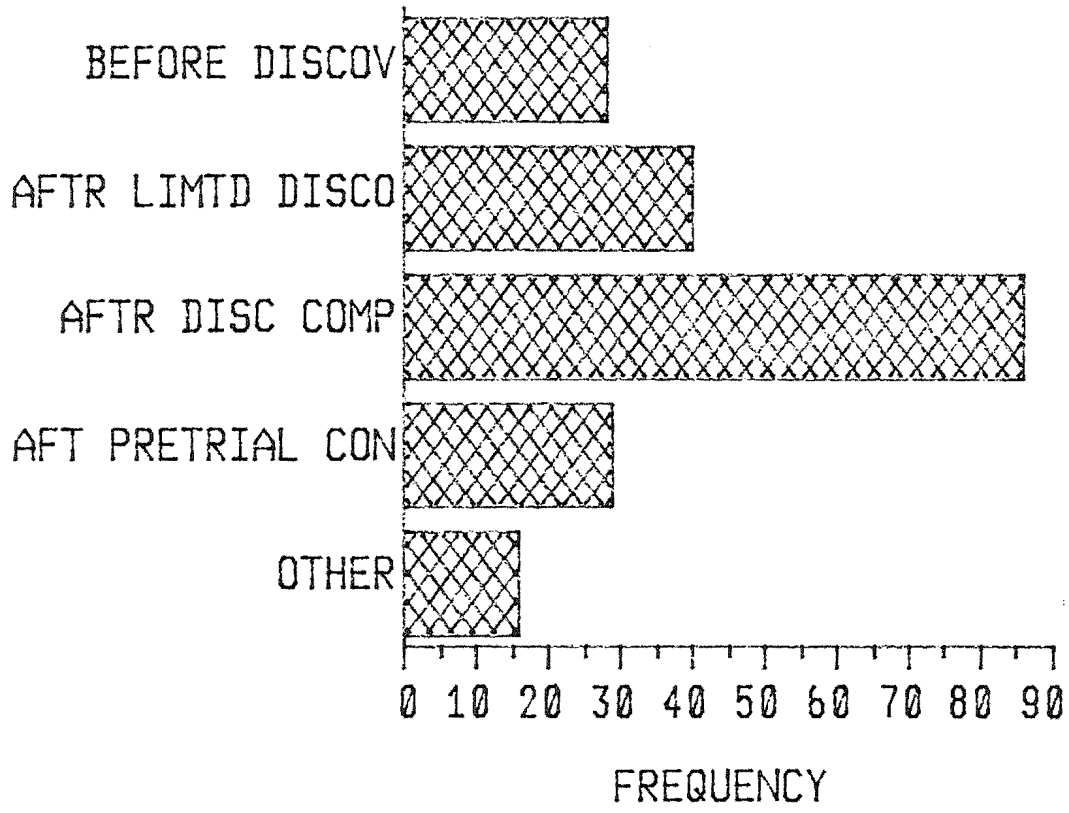


MEDIATOR SURVEY RESPONDENTS
FREQUENCY OF SANCTION



TIME IN PROCEEDINGS WHEN MEDIATION MOST SUCCESSFUL

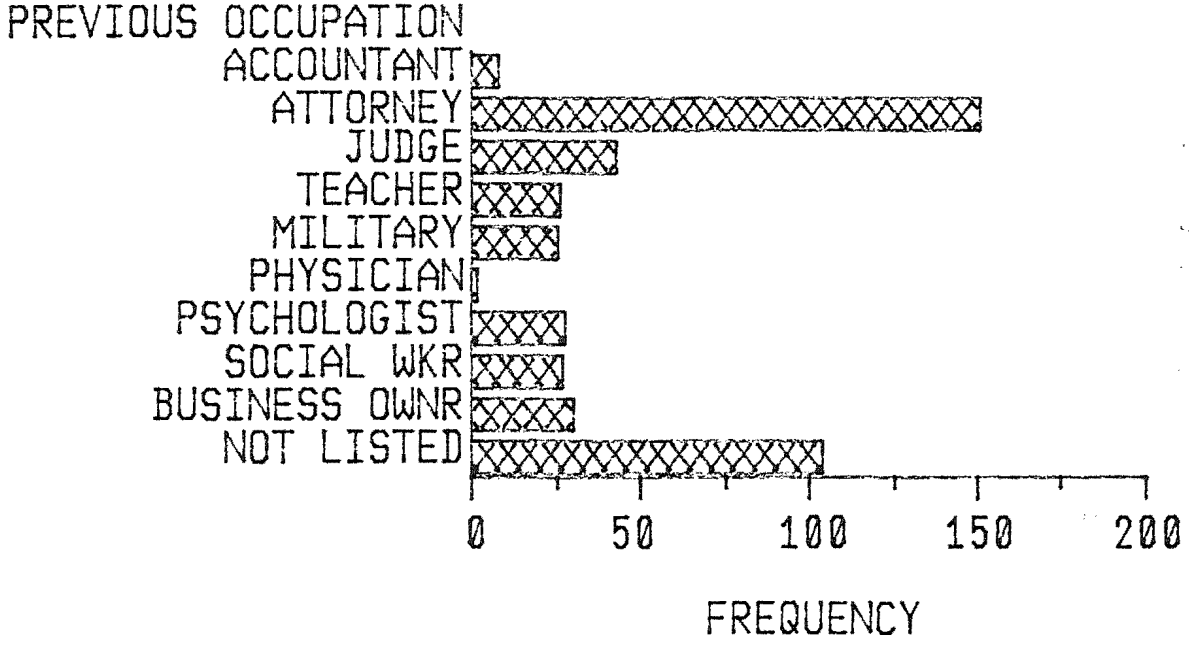
RESPONDENTS WHO ARE EITHER CIRCUIT OR FAMILY CERTIFIED



BEST TIME	FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
BEFORE DISCOV	28	28	14.07	14.07
AFTR LIMTD DISCO	40	68	20.10	34.17
AFTR DISC COMP	86	154	43.22	77.39
AFT PRETRIAL CON	29	183	14.57	91.96
OTHER	16	199	8.04	100.00

PREVIOUS PRIMARY OCCUPATION

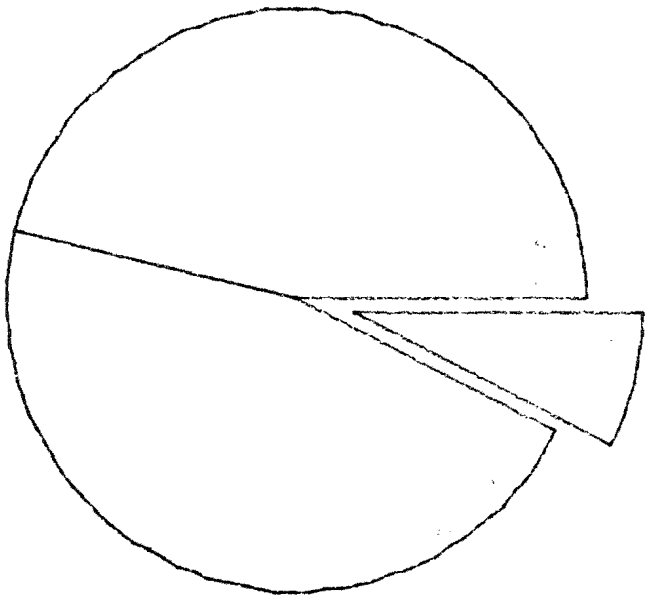
ALL SURVEY RESPONDENTS



PREVIOUS OCCUPATION	FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
ACCOUNTANT	8	8	1.81	1.81
ATTORNEY	151	159	34.09	35.89
JUDGE	43	202	9.71	45.60
TEACHER	26	228	5.87	51.47
MILITARY	25	253	5.64	57.11
PHYSICIAN	1	254	0.23	57.34
PSYCHOLOGIST	28	282	6.32	63.66
SOCIAL WKR	27	309	6.09	69.75
BUSINESS OWNR	30	339	6.77	76.52
NOT LISTED	104	443	23.48	100.00

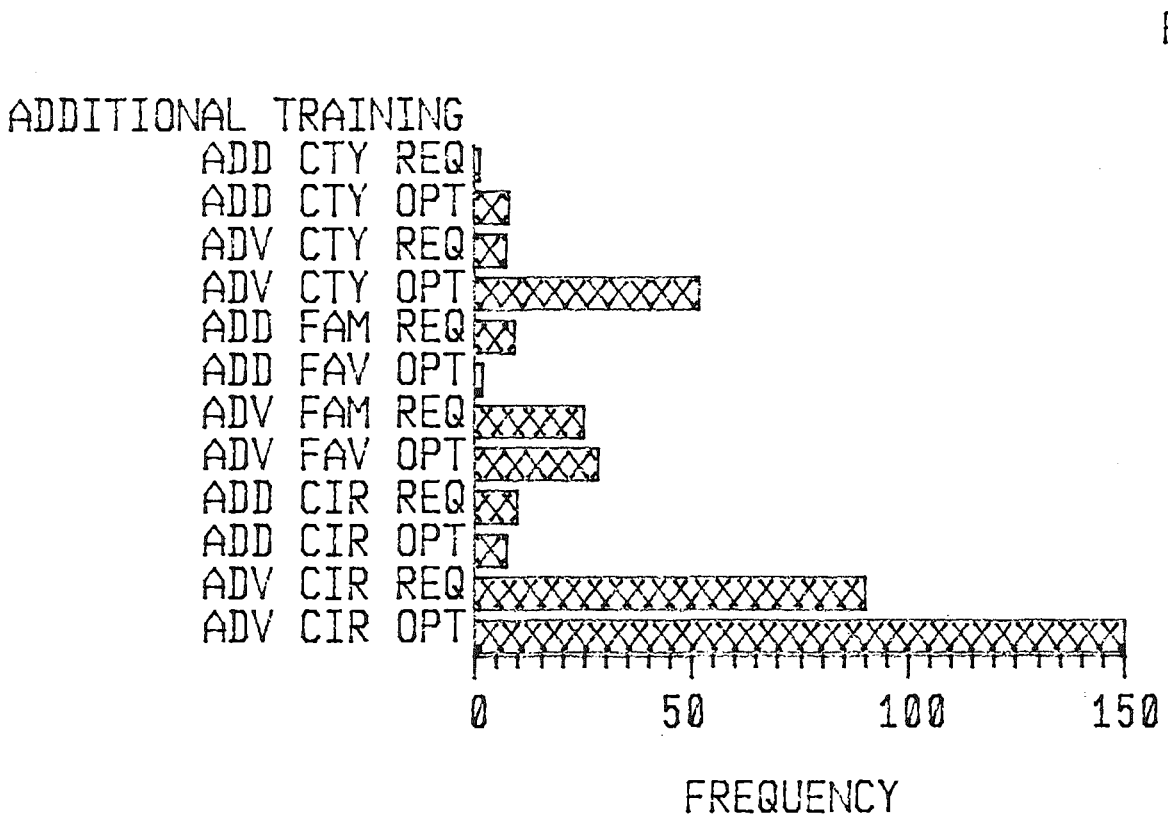
PRESENT EMPLOYMENT STATUS

ALL SURVEY RESPONDENTS
FREQUENCY OF V14B



ADDITIONAL/ADVANCED TRAINING SHOULD BE REQUIRED OR OPTIONAL?

COMBINED SURVEY RESPONDENTS



	FREQ	CUM. FREQ	PERCENT	CUM. PERCENT
ADD CTY REQ	1	1	0.26	0.26
ADD CTY OPT	8	9	2.06	2.31
ADV CTY REQ	7	16	1.80	4.11
ADV CTY OPT	52	68	13.37	17.48
ADD FAM REQ	9	77	2.31	19.79
ADD FAV OPT	2	79	0.51	20.31
ADV FAM REQ	25	104	6.43	26.74
ADV FAV OPT	28	132	7.20	33.93
ADD CIR REQ	10	142	2.57	36.50
ADD CIR OPT	7	149	1.80	38.30
ADV CIR REQ	90	239	23.14	61.44
ADV CIR OPT	150	389	38.56	100.00

17 B.

COUNTY/FAMILY SURVEY RESPONSES

ROLE OF MEDIATOR

Questionable Practices

Mediator should observe same dress codes as are required of jurors.

That an occasional mediator may have been judgmental.

Mediators sometimes get too "involved" in litigation at a personal level.

Yes. Mediators who file insurance claims for mediation as if it were psychotherapy. Psychotherapy is insurance reimbursable and mediation is not. Such mediators misuse insurance funds and undercut legitimate mediators who will not do this.

Yes. Some mediators are too willing to allow one party/spouse dominate the other. In other cases attorneys are not given ample opportunity to consult with the client. Many mediators steer the parties into agreements not in keeping with equitable distribution rules relating to property; some mediators do not know how to calculate child support under the Guidelines (F.S. 61.30).

Yes. I see people who mediate with clients - I believe that to be a conflict.

Yes/ Many mediators - especially retired judges attempt to force settlements and do not have skills to actually mediate.

Mediators not taking time to make sure clients understand their rights in the mediation process. Mediators not giving time for clients to gather information in order to make an informed decision. Total ineffectiveness by not using or knowing mediation skills. Rude, forced agreements, mediator telling clients what they should do; mediator making decisions and keeping clients too long in mediation - mediators need to succeed.

It appears that too many mediators are too directive with the clients - tend to make decisions for them rather than allow the parties to reach mutual decisions on their own. ARe they really practicing the mediator role? Some mediators confuse mediation with counseling.

Yes Mediators: Many newly trained attorney/mediators a) giving advice to the parties and/or 2) telling the parties "what's good for them"

I have been told of breaches of confidentiality; mediators not orienting the parties properly, making recommendations to the court on cases mediated.

When a judge knows of/or has had previous dealings with a person, that judge should automatically excuse himself/herself from the case that will be hearing.

I am not personally aware of any nor have I observed any questionable practices or ethics violations. To that extent, "we're all" trying very hard to relieve the courts from getting clogged up with cases that can be handled by trained mediators. Each mediator is doing the best they can to accomplish this.

Yes. Some mediators indicate a tendency to arbitrate.

If a mediators behavior (volunteer or paid) deviates from normal established procedural guidelines, what is the course of action that should be taken (written reprimand, additional training, decertification, etc.)?

Who is responsible for overseeing the conduct of the private mediator (Court Administration or the Bar Association)?

Not "questionable" in sense of honesty. Some judges (I only know three) and more mediators are needlessly tedious in questioning. Others (one judge) (two mediators) unorganized in their questioning. Most are very good.

Yes mediators who have retired from legal profession tend to quote the "law" to people involved in the case before them - mediation should be based on give and take with a wee touch of Solomon.

Generally judges and mediators all seemly do well. Occasionally. Very few mediators become judgmental.

Yes at least one I know too much to force an agreement.

Some mediators try to force settlements when there is no justification for me.

Mediators often make statements concerning the merits of client's position, ie statement made to husband seeking dissolution and custody" Oh, come on, you know the judges give custody to the mother - what sort of visitation do you really want?"

GREATEST CONCERNS ABOUT BEING A MEDIATOR

Concerns: That convenience to litigants be expanded i.e evening sessions.

Concern about county courts "no shows" Maybe a refundable fee.

No shows.

Keeping neutral balance.

Professional confidence.

Getting a clear understanding of what judge wants me to do and his/her trust that I will do that assigned task.

Getting physically injured by a party.

That some resolutions are only a delaying tactic on the part of the defendants and no effort will be made to meet agreement terms.

I'm really hopeful that I can see and help the participants reach their solutions.

That I reach a complete impartial agreement or rather in all session I remain completely neutral.

Being totally fair and impartial - How to handle an agreement that seems eminently unfair on its face - (it has not yet happened to me)

That parties might make an agreement which is unjust and as a layman I have no right to advise against that agreement.

Fairness of agreement.

Avoid a bias against those agencies which encourage "Quick Loans" etc. to those financially "irresponsible" then looking to courts to satisfy their debts.

Power differential in the couple.

Lack of public awareness of mediation.

Establishing a good relationship with court system and attorneys.

The disputants often fail to appear.

Getting people to take mediation seriously.

1. Maintenance of neutrality 2. Burnout 3. Not "uncovering" child abuse 4. Defusing party(s)'s anger inadequately 5. Personal safety.

Adequate understanding of role and limitations by parties.

Making people satisfied they chose mediation, they came to a satisfactory decision with my help and they are content when the session is concluded.

Doing a good job.

Mediating a solution that you may not agree with personally.

Pressure by the court system.

1) Immunity. 2) Role of Private vs. Court based mediators; 3) Attorney/mediator "conflict".

Ethics, in general, is much lacking.

Avoiding the appearance of favoritism for one side of the other.

Being faced with a party with preconceived positions.

My concern is for professionalism in delivery of mediation services. I am distressed by unethical practices and the potential for abuse.

In family law mediation, I know that almost invariably a compromise settlement is better than continued litigation: yet the emotions of the parties too often interferes with possibilities of resolution.

I try mostly to be fair to both parties and if they do not settle then I try to tell them how to prepare themselves for the trial. I have no other concerns and feel very confident.

To remain neutral. Particularly when the advisories are not of equal legal knowledge.

Being fair to both parties.

The fine line drawn between what can be construed as offering legal advice and what is people helping people to make the best possible agreement for each party.

Being held liable for decisions that have made by both parties.

Ideally, it is the concentrated effort and best hope for the parties to reach a successful agreement that will work for all of them and then to implement their agreement.

That both parties will be somewhat satisfied with the agreement reached.

That a fair agreement has been reached and that justice has been served.

Treating both parties equally.

That the mediator must remain neutral. None-Judgmental. I feel that retired judges and attorney mediators will quote and practice law not appropriate for mediation!

To achieve high rate of successful mediations resulting in agreements.

No concerns. Hope to be fair and wise. Seems to work out ok.

Maintain proper conduct (and control) and assure hearings are orderly - obtain all pertinent facts impartially.

That all mediators do not follow the rules laid down during our training. I arrive at this concern by talking with the mediators.

My greatest concern is do a good job for all concerned.

There is no problem as long as mediators remember what their function is and do not try to act as judges, or try to force a settlement.

Retaining an impartial approach re: fundamental issues as well as dispersing client's clouding same.

Concern that resolutions are followed through.

The greatest concern is to be fair with the contestants as well as trying to be completely impartial.

That I can always maintain complete neutrality unfettered by personal bias but only in the respect and dignity of each client to achieve "win - win" conclusions.

Giving the impression of favoring one side.

Making parties understand that you are neutral and are only trying to assist them and explain their position if there should be a trial.

1) It is sometimes difficult to maintain an image of complete impartiality. 2) It is frustrating when mediation is unsuccessful and a trial is set, not to know the outcome of the trial.

Being certain that you express impartiality and free of any possible conflicts.

How to know whether or not respondents will appear. How to get parties to realize what services they are getting free. How to follow up on compliance re:agreement.

Most people are not aware that it is available and don't know what it is.

My ability to maintain control over the session when the parties try to start arguing/fighting.

Agreements reached which, however fair they may be, are often viewed by the parties as being a result of pressure by the mediator or the system.

Many problems can be resolved equitably at this level.

Meeting needs of children.

Sanctions

Parties appearing and those appearing should have proper authority to settle. Without the parties appearing with present full authority - chances of settlement being reached is greatly reduced.

JUDGES

QUESTIONABLE PRACTICES

Yes. One judge allows his mood swings to dictate his actions.

Judges are ambiguous, ambivalent, or inconsistent in guidelines that mediators need in conducting sessions - Individual judges differ in application of these.

Judges often want arbitration from mediators.

A judge granting better schedules to those who hire lawyers from small claims cases. Letting an entire court room awaiting preliminary hearings cool their heels because judge couldn't organize his time.

Not ethically questionable, but some judges do a better job of explaining the mediation process and using mediators better.

Judges may not give appropriate reinforcement to mediators.

Some judges seek to inquire about the dynamics of a mediation which does not result in settlement. The wall of confidentiality should be reinforced.

GREATEST CONCERNS

Some judges are too quick to turn a case over to mediation. These cases could be handled by a few short questions by the judge.

Reluctance of judges to let go of clients and believe that people other than lawyers can do a good job.

Judges failure to enforce agreements entered into as a result of mediation when one party reneges.

QUALIFICATIONS

QUESTIONABLE PRACTICES

That volunteer mediators may be reduced with the advent of paid mediators.

I believe that Family mediation training and certification should be available only to those persons already licensed as a professional and regulated by DPR.

Does a mediator have to mediate a certain number of hearings per year to maintain their certification?

Will a mediator have to attend additional educational training courses to maintain their certification? If so, how often?

Why is the Commission represented by the private sector, rather than members of Judicial Court Based Programs?

I have no "concerns and in my opinion our program is working well at this time. I see as a possible

future "concern" the implementation of mandatory training in various legal aspects. I believe this would be wrong as it has been my experience that too much of this type of training would be counter productive and the use of just plan "common sense is most successful.

Many of the retired judges have not had divorce mediation training and practice from an adversarial perspective.

GREATEST CONCERNS

Understanding tax liabilities.

1. The concerted efforts by the Aba and retired judiciary to exclude non-legal professionals from the levels of mediation which receive compensation. 2. The flood of "schools" which offer "training" seminars at outrageous prices without sanction or regulation by the Dispute Resolution Center.

Everyone is becoming one and there is no effective way to know if they are good or bad.

That persons who do not have sufficient education in psychological theory and fact may become mediators.

My greatest concern is the conflict that the attorneys are creating - it's either attorney mediators or nothing I am as qualified as a mediator as any attorney - This animosity will create a separation seems ironic for the mediating profession.

The separation of attorney mediators and counselor mediators. This tends to contradict the concept of mediation itself.

Process is being exploited by too many - unskilled but "trained" mediators - need requirement that retired judges either mediate or adjudicate not both.

Poor mediators giving the others a "bad name".

None - that a good program will become lost in paper and higher education. Where common sense is not best.

Staying current on legal techniques.

Continuing education.

Experienced county court mediators should automatically be qualified as circuit court mediators.

1)Fear of too much state intervention. 2) Not enough state publicity on the programs.

Who is certified - presently CPA's do not qualify - I believe that a CPA is possibly the best qualified to deal with the bulk of mediationable problems.

Training

GREATEST CONCERNS

More financially reasonably priced courses. More locally available advanced courses.

Need for training.

I believe that "continuing education" programs for mediators should be encouraged.

Would also liked to be trained for family and circuit mediation.

GOOD COMMENTS

QUESTIONABLE PRACTICES

No. All judges and mediators (mediators are all unpaid volunteers) have demonstrated without exception, the highest of ethical conduct and seem genuinely and unselfishly interested in helping perform a worthwhile public service.

No particular concerns. The programs works extremely well and the judges appear to be satisfied with our progress and our professionalism.

No questionable practices. Words very smoothly - solve about 80%.

GREATEST CONCERNS

No great concerns. I enjoy working with people with problems which follows close to 40 years as an insurance adjuster.

I thoroughly enjoyed the work; had no real concerns. In a number of cases, after decision reached, I assisted participants getting with SCORE etc.

I thoroughly enjoy it! I just fear that too much "tampering" will destroy a "working program" and believe in the adage that - "If it isn't broken don't try to fix it"

No great concerns. I greatly enjoy the challenges and the satisfaction of dispute resolution.

From my experience the program is running smoothly.

I have none - Actually look forward to mediate have great sense of pride and achievement upon settlement - only 5 misses out of 100 plus cases.

None in particular. The service I am associated with requires mandatory in house training every 90 days. It also rotates mediators through the circuits. That rotation helps to keep the mediators fresh. If the process becomes hum drum it will loose it value to the bar.

CASE SELECTION

QUESTIONABLE PRACTICES

Ordering mediation for domestic violence cases - power differentials are so important.

Some judges are requiring mediation in all cases and do not properly screen cases to determine those appropriate for ADR.

Issues to be mediated should be specifically prescribed.

On occasion I have observed county judges to be abrupt and even arbitrary in ordering litigants into mediation without a good explanation of what it involves. This puts the mediator in an awkward posture and creates tension in place of a conciliatory atmosphere which should prevail in a mediation session

Occasionally a Judge orders mediations where there is no hope for success. At a recent meeting of mediators in the 12th circuit some mediators said that the wrote into the settlement a confession of judgment if plaintiff had to go to court to enforce agreement in my opinion this is going too far.

GREATEST CONCERNS

Dealing with cases not proper for mediation.

REFERRALS/ASSIGNMENTS

QUESTIONABLE PRACTICES

Mediation INC rather than individual mediators seems to have a "lock" in certain circuits; others have selected 1 or 2 mediators and employ no others.

Well, I don't think any effort has been made by the judges in St. Johns County to see who is qualified by training; because even though they have seen my vital (because I've served on "privately recruited testimonies," i.e. consultations for private attorneys who are arguing cases in their courtroom) I've never had a referral by the court. Instead one single psychologist continues to get most if not all referrals and I do not think he is specifically trained.

a) Judges choosing attorney mediators and excluding others on the court lists.
b) A judge allowing a civil mediator to do family mediation although not trained in that area.

It is next to impossible for private mental health mediators to obtain referrals from the mediation and arbitration department in Dade County. If you are not an attorney you get "o" even if you are only interested in family. There is no rotation basis for referrals - it's a close knit circle. Please help.

In the eleventh district it is virtually impossible for a mental health professional to obtain referrals from the Mediation and Arbitration office. This is unfair since mental health counselors are qualified to mediate family cases.

Judges: Assigning specific mediators to a case rather than giving the parties a list of court approved mediators.

Who's responsibility is it to see that a Court Ordered Mediation Case is handled by Certified Mediator listed on the administrative order?

GREATEST CONCERNS

The infrequency of assigned mediation sessions.

Crossing the three mile bridge. Insufficient number of cases.

Private sector/Attorneys taking over all family mediation. Not enough time and availability for networking, too many cases resulting sometimes in "bad habits".

Judges who only assign judge/mediators to their cases.

Do not get sufficient volume of assignments.

RULES/STANDARDS

QUESTIONABLE PRACTICES

Four totally different interpretations of the statute in four counties in one judicial circuit.

There should be a more concise standard of procedure with respect to responsibility of mediator and the mediation process. I have seen several different approaches but none are really good.

Poorly organized procedures that result in useless delays for all concerned.

GREATEST CONCERNS

Immunity to lawsuits - or lack thereof

Balance of power regarding agreements.

That ethical standards have not been stated (as they have for psychologists - so we are covered - but some other mediators may not be).

1. Proper regulation and enforcement. 2) In counties that do not have court based programs do low income parties have equal access to mediation.

My greatest concern and disappointment has been that the system after training does not assume any responsibility or guidance helpful in getting you into the system; as a court mediator you pay your money, they train you and that is all. I have spoken to several of my colleges mediators and attorneys and they feel the same.

Quality control of those mediating.

That therapists are not written out of the mediation field by lawyers.

That mediators paid $125/hr with judicial immunity will abuse the mediation process and the public backlash will destroy its ability to be used by the court as an appropriate judicial alternative.

I believe some enforceable rules about parties and/or counsel appearing for a scheduled session are desireable.

Respondents knowing mediation is voluntary and carries No weight in court, fail to show for scheduled hearings. Perhaps a form of mandatory pretrial hearing as another name for mediation is in order.

Being sued by disgruntled parties.

Would like to expand the $2500 periphery limitation.

PROCEDURES

QUESTIONABLE PRACTICES

Scheduling. Mediation should be scheduled to allow for multiple sessions before final court hearing. Of times, mediation is scheduled within the week of court date.
Sessions. Mediation sessions should be scheduled and time limited in advance, to avoid lengthy open ended sessions.

Non-parties attending mediation conference.

The people should be told that we are volunteers and non bias. The amount of court costs should be mentioned early on in the discussion. Also mediation prior to filing would solve a lot of cases being filed.

Yes from my discussions and opinion I have observed adversarial positions being rendered to clients instead of what I believe should be neutral observations and remedies.

GREATEST CONCERNS

When a plaintiff's costs, e.g.(interest, gasoline, and time lost) are reflected excessively on the complaint. These costs, many times ludicrous are then put in on the final total costs and if defendant defaults, these costs are due the plaintiff.

When I devote time to get ready I would like to have at least 4 hours of mediation.

The change of forms and the administrative problems encountered.

1) Lack of time in some cases; 2) Lack of knowledge of eventual discussion on cases of unsuccessful mediation.

No shows.

Showing up for mediation and one or both parties do not show up.

Calendar practice. Sometimes I show up for a mediation and without notice or explanation one or both parties fail to appear. There should be a better control system from the DRC.

Court mandated mediations occur often a few days before trial date which does not allow for more than 2 hours of mediation - hardly enough time to mediate a major issues such as child custody and division of property!

Legalities of procedures when attorneys are present.

EVALUATION

QUESTIONABLE PRACTICES

No direct observation

As a witness I most commonly observe that whole areas of relevant facts are overlooked.

GREATEST CONCERNS

It would be nice to know how permanent our agreements were, and if the non-agreements went to court.

Recognition - Jewelry i.e. service pin etc.; could try on other forms; just a nice thing to do for volunteers.

ATTORNEYS

QUESTIONABLE PRACTICES

Some ex-lawyers give legal advice.

In some cases retired Professionals have a tendency to offer legal advice, either out of habit of long

standing, but their legal advice may not be valid in Florida. I don't think this is done on purpose but it certainly should be of concern to mediators as I understand it.

No but it would help if lawyers were excluded from mediation - most are ok but some are a real problem.

GREATEST CONCERNS

I am concerned about the attorney's role in mediation. Without attorney cooperation in mediation, the process will likely be unsuccessful.

Dealing with lawyers who attempt to dominate or control the mediation session.

Attorneys sabotaging the mediation process by encouraging clients not to cooperate or stating "you can get a better deal if we go to court!" Many attorneys advocate only for short term financial gains of their clients and do not see the long term picture of what is best for the divorced family unit - i.e. ignoring the needs and interest of children.

That some lawyers undermine the process with their insistence on an adversarial approach.

More coordination and cooperation with lawyers to share knowledge bases rather than competing.

Attorneys impending process.

Attorneys hostile and undermining the process.

To many attorneys are reluctant to participate in mediation.

That at some point the lawyers may begin to resist our efforts.

LIABILITY

GREATEST CONCERNS

The possibility of liability.

FEES

GREATEST CONCERNS

I have no concerns. It would help the volunteers if expenses could be paid when working out of their own city.

As a volunteer I really find it a little hard to justify a) getting dressed b) travelling 8 miles c) waiting an hour for case assignment and then be asked to mediate a case for less than $100. My laundry and gas cost is about $5.00.

PHYSICAL

GREATEST CONCERNS

14.C

MEDIATOR

Circuit Survey Responses

QUALIFICATIONS

Questionable Practices

Non trained non licensed professionals in mediation activities.

Question: Having taken the 40 hour training to be court certified why do you close your doors to experienced persons that are not attorneys. You're doing the system a great injustice.

I don't have the opportunity to observe other mediators. I don't think they're knowledgeable in the area of child development and family issues.

That they value the private as well as public sector mediators and accord high respect to choices of parties in selection of mediators, time of session etc. truly empowering them in their own behalf.

Age of mediators - being volunteers - when to retire?

Greatest Concerns

Maintaining quality of mediators.

The breadth and depth of knowledge required for family mediation is vast and comes from so many different disciplines - law, child psychology, marriage counseling, social psychology, etc.

I have not done mediation but work with families who are in the divorce process. My bias is that divorce (family) mediators must have a strong background in child development and family therapy as opposed to the legal issues.

I am a non-attorney mediator. I do not feel that we are given or allowed the input and credit we deserve. We, the true mediators are a dying breed. The new rules governing mediators were written by attorneys and judges for attorneys and judges, I don't feel mediation was their main concern, this is very evident by all the rules and sanctions they want imposed, the fees they are charging and how easily and quickly they lead a case to impasse.

I would prefer mediators to be professionals in the field who work at it full time preferably as salaried staff - I fear the enormous $ potential as what will happen in present systems continue.

I believe there are individuals who are not suited to mediate either by background and experience or temperament.

Mediators need not be attorney or health professionals - business experience can make excellent mediators.

I'm also concerned that therapist/mediators have been locked out of meaningful court mediation.

Those members of the Florida Bar with significant experience or other professional should be permitted to be certified as a county and circuit court mediator. The Statute should be changed to require 3 years not 5 years as a member of the Florida Bar.

In my opinion five years Florida practice as a member of the Florida Bar is insufficient

to qualify as a mediator. Also, I am concerned that the appointment of mediators will become political.

Training

Questionable Practices

Training qualifications of mediators.

(1) not having a set of ethical standards which govern mediators; (2) inadequate training of mediators; (3) lawyer's inaccurate perceptions of mediators.

Not enough work to justify the training.

ROLE OF MEDIATOR

Greatest Concerns

Yes - role of mediator in (circuit cases) vis-a-vis inserting his/herself between attorney and client should be defined and discouraged mediator should not make statements to parties/attorneys which cast ???????????? on court or court process; mediator should be careful to not use too much "pressure" on parties to accept a particular settlement and not drag sessions out to increase billable time.

Yes mediator strong arming.

Each mediator must use his own methods to get to the desired result, that is settlement. Some use extreme methods however if it does the job, it should not be suppressed.

No I have not had much of an opportunity to observe other mediators in practice. I have known of mediators who made recommendations or tried to "strong arm" one of the parties. I have also known of mediators who were discourteous.

I have heard clients complain of strong arm tactics by mediators and that people will attempt to predict how a judge will rule on an issue. I was not involved in those mediations.

No, but mediation is privilege and opportunity, not just another club for the court to push cases through. Maybe mediation should be offered for limited time periods.

Yes. The mediator attempting to coerce the parties into an agreement that he/she has chosen as the most suitable for a case.

Yes I believe that some judges and attorneys acting as mediators forget what mediation really is. Mediators are not the decision makers, only the facilitators of an impartial and neutral forum for the parties to reach their "own solution."

Look at the question you have asked, "practices by mediator or judges" I have very high regards for our judges, their task is not an easy one, but if they want to call themselves "mediator" they should, leave or put their robes and titles aside, a mediator must bring the parties to their own resolution. He cannot influence them with his years of experience in this "type" of case, or give them a "dollar amount" of what the case is worth, in his experience.

Attorneys need to learn, how to unlearn what they have been previously thought, they must

stop litigating the legal issues of a case, which they are mediating, and allow the parties to resolve their own issues.

Judges requesting specifics regarding conference. Mediators disregarding orders or procedures; and providing inaccurate information to parties/counsel re same.

Giving legal advice.

Should minor children be "involved" in the decision making process? May a mediator/psychologist AFTER mediation is concluded, be allowed to offer "psychological services" (retesting) to the former clients? (i.e. can a professional service his clients in a nonmediation role "after the fact" ethically?

Mediators who use the forum as an extension of Judicial Authority.

Greatest Concern

(personal/none) Professional (1) use of "strong arm" tactics by poorly trained mediators; (2) conduct of mediators which will cause bar/parties to resist the process either one will chill acceptance and expansion of acceptance of process. (ie. proper demeanor/role of mediator being overstepped) On a more personal note, I left the circuit bench after 13 years. My perspective as a mediator is more bench oriented, perhaps. I recognize the need of the court to process cases and maintain bar relations. The role of judge and mediator is quite different. Adequate training and dedication is necessary to be effective. I feel myself more as an adjunct to the judiciary with a keen orientation to the needs of the process. I fear poorly trained mediators - especially those without a "bench perspective" will be destructive to the needs of the system.

Ensuring the agreement is fair - ensuring fair participation of all parties. Defusing hostility. Keeping up with law of area.

(1) Having enough opportunity to conduct family mediations (2) continued misconceptions from professional colleagues and the public.

That I gave up too soon before settlement. I also feel mediators tend to push toward unmediated settlement when at times laying the groundwork for future settlement is desired.

Trying not to take sides.

To be fair; to give sufficient explanations to litigants; to give parties a good impression of court system.

That one party is unable to present pertinent facts or to evaluate all of the facts - due to age, lack of education or experience or reduced verbal capacity or insecurity. The lack of investigation and cross examination and limited time may not afford the mediator with sufficient data to avoid a greatly unfair settlement agreement.

The mediator must make certain parties are confident that he/she is neutral intervenor. Also, parties must be convinced that mediator will respect confidentiality.

My greatest concern is that "mediation" is the term being used to describe methods of dispute resolution that are not mediation. If the process is not clearly defined, then I believe mediation will no longer be the extremely beneficial process that it is meant to be. A mediator can never forget his/her neutrality and allow the parties to exercise their self-determination." As long as mediators are aware of the limitations of the

process and do not exceed them, then I am not worried about the future of mediation.

Fair and impartial mediation and a fair settlement.

Have parties feel they were able to resolve dispute in a satisfactory manner.

It is essential that a mediator have the trust and respect of the attorneys and parties involved in the mediation.

Being able to successfully avoid being judgmental in respect to a party's stance or position.

Avoiding excess paperwork. One circuit requires stipulation to be typed. Great advantage has been immediacy and continuity. Looking for a typewriter and typist is wasted time. lost motion and opportunity for settlement remorse.

The appearance of unfairness or bias, and misunderstandings by participants concerning the nature and process of mediations.

Getting cases settled.

Dearth of authority to continue conference pending necessary discovery. Absence of authority to require presence of important witnesses. Absence of authority to report bad faith appearances.

Staying impartial and truly resolving the issues.

Attorneys who prefer to litigate rather than settle - they need to be trained as was done in the Florida Bar CLE program.

That I waited the parties out before declaring an impasse.

Lacking the skill to resolve an impasse where a settlement seems possible.

Sanctions

Questionable Practices

Court exercised sanctions against an attorney having input only of opposing counsel without obtaining input of mediator regarding "procedural" matters. Facts were different than those set forth by attorney seeking sanctions.

Greatest Concerns

I am also concerned about making proper determination that parties are or are not acting in "Good Faith".

Where are party refuses to appear court sanctions are necessary or order rescinded before mediation.

CASE SELECTION

Questionable Practices

Cases that are mandated for mediation that are not appropriate due to the parties

involved - situations where there is inequality in power and ability to use the mediation process.

In divorce disputes regarding children, all abuse allegations should be investigated prior to mediation and a custody evaluation by an independent licensed psychologist be done on all parties and made available to mediator.

1) Mediators talking to guardians ad litem outside of the mediation process on a case.

2) Judges allowing attorneys out of mediation orders on basis of "affordability" when attorneys on cases were retained at a higher hourly rate then the mediator.

That they are knowledgeable about content and process and when it is not likely to be effective.

My experience has been with court ordered mediation only - In many of these cases I sensed that one party or the other was making little, if any, effort to negotiate in good faith.

Yes - cases should not be removed from the trial docket just because case referred to mediation.

Greatest Concerns

Getting Judges to accept the concept of mediation.

Judge "throw" cases into mandated mediation. Clients are hostile leaving the mediator to have to "thaw the case before he/she can cook it".

Mediations ordered before discovery completed.

Having the court put time limitations as to when mediation should be completed.

Time wasted by non-appearing parties and postponements by counsel.

Cases that don't settle at mediation with minimal distance apart.

Postponement without advising the mediator.

The fact that court ordered mediation is sometimes forced negotiation. This is not mediation, is a public disservice and gives mediation a bad name.

(1) I do not wish to handle domestic relations cases; (2) Only half (or less) of the lawyers involved submit summaries of the issues in advance of the mediation conference, as required by Court's orders.

REFERRALS/ASSIGNMENTS

Questionable Practices

I question the practice of how judges recommend/assign mediation cases to approved/certified mediators on a list. Is it impartial and fair.

Judges do not use a rotating system of selecting mediators.

All Broward County referrals are sent to Mediation, INc. which has obtained a virtual monopoly.

Yes. Appointments other than blind rotation, the "good ole boy" network. Exclusion of competing/private organizations from certain circuits.

Question: Having taken the 40 hour training to be court certified why do you close your doors to experienced persons that are not attorneys. You're doing the system a great injustice.

The judges refer to all the mediations according to politics -to retired judges, cronies or full time staff mediators - UNFAIR! AGAINST THE INTENT OF THE MEDIATION LAW!

There seems little if any ability for the private mediators to get any referrals from the court. There seems to be a monopoly for the retired judges and Mediation INC. This is extremely unfair to the mediators and to the public at large.

(1) Some Judges in the 19th circuit are "alleged" to use civil certified mediators in family mediation. When asked, no explanation was given. (2) Efforts to coordinate with 19th Circuit Administration have failed ... e.g... expanded use of mediation, proper certification, funding of indigent cases (presently pro bono for mediators), etc. <u>real</u> cooperative. (3) A seemingly unfair selection process for assigning mediators to cases ... good ole boy process? Favoritism?

Yes, solicitation of lawyers and certain judges.

Judges who use the mediation process in a manner which reflects partiality towards a particular mediator.

Assignment to a group by judge. Parties do not know who mediator will be until day of conference. They may want to object to that particular person, but can't afford delay.

In Pinellas County certain judges are naming specific mediators in their mediation orders, thus playing favorites under the "Good old boy: system, and depriving other mediators of a fair share of work. <u>NOT</u> so in Hillsborough County where the system is very fairly administered.

Judges should not be permitted to appoint a company, or an individual or his designee. Also, Judges should not be permitted to use only certain mediators and exclude other certified mediators in the circuit without providing a reasonable basis for same, particularly when the other mediators have never been appointed by said judge.

<u>Greatest Concerns</u>

I have a fear that the mediation process will be preempted by mediation companies who dispatch faceless/nameless mediators of unknown effectiveness. I firmly believe the credibility of the process is increased by a referral to a person certain, hopefully in when the attorneys have confidence (by repudiated or prior experience) Referrals to "John Doe, or his designee" don't telegraph the sincere importance the process needs.

Not enough appointments

There doesn't seem to be much referral to mediation in the 2nd Judicial Circuit. But I'm not familiar with the procedure followed and therefor am not aware of total cases referred to mediation.

Lack of appointments.

Rules should require each Circuit to equitably assign caseload on a rotation basis to readily available certified mediators without "Personal or Political" considerations.

Few if any referrals are being made by judges in juvenile area in which I work.

I am eager to develop the skills I learned during mediation training. I am troubled by the fact that I have not received any court appointments to serve as a mediator after 6 months!

Inability to obtain case referrals.

To date I have not been assigned any cases.

Case receipt and assignment. Networking.

Can't get any court referrals (see above\0 - can't even do unpaid mediations (Broward County has over 1 year waiting list to do unpaid mediations!) Trainers getting rich off suckers like me.

Mediation is assigned to only a limited number of mediators.

RULES/STANDARDS

Questionable Practices

The state should adopt standards of conduct outlined by AFM for family mediators - also ABA standards.

Yes. Confidentiality, conflict of interest. ethics.

Greatest Concerns

Immunity

FEES

Questionable Practices

Referral fees.

Greatest Concerns

The fees that are charged.

Lawyers do not pay promptly. Many attorneys don't realize the benefit of mediation and don't pay their bills - we need a way of forcing them to pay our fees.

How to make cost efficient when you don't get paid for travel time and contact time outside of actual mediation.

Assurance that if I commit my time by scheduling hours for mediation, I'll be paid cancellations or not.

Being appointed, insufficient compensation due to much lost time, expenses of stationary, stamps, packing; mediations upon which time is expended and then settled without payment before the mediation session.

The pay scale is too low. As a circuit court mediator, I am receiving half my actual billing rate. Unless there is an increase the program will not be able to attract top attorneys to serve as mediators.

Scheduling takes a substantial amount of time, for which I feel I am not being compensated.

How to "make a living" doing full-time mediations.

Strangely - getting payment as ordered before mediation and not wanting to usurp time of parties to come back when payment is made. This has resulted in long delays unnecessary calls and reluctance to have court address the matter in getting paid.

Attorneys do not submit briefs prior to hearings and first hour fee for mediation is not paid in advance. If carrier advises circuit judge that they will not make an offer - case should not be sent for mediation.

Lack of cases.

Time to prepare before mediation conference.

Some counties pay their mediators, some don't. I believe this should be consistent, one way or another, throughout the state.

No shows.

LAWYERS

Questionable Practices

Have not observed "questionable practices", by mediators or judges. Have seen such practices by attorneys and clients.

Greatest Concerns

Lawyers do not pay promptly. Many attorneys don't realize the benefit of mediation and don't pay their bills - we need a way of forcing them to pay our fees.

Attorneys do not submit briefs prior to hearings and first hour fee for mediation is not paid in advance. If carrier abuses circuit judge that they will not make an offer - case should not be sent for mediation.

Fear of sabotage by attorneys.

Acceptance by lawyers.

The attitude with which the trial lawyer comes to the mediation. Efforts to make the lawyer understand that this is a helpful process and that it is the law - need to be imposed.

Pressure by counsel and courts to reach settlement in short periods of time.

Attorney for parties not preparing parties for mediation.

Reluctant attorneys.

Attorneys who use the process to obtain an insight as to the other party's weaknesses and strengths prior to going to trial.

Attorneys who prefer to litigate rather than settle - they need to be trained as was done in the Florida Bar CLE program.

FAIR/IMPARTIAL

UNKNOWN NUMBERS

Achieving a reasonable degree of success. Maintaining confidentiality. Avoiding liability.

LIABILITY

Greatest Concerns

Liability

Liability.

Liability. Competence. Licensing. Court system coordination with mediators.

Ethical problems that arise, liability.

Conflicts of interest. Liability.

Personal liability

CORPORATE CASES

Greatest Concerns

The defense in personal injury cases represented by insurance company representatives do not, as a general practice, negotiate in good faith. They rarely have sufficient authority, and they use the mediation process to attempt to "beat down" the plaintiff to settle.

I have few concerns, except with regard to question 10 (b) which happens mostly by out of state insurance companies.

EXHIBIT C

PUBLIC TESTIMONY

SUPREME COURT STANDING COMMITTEE ON MEDIATION/ARBITRATION RULES

PUBLIC HEARING SUMMARY

SEPTEMBER 13, 1989

Members Present: Larry Watson, Chairperson; Professor Alfini, Judge Andrews, Mary Cadwell, Judge Cook, Judge Green, Ailene Hubert, Henry Latimer, John Lazarra, Bill Lockhart, Professor Moberly, Chuck Rieders, Linda Soud, John Upchurch

Staff Present: Mike Bridenback, Charlie McCoy, Sharon Press

Members Not Present: Judge Alvarez, Robert Cole, Senator Davis

Others Present: Jim Chaplain, Diane Clark, Merrie-Roxie Crowell, Joyce Davis, Dan Dozier, Jody Litchford, Justice McDonald, Marty Nolan, Judge Orlando, Rusela Orr, Ken Palmer, Bill Salomone, Norman K. Schwarz, Arden Siegendorf, Lynne Ventry, Bo Ward

(The following is a summary of the comments received. Transcript of the hearing is available.)

Watson convened the meeting at 9:00 am.

KEN PALMER, the State Court's Administrator began the meeting with an overview of Florida's place in the national ADR scene. He then articulated five major policy areas, based on conversations he has had with judges, court administrators, program directors, mediators, and national colleagues, which should be addressed:

1. Is mediation and arbitration growing in the direction we want? Is it meeting the needs of the parties and judges? Need for more hard data.

2. 1.700(a) Referral by Presiding Judge: With mediation referrals coming close to trial, have we merely created a new settlement hoop for cases that would have settled anyway?

3. 1.720(f) Compensation of Mediator: The fee structure: how should mediation be financed? State or local funding?

4. How does this impact on new judge certification?

JUSTICE MCDONALD, the Supreme Court's Liaison to the Rules Committee, then responded to a question from the Chair regarding the Rule adoption procedure which could be expected. He indicated that a major Rule revision such as this, would normally be published through the Florida Bar and allow for public response. This would be followed, most likely, by a formal presentation/argument before the Court.

JUDGE FRANK ORLANDO, Chairperson of the Supreme Court's Mediation/Arbitration Training Committee; Director Center for Youth Policy raised the following issues for the Committee to consider:

- 1.760 Mediator Qualifications addition of an apprenticeship requirement

- 1.760 state-wide system for certification and decertification of mediators through the Supreme Court (DRC) and imposition of a registration fee to support the DRC

- 1.760 mandatory continuing education requirements

- **1.760(d)** sunset the "grandfather provision"

- **1.760** use of an objective exam to test the mediators' knowledge of the rules, statute and standards

- **1.760** retired judges should not mediate in circuits in which they sit as retired judges to avoid "any appearance of impropriety" and perhaps there should be a two year moratorium on judges acting as mediators in their former circuits.

- **1.760(c)** use of retired judges with no background in Florida Law should not be continued

- **1.810(c)** **Arbitration Training** change the terms "arbitration training" in 1.810(c) FRCP to "arbitration orientation"

- data collection and evaluation could be done by a sufficiently staffed DRC and this should be pursued

- the 4th DCA is running a pilot settlement program using retired judges and the Committee should be aware of its existence

In the discussion that followed Orlando's remarks, Watson asked Orlando on behalf of the Training Committee, to draft recommended rule changes to **1.760** FRCP and submit them to the Rules Committee prior to the November meeting.

MERRIE ROXIE CROWELL, President, Florida Association of Professional Family Mediators; Co-Chair of Family Law Section's Mediation Committee; Attorney/Family Mediator addressed the issue of how different the processes of circuit and family mediation are. Some of the differences include:

- **1.740** **Family Law Mediation** family cases should be referred earlier -- by the time the case is trial ready the parties are further apart

- **1.740** **Family Law Mediation** time frames: a session of more than 2 - 3 hours is inappropriate in the family area. In addition, multiple sessions are desirable.

Crowell identified the following issues of concern:

- **1.720(f)** **Mediator Compensation** fees for mediation particularly as relates to indigents

- **1.740** **Family Mediation** criticized the concept of bifurcation of family mediation cases and felt confident that both mental health professionals and lawyers, properly trained and supervised could both handle a complete dissolution mediation. Problem with 1.740 FRCP is no definition of "complex financial" and judge are interpreting it in different ways including not allowing mental health professionals to handle any financial aspects.

- **1.760** **Mediator Qualifications** local certification procedures that vary extensively from circuit to circuit

- **1.760** **Mediator Qualifications** the need for more training activities, i.e. an apprenticeship/internship concept and continuing education. The threshold educational requirements should not be lowered

NORMAN K. SCHWARZ: Director of Circuit Court Mediation and Arbitration Services in Dade County, 11th Judicial Circuit, certified circuit and family mediator.

Schwarz expressed concern with the following rules:

- **1.700(2)** **Notice**: suggested amendment to eliminate "court or designee" and replace with

"the mediator"

- **1.710(a)** Completion of Mediation: this rule should be eliminated. It is in conflict with **Rule 1.720(c)** Adjournments

- **1.710(b)** Exclusions from Mediation: many of the excluded cases are amenable to mediation and the judges want to be able to send them.

- **1.720(d)** Counsel: In circuit (non-family) counsel should be required by Rule to attend and not be left up to the discretion of the mediator or local rule as is now the case.

- **1.720(f)** Appointment of Mediator: meaning of provision which allows the presiding judge to "appoint specialists or experts who are not court-appointed mediators to assist court-appointed mediators" needs to be clarified.

- **1.720(f)** Compensation of Mediator: unclear what a "proportionate share" is when there are multiple defendants and/or multiple plaintiffs.

JOYCE DAVIS: member of the Advisory Board for the Florida Growth Management Conflict Resolution Consortium, the former Associate Director of FGMCRC and an environmental and certified family mediator

Davis addressed the following Rules:

- **1.700(a)(1)** Hearing Date: most environmental cases can not be resolved in the time frame required -- some take 5 - 6 years. Suggested special exception for these type cases since usually involve multiple parties with multiple issues

- **1.700(a)** Referral By presiding Judge: Add rule for auxiliary program of "court-sponsored" mediation in addition to "court-ordered" mediation -- similar to simplified divorce procedure

- **1.720(b)** Mediation Procedures: sunshine entities should be exempted from being required to appear with full authority to settle

- **1.760(c)** Mediator Qualifications: excludes some of the best mediators in the Country

RUSELA ORR: Director of county court mediation services in Dade county and certified county and circuit mediator.

Orr expressed concern over the movement towards sanctioning a party who does not attend the mediation conference in good faith:

- **1.720(b)** Sanctions for Failure To Appear: sanctioning for lack of good faith should not be allowed -- antithesis of what mediation is all about and would be difficult to prove without breaking the confidentiality provisions.

- **§ 44.301(1) Fl. Stat.** Mediation Definition: needs to include provision that makes it very clear that the mediator will not be making a decision -- the power rests with the parties.

BO WARD: Coordinator of the Peace River Center, Family Court Mediation Services in Polk County, 10th Judicial Circuit

Ward raised the issue of how mediators should be/are required to handle situations where an allegation of child abuse is revealed in the mediation setting. He asked the Committee to consider

a "formal, unified approach through **Rule 1.720(c)** of putting the child's best interest first." Ward raised the issue whether the current provision in 1.720(c) which allows the mediator to adjourn the mediation as not being appropriate covers the abuse situation and whether independent language regarding this situation should be included.

Related **Ethical Standard**: mediators have an ethical obligation not to support, suggest or encourage any mediated agreement which we perceive may jeopardize the best interest of the child

DAN DOZIER: Member Society of Professionals In Dispute Resolution (SPIDR) Commission on Qualifications, former counsel for the Federal Mediation and Conciliation Service.

Dozier addressed **Rule 1.760 Qualifications**. He delineated the 3 principles which form the basis of the SPIDR Commission on Qualifications Report:

1. no single entity (rather a variety of organizations) should establish qualifications for neutrals;

2. the greater the degree of choice the parties have over the dispute resolution process, program or neutral, the less mandatory should be the qualification requirements; and

3. qualification criteria should be based on performance, rather than paper credentials.

The two major areas of the Florida Rules which concern SPIDR are:

- the rules do not provide for party choice of mediator

- the barriers to become a mediator for family and circuit are too high and are inappropriate -- i.e. paper credentials/degree requirements do not necessarily correlate with who is a good mediator. He expressed particular concern about requiring a law degree or having been a retired judge since the skills taught in law school "cut against the skills that mediators should have."

Dozier applauded the use of training and apprenticeship requirements and supports move toward giving the parties more choice in selection. Use of a roster is ok, unless the roster is limited to cronies or paper credentialed people.

JODY LITCHFORD: President of the Florida Academy of Certified Mediators, Chief Assistant Attorney for the City of Orlando, certified family and circuit mediator.

Litchford discussed the Academy of Certified Mediators which is a social, professional organization which was founded to provide the members with increased opportunity to meet together and share experience re: mediation and to attend "advanced training seminars." The Academy currently has 86 members and was planning their first statewide meeting for October 6th - 7th. At the business meeting they planned to discuss code of ethic, legislative matters and the need for uniform practices and procedures. Major policy recommendations will be shared with the Committee after the Academy's meeting.

Litchford expressed concern over the following issues:

- **1.720(b) Sanctions for Failure to Appear**: regarding sunshine entities being unable to bring someone with authority to a mediation. The sunshine entities should be required to bring someone who is authorized to negotiate on behalf of the City but would not be required to bind the City. They should not be excepted from the mediation process entirely.

Litchford expressed concern over the lack of uniformity in mediation policies and procedures:

• **1.720(f)** Appointment and Compensation of the Mediator: no consistency/guidance on whether and if so, how much, a mediator can charge if the mediation is cancelled or if the parties do not show up. What is the appropriate minimum fee for mediation? Can a mediator charge for preparation activities? Appropriateness of referral fees? Mediators are making up their own rules on these questions. Litchford encouraged the Committee to develop some uniform guidelines -- mediators in a court-ordered setting shouldn't be making these decisions.

• Ethics: Expressed need for guidance in the areas of conflict of interest and ethics: i.e. when and how should a mediator disqualify him/herself? The ethical guidelines for the Bar and the disqualification rules for the judges are not appropriate in the mediation setting.

• **1.760** Certification and Selection: Need for uniformity in the circuits as to procedures for certification. Parties should be given first choice to agree on a mediator. If they can't agree the Court Administrator should provide the parties with a list of 5 or 7 and let them use the strike method. Market will be able to handle maintenance of competency if lawyers have a say in who is appointed and certified mediators have the opportunity to practice.

WILLIAM SALOMONE: Mediator of Environmental Issues; Attorney

Salomone addressed the Committee regarding his concerns over

• **Rule 1.760(c)(1)** Circuit Civil Mediation Qualifications: Number of years of Florida practice required should be lowered or be removed completely; judges should be given discretion to appoint someone even if he/she does not meet the qualifications; and/or allow for years of licensure in another profession to serve as equivalent to number of years as a member of the Florida Bar. 15% to 20% of the people graduating from Law School have dual backgrounds from disciplines that are very conducive and consistent with what mediation really is.

• Committee needs to "balance flexibility with guidelines -- too much regimentation will not allow the market place to weed out those that are not qualified."

DIANE CLARK: Chairperson of the Florida Bar Committee on Delivery of Legal Services; staff attorney with Bay Area Legal Services in Tampa.

Clark raised concerns regarding the following Rules:

• **1.720(f)** Compensation of Mediators: there is no provision for a waiver of fees for indigents. Although there are local waivers, this should be part of the uniform rules. Perhaps some pro bono mediation should be required. Also concerned about the lack of uniformity of fees being charged by mediators circuit to circuit. Mediation and arbitration, whether mandated or voluntary, should remain available to all -- not just those who can afford it.

• **1.760(a)** County Court Qualifications: concern re: second class justice for county cases since the mediator qualifications are significantly higher for circuit and family mediators then they are for county mediators. This impacts the poor because they tend to have matters that involve the jurisdictional limits of county court and even though the amount may be small, the impact on the poor person may be very serious.

ARDEN SIEGENDORF: Chairperson, Florida Bar's ADR and Mediation Committee

Siegendorf described the Bar Committee's goals for the coming year:

- serve as the Bar's conduit for ADR development and activities
- to assist in the education of the Bar, Bench and the public regarding ADR

- to coordinate with the Court's Rules and Training Committees in order to keep the Board of Governors advised
- propose legislative and rule changes, as appropriate

Siegendorf indicated that his remarks were his personal view since his committee had not yet met.

• **1.700 Mediation Initiation**: parties should be allowed to initiate mediation or arbitration by the filing of a notice in form similar to the initiation of discovery deposition.

• **1.700 (a)(2) Notice**: lienholders, compensation carriers, etc. who have made appearances in the file, especially in PI cases should be noticed

• **1.720(b) Mediation Procedures**: presence of the lienholders, etc. should be required at the mediation

• **1.720(d) Counsel**: counsel should be mandated in the circuit setting

• **1.740** Supports move to have separate rules for family and circuit, where appropriate

• **1.760 Continuing Mediation Education/Training**: should be mandatory

• **1.820 Hearing Procedures for Non-Binding Arbitration**: small PI cases, PIP suits, etc. of less than $10,000 should be sent to non-binding arbitration instead of mediation.

JIM CHAPLAIN, Founder/Director Mediation, Inc.; certified circuit and family mediator, and federal mediator, member original Rules Committee

Remarks limited to Circuit civil

Original Rules Committee attempt was made to give the judges latitude and flexibility -- not to restrict them too much. Chaplain urged this Committee to retain that flavor. the

• **1.700** Judge's ability to insert the mediation process and not have to be concerned with making sure the attorneys have followed through and picked a mediator should be retained. Advocates a confidential start-up process, but not an automatic order mandating mediation -- judges should be involved in case selection. A case that will be only a half day trial probably should not be sent to mediation.

Attorneys want "a good mediator, control over the timing of the mediation process and something easy to start." Attorneys should have more input into the timing of the mediation conference.

1.720(f) Mediator Compensation: The Court should not regulate the fees of mediators.

Standards: Circuit mediators are members of the Bar and they practice law therefore the already have a lot of ethical standards. Perhaps there are a few additional items that should be added. Fee caps should not be explored by the committee.

The Public Hearing was adjourned at 4:00 pm.

EXHIBIT D

COMMITTEE MEETING MINUTES

JULY 27, 1989

MEDIATION/ARBITRATION RULES COMMITTEE PLANNING MEETING

Attended by: Larry Watson, Chairman; Mike Bridenback and Sharon Press, Staff

I. PUBLIC INPUT:

A. Public Testimony by invitation

1. include: chief judges' representative, Med. Inc, USA & M, AAA, DMI, Zack's Committee, SPIDR, FGMCRC
2. The two day full committee meeting only vote to direct subcommittee
3. Comments solicited on Rules and Standards of Conduct

B. Get Judicial Input

1. Survey all circuit judges

   a. two times:

      1. first letter: survey
      2. second letter: this is what we are thinking

   b. Include in survey:
      1. what division currently - how often are cases sent - what circuit
      2. where do you think rule changes are needed/short falls
      3. where can it be better
      4. sanctions - bad faith mediation
      5. mediator picked by court or mutual accord
      6. mediators report - what should it contain
         (a). isolate issues
         (b). make recommendations
         (c). report on bad faith

2. Rules subcommittee symposium at circuit judges meeting in Key West on October 18 - 20

   - Mike to call Judge Hall - Head of Civil Section of Circuit Judges Conference

II. SUB-COMMITTEES

A. Rules

- Subcommittee chairman: Upchurch
- Members: Latimer, Rieders, Soud, Cole and Alvarez
- Develop and recommend changes to the Rules by December 1, 1989.
- Vote at last meeting
- Use professional drafter: Supreme Court legal affairs personnel

B. Standards of Conduct

- Subcommittee chairman: Alfini
- Members: Hubert, Moberly and Andrews (Titus has declined the appointment to the committee)
- Develop and recommend standards of conduct for mediators and arbitrators by December 1, 1989

- Develop and recommend procedure for implementation:
  a. voluntary compliance?
  b. required/regulatory agent?
- Staff draft - solicit information from professional groups and court groups
- Provide full committee with report, vote at second full committee meeting

C. Legislation

- Chairman: Davis
- Members: Cadwell, Lockhart, Green and Lazarra
- Evaluate Chapter 44 and advise Court of need for changes to be proposed to legislature
- Wait until after 12/1/89 in order to coordinate with role changes

III. MEETINGS

A. Need three full committee meetings (between now and December 1, 1989)

1. Organization and Public input on rules and standards, September 12 - 13
   Orlando downtown hotel
   DRC handle details

2. (Send ethical standards report out to committee by October 1st.)
   Meet October 11th - Orlando
   Vote on standards
   Receive status report from Rules Subcommittee
   [invite Chief Judge of 9th circuit: Thompson]

3. November 15th receive report from Legislation subcommittee
   - Vote on Rules (received by mail prior to meeting)

B. Subcommittee Chair Meeting

1. Tentative date: Wednesday, August 16th in Orlando

C. Subcommittees will meet according to schedule to be announced by subcommittee chairman

IV. TO DO BEFORE FIRST MEETING:

A. Provide to Larry

1. Committee list with names, addresses, telephone numbers and fax numbers.
2. List of interested individuals who will be invited to comment.

B. Orientation mailing to committee to include:

1. Introductions/biographies
2. Goals of committee
3. Structure of committee and assignment
4. Procedure
5. Schedule of future meeting
6. Background information

C. Notice to the Chief Judges, Court Administrators, Clerks, Conference Officers

SUPREME COURT COMMITTEE ON MEDIATION AND ARBITRATION RULES

SUBCOMMITTEE CHAIRS MEETING

Wednesday August 16, 1989

MINUTES

Present: Larry Watson, John Upchurch, Jim Alfini, Senator Helen Gordon Davis

Staff Present: Mike Bridenback, Charlie McCoy and Sharon Press

Meeting was called to order at 10:00 am

Watson reviewed the plan of action developed with Bridenback and Press a few weeks prior to this meeting.

Standards of Conduct Subcommittee: will gather base data from what already exists

Rules Subcommittee: surveys of circuit judges and mediators as well as public meeting (September 13) At this meeting we identified areas of concern in the Rules and developed questions for the surveys

Legislation: study arbitration and mediation as covered in the statutes; look at the broad picture; December 1 report would include recommendation for future work of the Committee; Davis agreed to sponsor the bill the Committee drafts, but would ask a spokesperson from the Committee to testify.

Press and Bridenback provided the subcommittee chairpersons with a packet of information including: a revised list of committee members, a copy of the minutes from the initial rules committee; a set of opinions from court cases on the rules or statute; a list of questions/comments on the rules; a draft of the standards of conduct circuit judges survey and mediator survey.

Watson indicated that this group will exert the leadership over the full committee. The goal for this meeting was to plan where to focus and channel the full committee's attention. This group will provide the agendas and parameters for the work since there is no time for a "free for all" process. Prior to the first full committee meeting, notice will be sent to the members re: what issues the Committee will be considering -- what they may want to think about in advance and gather information on.

Davis suggested that the arbitration process not be ignored. It was suggested that data from the 13th and 6th circuit be gathered since they are using arbitration. The major questions regarding arbitration are: How is it funded? How should it be funded? Which cases should be selected for arbitration? When should they be sent?

Alfini suggested that the Ratliff article, on circuit mediation in the 15th circuit, which appeared in Judicature be included in packet to Committee.

Topics to be Addressed

- **mediator assignment clarification/qualifications/appointment procedures**
  provide mechanism for parties to have a greater hand in choosing their own mediator; should retired judges be prohibited from serving as a mediator in the circuit they retired from for a two year period.

- **uniform, detailed order setting mediation:**
  potential standard for what has to be accomplished prior to mediation

- **sanctions**
  should there be sanctions; if so, what should they be; how determined -- what role should mediator play in reporting; what should trigger sanctions; watch for muscle mediator effect and family/county difference; should negotiation in "good faith" be required; if so, whose duty would it be to report lack of negotiation in good faith and how should it be proven.

- **mediator reports**
  what should the report contain; should it identify "linchpin" issue and areas of agreement even if no complete agreement; watch for court contracting away their duties

- **case selection**
  identify those cases which are most amenable to mediation and those least amenable

- **timing of mediation**
  at what point in the process should cases be sent

- **standards of conduct**
  what should it contain; in survey ask one broad question along the following lines: "In your experience, have you observed any practices by mediators or judges which should be addressed in a standard of conduct?" consider advertising, brokering, and fee-splitting

- **mediator fees**
  should there be a cap? ... just on mandatory, court-ordered mediation? who should pay ... county, parties? should there be a different set of rules for family and county vs circuit? need for legislation for court to continue to regulate the rate and source of mediator fees; should there be a time limit on mediation sessions.

- **certification procedures**
  should chief judge have discretion as to who to certify; should the certification procedure be handled on the state level.

- **local mediation rules**
  should the general mediation rules allow for local variations

- **mediation agreement**
  should the rules continue to allow for a default approval for mediation agreements, particularly as relates to lack of jurisdiction.

Surveys to circuit judges and mediators will reflect these topic areas. They will be sent out no later that August 21.

The group also agreed that any correspondence sent to their subcommittees would be copied to the other subcommittee chairpersons and Watson. McCoy will serve as liaison to the Rules subcommittee along with either Bridenback or Press; Bridenback will staff legislation subcommittee and Press will staff standards of conduct subcommittee.

Each subcommittee is charged with considering the special problems relating to family.

Meeting was adjourned at 3:00 pm.

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SUPREME COURT STANDING COMMITTEE ON MEDIATION AND ARBITRATION RULES
ORGANIZATIONAL MEETING
SEPTEMBER 12, 1989

Members Present:
Larry Watson, Chairperson, Professor Alfini, Judge Alvarez, Judge Andrews, Mary Cadwell, Robert Cole, Judge Cook, Judge Green, Ailene Hubert, Henry Latimer, John Lazarra, Bill Lockhart, Professor Moberly, Chuck Rieders, Linda Soud, and John Upchurch

Members Not Present: Senator Helen Gordon Davis

Staff Present:
Mike Bridenback, Charlie McCoy and Sharon Press

I. Introductions:

Watson welcomed the Committee and thanked them for agreeing to serve. The Committee then introduced themselves to the group indicating there present occupation as well as there interest/background in mediation.

II. Summary of Committee Charge:

Watson reviewed the Supreme Court's charge to the Committee: 1) evaluate rules 1.700 and 1.800 et seq. FRCP, take public testimony and submit recommendations to the Court by December 1, 1989 reflecting any amendments to the rules the Committee deems appropriate; 2) study and evaluate the need for standards of conduct for mediators and arbitrators and recommend to the Supreme Court an appropriate set of standards by December 1, 1989; 3) evaluate Chapter 44, Florida Statutes, and amendments thereto enacted during the 1989 legislative session, and advise the Supreme Court of the need for any further changes that should be proposed to the Legislature; 4) make such recommendations as would improve the use of mediation or arbitration to supplement the judicial process, as deemed appropriate.

Watson indicated that the Committee would attempt to "divide and conquer" the task by forming subcommittees. He identified the subcommittees, chairpersons and members. The subcommittee structure is:

Rules: John Upchurch, Chairperson; Judge Cook, Linda Soud, Robert Cole, Henry Latimer, John Lazarra, and Chuck Rieders

Standards of Conduct: Jim Alfini, Chairperson; Judge Andrews, Ailene Hubert and Bob Moberly

Legislation: Senator Davis, Chairperson; Judge Alvarez, Mary Cadwell, Judge Green, and Bill Lockhart

III. Subcommittee Reports

Rules: Upchurch reported that the Rules Subcommittee has a formal meeting scheduled for September 19 at 10 am at John Upchurch's Office in Daytona. He further indicated that the Rules Subcommittee will operate under the premise that a lot of work and analysis went into the first draft of the rules which have generally been well accepted and are working. As a result, the Subcommittee will try to limit their focus to the most important issues and address them well rather than water things down. Upchurch reviewed the attached List of Topics to be Addressed, indicating that this was merely a starting point and should not be viewed as either a comprehensive or final list.

Watson added that there was time on the agenda to discuss the list and to make additions to

it. As Chairperson of the Trial Lawyers Section, Watson reported that the Trial Lawyers at their meeting had requested the Committee to go slowly under the philosophy "if it's not broken -- don't fix it."

Legislation: Bridenback reported that Senator Davis could not attend the meeting today due to a trip to Moscow but had discussed a plan of attack for this subcommittee. Since the Rules and Standards Subcommittees were both going to initially focus on the mediation side, the legislative subcommittee would start with the arbitration statutes to assess the need for changes to remove duplication and conflict between the various ADR statutes. Another major focus will be on the mediation definitions. Davis had requested that Bridenback inform the Committee that the funding opportunities in this legislative session would be bleak. She suggested that the Committee consider identification of alternative revenue sources: i.e. filing fees and fees on post judgment divorce actions. The Legislative Subcommittee also expects to receive further direction from the Rules and Standards Subcommittees after they complete work for the December deadline.

Standards: Alfini arrived late so Moberly made the initial report. He indicated that the subcommittee had met once already, had gathered and reviewed the codes and standards which are already in place. The subcommittee would like the Standards to be aspirational and educational in addition to prohibitive. Some of the topics expected to be included are: duty of impartiality, neutrality, confidentiality, fees ,costs, duties of the mediator and educational duties. The initial focus will be on a set of mediator standards and then arbitration standards.

Judge Green asked the subcommittee to consider the ethical dilemma of "the massive user" where a mediator by virtue of mediating often may get to know a collection agent or insurance representative, particularly in the small claims area.

IV. Discussion of Topics to be Considered:

Watson reminded the Committee that this was merely to be a discussion of the topics to be addressed, not a resolution of the topics.

A. Process by which mediators are selected and qualified:
Related Issues: "cronism," how should mediators be funded, how to maintain quality mediators, should parties be allowed to chose their mediator, should the market determine; should Florida Bar membership be required for all circuit mediators; should the chief judge be granted some discretion to either not certify or to take someone off the list; should the application process for certification be uniform; need for court office to evaluate and maintain statistics on what is happening in the field. The committee discussed the potential use of the "strike method" of allowing the parties a certain number of days to chose a mediator from a list. Concern was expressed over how would a new mediator ever break in and the market approach would not be an effective way to deal with the family cases and indigent parties

B. Order Setting Mediation:
Related Issues: need to split county, family, and circuit; timing of mediation referrals; need for evaluation and education on how to decide which cases and when

Based on these discussions, the Committee decided to form a fourth subcommittee on Family Mediation to deal with the special issues involved. Linda Soud agreed to serve as chairperson with Ailene Hubert, Mary Cadwell and Jim Alfini as subcommittee members. These members agreed to continue to serve on their original subcommittee assignments as well as on this subcommittee.

C. Mediator Reports:
Related issues: confidentiality and party privilege

D. Sanctions:
Related Issues: mediation as "voluntary" process; attorney use of mediation as "free discovery;" constitutional right to go to trial; should be tied to evaluation of appropriateness of sending

a case to mediation; use of sanctions only for objective conduct, i.e. not showing or not showing with authority to settle; permissive sanctions in rule versus mandatory sanctions; judges don't want to be involved determining "good faith" cases

E. Standards:
The committee discussed whether to start with the premise that a mediator is an officer of the court

F. Other Areas:
- representation of someone who can't attend the mediation -- sunshine entities

V. Public Hearing Agenda and Procedures

Bridenback reviewed the schedule of speakers. He indicated to the Committee that David Strawn had sent a letter in lieu of his live appearance since he would be unable to attend the meeting. The Committee requested that Ken Palmer, the State Court's Administrator address the Committee re: his perspective on what rules are needed and what happens after the Committee makes its report to the Court. Palmer agreed to open the public hearing with a brief address.

Bridenback continued explaining the procedures including his hope that the hearings be conducted relatively informally. Time was provided in the agenda to accommodate questioning by the Committee.

The meeting was adjourned at 4:00 pm

SUPREME COURT STANDING COMMITTEE ON MEDIATION/ARBITRATION RULES

MEETING OCTOBER 11, 1989

Minutes

Members Present: Larry Watson, Chairperson; Professor Alfini, Judge Andrews, Judge Cook, Judge Green, Ailene Hubert, Henry Latimer, John Lazara, Bill Lockhart, Professor Moberly, Chuck Rieders, Linda Soud

Members Not Present: Judge Alvarez, Mary Cadwell, Robert Cole, Senator Davis, John Upchurch

Staff Present: Mike Bridenback, Sharon Press

Others Present: Gay Inskeep, Sue Johnson, Ken Palmer, Bill Salomone, Judge Silverman, Nancy Yanez

I. Watson called the meeting to order at 9:30 and reviewed the procedures for the day's meeting.

II. Press reviewed the comments which were received after the last meeting and the preliminary survey results from the circuit judge's survey and the mediators' survey. A final report will be available for the Committee's review by the November meeting.

III. Subcommittee Reports:
Legislation: Bridenback reported the subcommittee's next meeting will be October 23, in Tampa

Family: Soud reported that the subcommittee met and has drafted some amendments to Rule 1.740 and a model order which needs some extensive reworking. Watson suggested that the Family subcommittee keep the differences in mind as the Committee reviewed the Standards and Rules.

Rules: Watson reported that the Rules draft had been circulated and encouraged the Committee to review it and make suggestions to Upchurch and the other Rules Committee members.

IV. Alfini thanked the members of the Standards subcommittee for their hard work. Alfini moved the adoption of the Standards it was seconded. Watson then moved that the Committee vote on the Standards en banc -- not after each provision. This motion was seconded and adopted unanimously by the Committee.

Lockhart expressed his concern with the proposed enforcement procedures because of potential denial of due process. Lockhart agreed with the Committee's support to redraft the enforcement procedures. The Committee discussed who should have responsibility for the enforcement procedures: the Bar, the Supreme Court (Dispute Resolution Center) or the local chief judges and court administrators. Lockhart agreed to send out a new proposal prior to the November meeting.

The Committee then reviewed the proposed standards point by point and developed a consensus on Standards I - VI. Attached are the revised Standards which reflect these amendments.

V. The meeting was adjourned at 4:00. Next meeting to be extended to a two day meeting November 15 - 16 in Orlando.

Supreme Court Standing Committee on Mediation and Arbitration Rules
Minutes November 15 Meeting

Committee Members Present: Larry Watson, Chairperson, Professor Alfini, Judge Alvarez, Judge Andrews, Judge Cook, Senator Davis, Judge Green, Ailene Hubert, Henry Latimer, John Lazzara, Bill Lockhart, Professor Moberly, Chuck Rieders, Linda Soud, John Upchurch

Staff Members Present: Mike Bridenback, Charlie McCoy, Sharon Press

Others Present: Justice Parker Lee McDonald, Jim Chaplain, Arden Siegendorf, Judge Silverman

Watson called the meeting was called to order at 9:00 a.m.

I. Press gave a final report on the surveys of the circuit judges and mediators who completed certified training programs. The Committee was provided with charts which graphically indicated the responses. Press pointed out to the Committee that in their packets of material they each had received a copy of summary of the comments which had been submitted to the Committee at the public hearing or through written communication.

II. Alfini presented sections VII - XII of the Proposed Standards of Conduct for the Committee to review. The Committee unanimously voted to adopt the Standards of Conduct as amended, but agreed to revisit Standards IX B 1 and III A 2 after the rules were discussed and voted on.

III. The Committee discussed the alternative enforcement procedures proposed by the Standards Subcommittee and Lockhart. Due to the time constraints of completing the report to the Court by December 1, the Committee voted to defer further discussion and the vote on enforcement until the next meeting. Watson indicated that before the next meeting he, Alfini, Siegendorf and Bridenback will get the reaction from Harkness, Executive Director of the Florida Bar, to the possibility of the Bar serving as the enforcement body for the Standards. Many members of the committee expressed concern with the Bar serving in this capacity.

IV. The committee next moved to consideration of the Amendments to the Rules. Upchurch moved the adoption of the editing changes which were suggested by Watson and adopted by the Rules subcommittee as being noncontroversial. This motion was approved unanimously. The Committee discussed each suggested amendment to the Rules. Where consensus was not reached, i.e. the vote was 8 to 7, the Committee agreed that a minority commentary would be included with the report to the Court.

V. The meeting was adjourned at 5:00 pm

Supreme Court Standing Committee on Mediation and Arbitration Rules
Minutes November 16 Meeting

Watson called the meeting to order at 9:00 am.

I. The Committee continued their discussion of amendments to the rules. The amendments to the Rules were adopted en banc, as amended. This is reflected in the final product which is attached.

II. Form Orders for family and circuit referrals were reviewed. The Committee endorsed the inclusion of these orders as 1.999 and 1.9995 in the Rules. These wold be included as sample orders, but circuits would be free to design their own orders so long as they conform to the Rules. McCoy was directed by the Committee to rework the orders pending final review by the Committee.

III. After completing a review of the Rules, the Committee voted to reconsider Rules 1.760(c)(2); 1.720(b) and (d); 1.740 and Standard IX B 1.

1.760(c): The original amendment allowing out of state attorneys to be certified as circuit mediators was reconsidered and by a vote of 8 to 4 was deleted.

1.760(c): An amendment which would allow the Chief Judge to certify an individual who may not fit the formal qualifications to serve in a particular case was defeated by a vote of 8 to 4.

1.720(b) and (d): An amendment to ensure that the appropriate people are at the mediation conference which would include a representative of the insurance carrier who has full and complete authority to settle the case was proposed and adopted by a vote of 6 to 3.

IV. The Committee approved the use of a few members to complete a "clean-up" of the Rules for consistency. Watson requested that all of the subcommittee chairpersons attend the next legislative subcommittee meeting. Date and time to be announced. The next full Committee meeting will be held in January to discuss the legislative program. The meeting will be scheduled for a Monday or a Friday and will be held ion Tallahassee or in Orlando. The report will be put in final form during the last week in November for submission to the Court the first week of December.

SP

EXHIBIT E

PROPOSED STANDARDS OF CONDUCT

FLORIDA STANDARDS OF PROFESSIONAL CONDUCT FOR COURT-APPOINTED MEDIATORS

Florida Supreme Court
Standing Committee On
Mediation and Arbitration
Rules
December, 1989

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PREAMBLE

As with other forms of dispute resolution, mediation must be built on public understanding and confidence. Persons serving as mediators are responsible to the parties, the public, and the courts to conduct themselves in a manner which will preserve public confidence in the process. These Standards are intended to promote that public confidence by guiding mediators' conduct in discharging their professional responsibilities. The Standards herein apply to mediators -- certified, non-certified, court appointed or independent -- who participate in court-sponsored mediations pursuant to Florida Statutes in County, Family and Circuit Civil settings in the State of Florida.

Mediation is a process whereby a neutral third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.[1]

In mediation, decision-making authority rests with the parties.[2] The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping the parties reach voluntary agreements.

Mediation is based on principles of communication, negotiation, facilitation and problem-solving that emphasize:

- the needs and interests of the participants;
- fairness;
- procedural flexibility;
- privacy and confidentiality;
- full disclosure; and
- self determination.

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[1] Fla. Stat. §44.301(1).

[2] See **Standards for Public and Private Mediators in the State of Hawaii** (April, 1986).

I. MEDIATOR GENERAL STANDARDS AND QUALIFICATIONS

A. General

Integrity, impartiality, and professional competence are essential qualifications of any mediator. Mediators shall adhere to the highest standards of integrity, impartiality and professional competence in rendering their professional service.

1. A mediator shall not accept any engagement, perform any service, or undertake any act which would compromise his or her integrity.
2. A mediator shall maintain professional competence in mediation skills including, but not limited to:
   a. staying informed of and abiding by all statutes, rules and administrative orders relevant to the practice of court-ordered mediation; and
   b. if certified, continuing to meet the requirements of the Florida Rules of Court; and,
   c. regularly engaging in educational activities promoting professional growth.
3. A mediator shall decline appointment, withdraw, or request technical assistance when he or she decides that a case is beyond his or her competence.

B. Concurrent Standards

Nothing herein shall be deemed to replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these Standards, which may be imposed upon any mediator by virtue of his or her professional calling.

II. MEDIATOR RESPONSIBILITIES TO COURTS

A. A mediator shall be candid, accurate, and fully responsive to a court concerning his or her qualifications, availability, and all other pertinent matters.

B. A mediator shall observe all administrative policies, local rules of court, applicable procedural rules and statutes.

C. A mediator is responsible to the judiciary for the propriety of his/her mediation activities and must observe judicial standards of fidelity and diligence.

D. Mediators shall refrain from any activity which has the appearance of improperly influencing a court to secure placement on a roster or appointment to a case, including gifts or other inducements to court personnel.

III. THE MEDIATION PROCESS

A. Orientation Session

On commencement of the mediation session, a mediator shall inform all parties of the consensual nature of the process and that the mediator may not impose or force any settlement on the parties.

B. Appropriateness of Mediation

Both before and during the process, the mediator shall assist the parties in evaluating the benefits, risks, and costs of mediation and alternative methods of problem solving available to them.

A mediator shall not unnecessarily or inappropriately prolong a mediation session if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unwilling or unable to participate in the mediation process in a meaningful manner.

C. Avoidance of Delays

It is the responsibility of a mediator to plan his or her work schedule so that present and future commitments will be fulfilled in a timely manner. A mediator shall refrain from accepting appointments when it becomes apparent that completion of the mediation assignments accepted cannot be done in a timely fashion. A mediator shall perform his or her services in a timely and expeditious fashion, avoiding delays wherever possible.

D. Substitute Mediators

A court-appointed mediator shall not delegate a mediation assignment to another person without the prior consent of the parties; nor shall the mediator mediate a case where a court order has designated another mediator, unless the parties have agreed to the substitution in advance of the scheduled mediation conference.

IV. SELF-DETERMINATION

A. Parties' Right to Decide

The mediator's obligation is to assist the disputants in reaching an informed and voluntary settlement. All decisions are to be made voluntarily by the parties themselves.

B. Prohibition of Mediator Coercion

A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to a mediation process.

C. A Balanced Process

A mediator shall seek a balanced process and shall not allow excessive manipulation or intimidation tactics by any party.

D. Responsibility to Non-Participating Parties

A mediator shall promote consideration of the interests of persons affected by actual or potential agreements and who are not represented at the bargaining table.

E. Mutual Respect

A mediator should promote mutual respect among the parties throughout the mediation process.

V. IMPARTIALITY

A. Impartiality

A mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice or impartiality. Impartiality means freedom from favoritism or bias in both word, action and appearance. Impartiality implies a commitment to aid all parties, as opposed to a single individual, in moving toward an agreement.

1. A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.

2. A mediator shall withdraw from mediation if the mediator believes he or she can no longer be impartial.

B. Conflicts of Interest and Relationships: Required Disclosures and Prohibitions

1. A mediator must disclose, directly or through the involved court, any current or past representational or consultative relationship with any party or attorney involved in a proceeding in which he or she has been appointed or has been tentatively designated to serve. Disclosure must also be made of any pertinent pecuniary interest. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship.

COMMENT: The duty to disclose potential conflicts includes the fact of membership on a Board of Directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements) or any other pertinent form of managerial, financial or immediate family interest in the party involved.

2. A mediator must disclose to the parties or to the court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise a question as to the mediator's impartiality. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship.

COMMENT: Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

3. The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

4. A mediator shall not provide counselling or therapy to either party during or after the mediation process.

5. A mediator who is a lawyer shall not represent either party in any matter during the mediation, nor in future proceedings concerning the same or related subject matter.[3]

VI. CONFIDENTIALITY

A. A mediator shall preserve and maintain the confidentiality of all mediation proceedings to the full extent allowed by applicable law.[4]

B. A mediator shall keep confidential from opposing parties any information obtained in individual caucuses when a party requests confidentiality.

C. The mediator shall maintain confidentiality in the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

VII. PROFESSIONAL ADVICE

A. A mediator shall not give information in those areas where the mediator is not qualified by training or experience.

B. When the mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise participants to seek independent legal counsel prior to resolving the issues and in conjunction with formalizing an agreement.[5]

C. If one of the parties is unable to participate in a fair mediation process for psychological or physical reasons, a mediator should postpone or cancel mediation until such time as all parties are able and willing to resume. Mediators may refer the parties to appropriate resources if necessary.

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[3] Notwithstanding any other provision of these Standards, a lawyer family mediator should note Fla. Bar Comm. on Professional Ethics, Formal Op. 86-8 at 1239.

[4] See Fla. Stat. §§ 44.302(2), 415.504.
See also Florida Evidence Code §§ 90.501-.510.

[5] Mediators who are attorneys should note Fla. Bar Comm. on Professional Ethics, Formal Op. 86-8 at 1239, which states that the lawyer-mediator should "explain the risks of proceeding without independent counsel and advise the parties to consult counsel during the course of the mediation and before signing any settlement agreement that he might prepare for them."

D. While mediator may point out possible outcomes of the case, under no circumstances may a mediator, offer his or her personal or professional opinion as to how they court in which the case has been filed will resolve the dispute.

VIII. FEES AND EXPENSES

A. A mediator occupies a position of trust in respect to the parties and the courts. In charging for services and expenses, the mediator must be governed by the same high standards of honor and integrity that apply to all other phases of his or her work.

A mediator must endeavor to keep total charges for services and expenses reasonable and consistent with the nature of the case or cases.

If fees are charged, a mediator or his/her agency shall explain before mediation begins the fees and any other related costs to be charged. Such explanation shall be in writing. The mediator shall also seek agreement with the participants on how the fees will be shared and the manner of payment.

1. The mediator must adhere faithfully to all agreed-upon arrangements governing fees and expenses.
2. When mediators' charges for services are determined primarily by a stipulated fee, the mediator should establish in advance his or her bases for application of such fee and for determination of reimbursable expenses.

Practices established by a mediator should include the basis for charges, if any for:

a. meeting time, including the application of the stipulated basic fee to meetings of varying lengths;
b. preparation;
c. necessary travel time when not included in charges for mediation hearing time;
d. postponement or cancellation of mediation by the parties and the circumstances in which such charges will normally be assessed or waived.

B. Each mediator should be guided by the following general principles:

1. Charges for a meeting should not be in excess of actual time spent or allocated for the meeting.

2. Charges for preparation time should not be in excess of actual time spent.

3. Charges for expenses must not be in excess of actual expenses normally reimbursable and incurred in connection with the case or cases involved.

4. When time or expense are involved for two or more sets of parties on the same day or trip, such time or expense charges should be appropriately prorated.

5. A mediator may stipulate in advance a minimum charge for a mediation session without violation of (1) or (4) above.

C. A mediator must file his or her individual bases for determination of fees and expenses,with the chief judge or his designee if the judge so requires. Thereafter, it is the responsibility of each mediator to advise the judge promptly of any change in any basis for charges.

Such filing may be in the form of answers to a questionnaire or by any other method adopted by or approved by the circuit.

Having supplied a judge with the information noted above, a mediator's professional responsibility of disclosure with respect to fees and expenses has been satisfied for cases referred by that circuit.

D. If a chief judge promulgates specific standards with respect to fees and expenses which are in addition to or more restrictive than the mediator's individual bases of determiniation of fees and expenses, a mediator on its active roster must observe the standards for cases handled under the auspices of that circuit, or decline to serve, unless the parties agree otherwise.

E. When a mediator is contacted directly by the parties for a case or cases, the mediator has a professional responsibility to respond to questions by submitting his or her bases for charges for fees and expenses.

F. When it is known to the mediator that one or both of the parties cannot afford normal charges, it is consistent with professional responsibility to charge lesser amounts to both parties or to one of the parties if the other party is made aware of the difference and agrees.

G. If a mediator concludes that the total of charges derived from his or her normal basis of calculation is not compatible with the case decided, it is consistent with professional responsibility to charge lesser amounts to both parties.

H. A mediator must maintain adequate records to support charges for services and expenses and must make an accounting to the parties or to an involved court on request.

I. No commissions, rebates, or similar forms of remuneration shall be given or received by a mediator for referral of clients for mediation or other related services.

J. A mediator shall not charge a contingent fee or base the fee in any manner on the outcome of the process.[6]

IX. CONCLUDING MEDIATION

A. With Agreement

1. Full Agreement.

The mediator shall discuss with the participants the process for formalization and implementation of the agreement.

2. Partial Agreement.

When the participants reach a partial agreement, the mediator shall discuss with them procedures available to resolve the remaining issues.

3. Integrity of The Agreement.

The mediator shall not knowingly assist the parties in reaching an agreement which would be denied judicial enforcement for reasons such as fraud, duress, overreaching, the absence of bargaining ability, or substantive unconscionability.

B. Without Agreement

1. Termination by Participants.

The mediator shall not require a participant's further presence at a mediation conference when it is clear the participant desires to withdraw.

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[6] See Fla. Bar Comm. on Professional Ethics, Formal Op. 86-8 (attorneys acting as family mediators).

2. Termination by Mediator.

If the mediator believes that participants are unable or unwilling to meaningfully participate in the process or that a reasonable agreement is unlikely, the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help.

3. Impasse.

If the participants reach final impasse, the mediator should not prolong unproductive discussions that would result in emotional and monetary costs to the participants.

C. Report

1. **Report of No Agreement.** In cases where the parties do not reach agreement as to any matter, the mediator shall immediately report such to the court without any comment or recommendation, unless otherwise allowed by applicable rules.

2. **Report on Agreement.** In cases where agreement or partial agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, such agreement shall be reduced to writing, signed by the parties and their counsel, if any, and be immediately thereafter submitted to the court in compliance with Fla.R.Civ.P. 1.730.

X. TRAINING AND EDUCATION

A. Training

A mediator is obligated to acquire knowledge and training in the mediation process. This includes an understanding of appropriate professional ethics, standards, and responsibilities. Upon request, a mediator is required to disclose the extent and nature of their mediation training and experience.

B. Continuing Education

A mediator shall participate in continuing education activities and be personally responsible for ongoing professional growth. Mediators are encouraged to join with other mediators and members of related professions to promote mutual professional development.

C. New Mediator Training

An experienced mediator should cooperate in the training of new mediators.

XI. ADVERTISING

A. All advertising by a mediator must honestly represent the services to be rendered. No claims of specific results or promises which imply favor of one side over another should be made for the purpose of obtaining business.

B. A mediator shall make only accurate statements about the mediation process, its costs and benefits, and about the mediator's qualifications.

XII. RELATIONSHIPS WITH OTHER PROFESSIONALS

A. The Responsibility of the Mediator Toward Other Mediators

1. Relationship with Other Mediators.

A mediator should not mediate any dispute which is being mediated by another mediator without first endeavoring to consult with the person or persons conducting such mediation.

2. Co-Mediation.

In those situations where more than one mediator is participating in a particular case, each mediator has a responsibility to keep the others informed of developments essential to a cooperative effort. The wishes of the disputants supersede the interests of the mediators.

B. Relationship with Other Professionals

A mediator should respect the complementary relationship between mediation and legal, mental health, and other social services and should promote cooperation with other professionals.

XIII. ADVANCEMENT OF MEDIATION

A. Pro Bono Service

A mediator is encouraged to donate some mediation services.

B. Promotion of Mediation

A mediator shall promote the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

EXHIBIT F

PROPOSED AMENDMENTS TO RULES 1.700 ET SEQ.

RULES OF CIVIL PROCEDURE	REASON FOR CHANGE
RULE 1.700 RULES COMMON TO MEDIATION OR ARBITRATION	
(a) Referral by Presiding Judge or by Stipulation. Except as hereinafter provided, the presiding judge may order ~~refer~~ any contested civil matter or selected issue referred ~~for assignment~~ to mediation or arbitration. The parties to any contested civil matter may file a written stipulation to mediate or arbitrate any issue between them at any time. Such stipulation, shall be incorporated into the order of referral.	
(1) Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference or arbitration hearing shall be held within 60 days of the order of referral~~, unless sooner ordered by the court~~.	Clarity and consistency in designating the initiating order as a "order of referral". By allowing initiation of mediation by stipulation, the parties are given more control over issues to be mediated, selection of mediator and overall terms of mediation.
(2) Notice. Within 10 days after the order of referral ~~case has been referred for either mediation or arbitration~~, the court or its designee, who may be the mediator or arbitrator, shall notify the parties ~~and either the mediator or arbitrator~~ in writing of the date, time and place of the conference or hearing, unless the order of referral specifies the date, time and place.	Additions and deletions reflect the fact that mediators are coordinating mediation dates in many jurisdictions.
(b) Motion to Dispense With Mediation and Arbitration. A party may move, within 15 days after ~~service of~~ the order of referral, to dispense with mediation ~~and with~~ or arbitration, ~~respectively~~, if:	
(1) the issue to be considered has been previously mediated or arbitrated between the same parties pursuant to Florida law;	
(2) the issue presents a question of law only;	Establishes a broader base upon which to dispense with mediation in instances where experience has proven mediation is not particularly successful. Gives the court an opportunity to review unique circumstances of cases which might make mediation a waste of time and money.
(3) the order violates rule 1.710(b); or	
(4) other good cause is shown	

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(c) Motion to ~~Waiver or~~ Defer~~ral of~~ Mediation or Arbitration. Within 15 days of the ~~court~~ order of referral, ~~assigning the case to mediation or arbitration~~, any party may file a motion with the court to defer ~~or forego~~ the process. The movant ~~and~~ shall set ~~such~~ the motion to defer for hearing prior to the ~~date that mediation or arbitration has been ordered~~ scheduled date for mediation or arbitration. ~~with~~ Notice of the hearing shall be provided to all interested parties, including any mediator or arbitrator ~~that~~ who has been appointed. ~~Such~~ The motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation or arbitration shall be tolled until disposition of the motion.	Consistency. Clearly distinguishes difference between motion to defer and motion to dispense mediation. Gives the parties an opportunity to defer mediation pending resolution of discovery, outstanding motions, etc. which, if unresolved, would block settlement
~~(d) Calculation of Times. All times hereunder shall be calculated in accordance with Rule 1.090(a) Fla. R. Civ. P.~~	Unnecessary.
(d) ~~(c)~~ Disqualification of a Mediator or Arbitrator. Any party may move the court to enter an order disqualifying ~~disqualify~~ a mediator or an arbitrator for good cause. ~~using the procedures of Fla. R. Civ. P. 1.432. Mediators and arbitrators have a duty to disclose any fact bearing on their qualifications, including any fact which would be ground for disqualification of a judge.~~ If the court rules that a mediator or arbitrator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude ~~limit the discretion of a~~ mediators or arbitrators ~~to~~ from disqualifying themselves or refuseing any assignment. ~~A mediator or arbitrator may elect voluntary disqualification, which is final upon service upon the parties and the court.~~ The time for mediation or arbitration shall be tolled during any period in which ~~mediation or arbitration is deferred pending determination of a disqualification~~ a motion to disqualify is pending.	Clarity, consistency. Separates disqualification procedure for mediator from disqualification procedure for a judge in view of functional differences in the two positions. Establishes a "good cause" basis for disqualifying mediator leaving decision to presiding judge.
RULE 1.710 MEDIATION RULES	
(a) Completion of Mediation. Mediation shall be completed within ~~30~~ 45 days of the first mediation conference unless extended by order of the court or by stipulation of the parties. ~~on motion of the mediator or of a party. No extension of time shall be for a period exceeding 60 days from the first mediation~~	Time is extended from 30 to 45 days to reflect pragmatic needs experienced in the field. Freedom is given to the parties to stipulate to timing mediation to best suit their needs. The remaining sticken language was considered unnecessary.

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~~conference. The mediator's report shall be filed immediately with the court upon its becoming binding on the parties pursuant to Rule 1.730(b).~~	
(b) Exclusions From Mediation. The following ~~categories of claims~~ actions shall not be referred to mediation except upon petition of all parties.	
(1) Appeals from rulings of administrative agencies	
(2) Bond estreatures	
(3) Forfeitures of seized property	
(4) Habeas corpus and extraordinary writs	
(5) Bond validations	
(6) Declaratory relief	
~~(7) Any litigation expedited by statute or rule, except issues of parental responsibility~~	Unnecessary.
(7) ~~(8)~~ ~~Such~~ oOther matters as may be specified by administrative order of the Chief Judge in the Circuit	
(c) Discovery. Discovery pursuant to ~~R~~rule 1.280 ~~Fla. R. Civ. P.~~ may continue throughout mediation. ~~Such discovery may be delayed or deferred upon agreement of the parties. All discovery shall be held in abeyance, and the times tolled, upon submission of a written settlement agreement to the court.~~	Unnecessary.
RULE 1.720 MEDIATION PROCEDURES	
(a) Interim or Emergency Relief. A ~~Either~~ party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court, or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motions.	Clarity.

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(b) Sanctions for Failure to Appear. ~~The court, upon written notice from the mediator that any party has failed to appear after receiving written notice and without good cause, may apply appropriate sanctions as provided by the Florida Rules of Civil Procedure, including taxing of the fees and costs of the mediator.~~ If a party fails to appear at a duly noticed mediation conference without good cause, the court upon motion, shall impose sanctions including an award of mediator and attorney fees and other costs against the party failing to appear. Unless otherwise stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present: (1) the party or its representative having full authority to settle without further consultation; and (2) the party's counsel of record, if any; and (3) a representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation. If a party to mediation is a public entity required to conduct its business pursuant to Chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.	Clarifies process for imposition of sanctions upon a failure to appear by either party. Defines "failure to appear" in light of experience from the field as to parties who must necessarily be present to make settlement possible. With respect to insurance carriers, the rule requires the physical presence of a direct representative of the carrier who has the ability to enter into a settlement pledging the full benefits of the policy involved. The intent is to avoid situations in which insurance representatives appear at mediation sessions with limitations on their authority which serve to place an absolute, unconditional barrier on settlement. While there is no intent in this rule to mandate any party to settle any case in mediation, it is the intent to have each party participating in a mediation directly vested with the ability to resolve the dispute. The only exception to this rule is spelled out in the last paragraph which provides for participation in mediation sessions by parties who, by statute, are precluded from making decisions outside public hearing process.
(c) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference. ~~The mediator may suspend or terminate mediation whenever, in the opinion of the mediator, the matter is not appropriate for further mediation.~~	Unnecessary.
(d) Counsel. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel ~~for each party may attend the mediation conference and~~	Experience reveals the presence of counsel in mediation sessions is a helpful and beneficial element of the process which promotes finality of agreements reached. Proceeding with mediation without counsel should be

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shall ~~at all times~~ be permitted to ~~privately~~ communicate privately with their clients. ~~Presence of counsel is not required and in the discretion of the mediator, mediation may proceed in the absence of counsel.~~ In the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.	with the consent of all parties and the mediator and subject to review by the court, rather than a matter of the mediator's sole discretion.
(e) Communication With Parties. The mediator may meet and consult privately with any party or parties or their counsel. ~~With consent of the parties, the mediator may speak with designated third parties about substantive issues involved in the mediation. Mediators are not restricted in their communication with third parties concerning procedural or administrative matters.~~	Unnecessary.
(f) Appointment of the Mediator. (1) Within 10 days of the order of referral, the parties may agree upon a certified mediator and file a stipulation designating the mediator with the court. (2) If the parties cannot agree upon a mediator, the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.	The amendment preserves the consensual nature of the mediation process, allows the "free market" forces to develop in selection a certified mediator, by giving the parties, in the first instance, an opportunity to choose their mediator. In the event they are unable to agree, however, the rule also provides for a self executing selection of a mediator by the presiding judge. The presiding judge's selection is by rotation or by a procedure adopted pursuant to administrative order within the circuit in order to relieve individual circuit judges of having to choose one mediator over another unless that procedure is adopted by the entire circuit pursuant to administrative order. Minority Comment: Since the Committee's initial public hearing in October, a strong consensus developed among the members favoring the notion that the parties to a mediation should have a greater degree of freedom in choosing the mediator than permitted under the present rules. Although the recommended rules (1.720(f)(1)) provide that the parties have the right to choose a certified mediator during the 10 day period immediately following the order of referral to mediation, we believe that this does not go far enough. Because of the restrictive requirements for certification of circuit civil mediators under the present rules, this offers the parties an unnecessarily narrow pool of individuals from which to choose. For example, parties desiring a mediator with technical expertise in an area relevant to the controversy (e.g.

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	environmental construction, etc.) may experience difficulty finding an individual with that expertise among the pool of Florida lawyers and retired judges from which they would be required to choose. A minority faction of the Committee thus recommends the inclusion of a rule that would permit a chief judge, at the request of all parties to a mediation, to certify a mediator for a particular case only. Such a rule would allow the parties to agree on a technical expert or a nationally prominent mediator who is not a member of the Florida Bar or a retired judge. *This comment reflects the views of Professors Alfini and Moberly. They are presently being circulated among the other members of the Committee. The names of other committee members joining in these minority statements will be communicated to the Court as soon as possible.*
(g) ~~(f) Appointment and~~ Compensation of the Mediator. ~~The presiding judge may appoint any person as a mediator who meets the qualifications set forth in these rules. The presiding judge may also, in appropriate cases, appoint specialists or experts who are not court-appointed mediators to assist court-appointed mediators.~~ The mediator may be compensated or ~~an~~ uncompensated. ~~volunteer, a government employee or may be compensated according to the written agreement of the parties.~~ When the mediator is compensated in whole or part by the parties, the presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a ~~such~~ written agreements providing for the mediator's compensation, ~~or of any objections served on the mediator and other parties by any party within 15 days of the order referring the matter to mediation,~~ the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. Where appropriate, each party shall pay a proportionate share of the total charges of the mediator. Parties may object to the rate of the mediator's compensation within 15 days of the order of referral by serving an objection on all other parties and the mediator.	The amendment eliminates any restrictions from the parties reaching compensatory arrangement with mediators of their choosing, while still providing for judicial review of mediator fees, if necessary. This will allow the parties to utilize higher, or lower, priced mediators who may be uniquely qualified to resolve specific disputes. In the event a mediator is selected for the parties and no agreement regarding mediator compensation is reached, the mediator's compensation shall be set by the presiding judge according to standards within the circuit where the action is pending. The parties are given the opportunity to object to judicially established compensation rates which subjects those rates to judicial review as well.

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RULE 1.730 COMPLETION OF MEDIATION	
(a) ~~Report of~~ No Agreement. ~~In cases where~~ If the parties do not reach any agreement as to any matter as a result of mediation, the mediator shall ~~immediately~~ report ~~such~~ the lack of any agreement to the court without any comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed,would facilitate the possibility of a settlement.	Clarity. The mediator's report is expanded, with the consent of the parties, to include identifying matters to the court which, if resolved, could promote settlement. This gives the presiding judge the opportunity to take appropriate steps to break logjams precluding resolution of the case.
(b) ~~Report on~~ Agreement. ~~In cases where~~ If an agreement ~~or partial agreement~~ is reached, ~~as to any matter or issue, including legal or factual issues to be determined by the court, such~~ it ~~agreement~~ shall be reduced to writing~~,~~ and signed by the parties and their counsel, if any. ~~and be immediately thereafter submitted to the court. If counsel neither signs nor objects, in writing, to the agreement with 10 days of service on counsel, then the agreement is conclusively presumed to be approved by counsel and shall then be immediately submitted to the court. Once the agreement becomes binding upon the parties by their execution and that of their counsel, it may only be set aside by the court pursuant to these rules. The agreement shall set forth all relevant statements of fact and statements of future courses of conduct as agreed upon by the parties.~~ The agreement shall be filed when required by law or with the parties' consent. If the agreement is not filed, a joint notice of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court.	Clarity. The amendment eliminates lack of finality to agreements reached during mediation and provides for dismissal of the case in instances in which the parties wish the terms of an agreement reached during mediation be kept confidential. It also provides for mechanical recordation of the settlement agreement to comply with existing practice in many jurisdictions.
~~(c) Court's Action. Within 10 days after receiving the agreement, the court shall determine whether the terms are lawful, within the jurisdiction of the court, and, where court approval is required by law, in the best interests of all parties concerned, including minor children where appropriate. If the court has not filed a written objection within 10 days after receiving the report, the agreement shall become binding on the parties. If the judge rejects or fails to adopt any part of the agreement, either party may, within 10 days of receipt of~~	Unnecessary.

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~~the order, give notice to all parties declaring the agreement void.~~ ~~Committee Notes~~ ~~After making the determination called for in this rule, the court may consider it appropriate to take any of the following courses of action: approving or rejecting the agreement in whole or in part, holding an evidentiary hearing to determine the appropriate course of action, requiring the parties to return to mediation to settle any unresolved issues, modifying either the sanctions or remedies contained in the agreement, requiring the parties to submit any unresolved issues to arbitration under Rule 1.800, or setting the case for trial.~~	
(c) ~~(d)~~ Imposition of Sanctions. In the event of any breach or failure to perform under the ~~stipulated~~ agreement, ~~as approved by the judge pursuant to subdivision (c) of this rule, the sanctions agreed upon or such other remedy as the court may deem appropriate, shall be imposed by order of the court.~~ the court, upon motion, may impose sanctions, including costs, attorney fees or other appropriate remedies including entry of judgment on the agreement.	The amendment specifically provides for measures to ensure the finality of agreements reached during mediation.
RULE 1.740 FAMILY ~~LAW~~ MEDIATION	
~~Every effort should be made to expedite mediation of parental responsibility issues. In cases in which there are complex or substantial tax, financial or property issues, the court shall refer such issues to a lawyer or Certified Public Accountant mediator. The court may refer parental responsibility issues to a non-lawyer mediator in such cases.~~	Clarity. Since there was no definition of "complex" and family matters do not lend themselves to bifurcation, referrals were limited to attorney and certified public accountants, thus excluding mental health professionals, a class of family mediators deemed to be qualified.
(a) Applicability. This rule applies to the mediation of family matters and issues only, and controls over conflicting provisions in rules 1.710, 1.720 and 1.730. For purposes of this rule, "family matters and issues" means issues in marriage dissolution and post-dissolution proceedings and in domestic proceedings between unmarried parents, unless excepted from mediation by statute or court rule.	Clarity.

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(b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort should be made to expedite mediation of family issues.	Clarity.
(c) Limitation on Referral to Mediation. Unless otherwise agreed by the parties, family matters and issues may be referred to a mediator or mediation program which charges a fee, only after the court has determined that the parties have the financial ability to pay a fee. This determination may be based upon the parties financial affidavits or other financial information available to the court. When appropriate, the court shall apportion mediation fees between the parties and shall state each party's share in the order of referral.	Indicate preference for family matters to be referred to court based mediation programs. Provide court flexibility to make financial determination on basis of affidavits rather than a full hearing.
(d) Unless otherwise stipulated by the parties, a party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present at the mediation conference. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.	Reflects actual practice of family mediation in which parties appear at conferences without counsel. Since counsel has an opportunity to review the agreement before it is submitted to the court, it is not necessary that counsel be present during all the mediation sessions.
(e) Completion of Mediation. Mediation shall be completed within 75 days of the first mediation conference unless extended by order of the court.	Allow longer period of time.
(f) Report on Agreement. (1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by the parties and their counsel, if any and if present, and be submitted to the court. If counsel for any party is not present when agreement is reached and neither signs nor objects, in writing, to the agreement, within 10 days after receipt, the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator. An objection shall be served on the mediator, the parties and counsel.	Consistent with existing rule. This allows counsel an opportunity to review an agreement which was made by a party during a mediation session in which counsel did not attend.

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(2) After the agreement is filed, the court shall take action as required by law. When court approval is not necessary, the agreement shall become binding upon filing. When court approval is necessary, the agreement shall become binding upon approval. In either event, the agreement shall be made part of the final judgment or order in the case.	
RULE 1.750 SMALL CLAIMS MATTERS	Clarity and consistency with other rules.
(a) Applicability. This rule applies to the mediation of small claims matters and issues only and controls over conflicting provisions in Rules 1.710, 1.720 and 1.730.	
~~(a)~~(b) Scheduling. The mediator shall be appointed and the mediation conference held during or immediately after the pretrial conference unless otherwise ordered by the court. In no event shall the mediation conference be held more than 14 days after the pretrial conference.	
~~(b)~~(c) Settlement Authority. If a party gives counsel or another representative authority to settle the matter, the party need not appear in person. Counsel or ~~the~~ other representative may speak for the party in the mediation conference ~~notwithstanding the limitations on counsel's participation contained in Rule 1.720(d)~~.	
~~(c)~~(d) Agreement. Any agreements reached as a result of Small Claims Mediation shall be written in the form of a stipulation. After court review ~~pursuant to Rule 1.730 (c)~~, the stipulation shall be entered as an order of the court.	
RULE 1.760 MEDIATOR QUALIFICATIONS	
(a) County Court Mediators. For certification ~~by the Supreme Court~~, a mediator of county court matters must:	Consistency with Florida Statute 44.302(3).
(1) ~~have~~ completed a minimum of a 20 hour training program certified by the Supreme Court; ~~and~~	

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(2) ~~have~~ observed a minimum of four county court mediation conferences conducted by a court certified mediator; ~~and~~	
~~(3) have co-mediated a minimum of three mediation conferences with a court certified mediator; and~~	Experience from the field revealed "co-mediations" in county court environments were unsatisfactory and a waste of time. Accordingly, co-mediations are replaced with supervised mediation experiences as a qualification to certification.
(3) ~~(4) have~~ conducted four county court ~~a~~ mediation conferences under the supervision and observation of a court certified mediator; and	
(4) ~~(5) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3), Florida Statutes (1987)~~ be of good moral character; or	Provide flexibility to statutorily change to a statewide certification process.
(5) ~~(6)~~ be certified as a circuit court or family mediator.	Recognizes ability of family mediators to serve as county mediators should they so desire.
(b) Family Mediators. For certification ~~by the Supreme Court~~, a mediator of family and dissolution of marriage issues must:	Consistency with Florida Statute 44.302(3).
(1) ~~(3) have~~ completed a minimum of 40 hours in a family mediation training course certified by the Supreme Court; ~~or have received a Masters Degree in family mediation from an accredited college or university, and~~	Direct mediation training in an appropriate training course is essential. The Committee was unaware of any academic program offering a "masters degree in family mediation", and in any event, did not consider it an appropriate substitute for existing approved training courses.
(2) ~~(1)~~ have a Masters Degree or Doctorate in social work, mental health, behavioral or social sciences; or be a physician certified to practice adult or child psychiatry; or be an attorney or a Certified Public Accountant licensed to practice in any United States jurisdiction; and ~~(2)~~ have at least four years practical experience in one of the ~~above~~ afore mentioned fields; ~~and~~ or have eight years family mediation experience with a minimum of ten mediations per year;	The amendment allows doctorates in designated fields to qualify as mediators as well as Masters, and direct family mediation experience to substitute for certain educational backgrounds.
(3) observe two family mediations conducted by a certified family mediator and conducted two family mediations under the supervision and observation of a certified family mediator; and	Adds a direct experience requirement to qualifications.

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(4) ~~have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3).~~ be of good moral character.	Provide flexibility to statutorily change to a statewide certification process.
(c) Circuit Court Mediators. For certification ~~by the Supreme Court~~, the mediator of circuit court matters, other than family matters, must:	Consistency with Florida Statute 44.302(3).
(1) ~~(2)~~ complete a minimum of a 40 hour circuit court mediation training program certified by the Supreme Court;	Clarifies training requirement at circuit court level.
(2) ~~(1) be a former judge of a trial court who was a member of the bar in the state in which the judge presided, or~~ be a member in good standing of the Florida Bar with at least five years of Florida practice~~, and~~, and be an active member of the Florida Bar within one year of application for certification. This paragraph notwithstanding, the chief judge, upon written request setting forth reasonable and sufficient grounds, may certify as a circuit court mediator, a retired judge who was a member of the bar in the state in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought and must meet the training requirements of subsection (1);	Allows chief judges within circuits to certify retired judges from other states to serve as mediators within their circuit. Experience has shown retired, out-of-state judges, after appropriate training, have experienced success as mediators in certain circuits where they have been certified. The decision to certify these individuals despite their absence of legal training in Florida, however, is left to the chief judges of each circuit who would have an opportunity to review specific applications.
	Minority Comment: This committee and the prior rules committee believe it important for circuit court mediators selected by the court to be learned in the law. The present rule thus provides circuit court mediators be either Florida lawyers with 5 years practical experience or be a retired judge from any United States jurisdiction. A minority faction of the Committee recommends the rule be expanded to enable non-Florida lawyers to become certified mediators as well. We believe permitting certification of non-Florida judges, but excluding non-Florida lawyers is both illogical and unnecessarily restrictive. Both lawyers and judges from other jurisdictions would possess the fundamental background the Committee considers necessary for circuit court mediators. *This comment reflects the views of Professors Alfini and Mberly. They*

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	are presently being circulated among the other members of the Committee. The names of other committee members joining in these minority statements will be communicated to the Court as soon as possible.
(3) observe two circuit court mediations conducted by a certified circuit mediator and conducted two circuit mediations under the supervision and observation of a certified circuit court mediator; and	Establishes direct experience requirement for qualifications.
(4) be of good moral character.	Clarity.
(d) Special Conditions. ~~Prior to January 1, 1989, the Chief Judge of each Circuit may certify any mediator who is currently mediating in an established program and who~~ Mediators who have been duly certified as circuit court mediators before January 1, 1990, shall be deemed qualified as circuit court mediators pursuant to these rules.	"Grandfathers" previously certified mediators who would otherwise be adversely affected by the suggested rule changes.
~~(1) has been actively engaged in the practice of mediation for the proceeding year; and~~	Unnecessary.
~~(2) completes the minimum training specified in these rules for the particular type of mediation. Mediators presently practicing pursuant to section (1) of this sub section may continue to do so for no more than 6 months past the date upon which the Supreme Court certifies a training program appropriate to their needs. Such mediators may continue to practice mediation after such period if they satisfactorily complete requirements of such training programs, including successful completion of a form of examination approved by the Supreme Court of Florida. Such mediators may continue to practice mediation if the field of prior practice.~~	Unnecessary.
~~RULES 1.770 STANDARDS FOR MEDIATION TRAINING PROGRAMS~~	Unnecessary. Standards for mediation training programs were thought to have no place within a body of procedural rules. While the Committee expresses no opinion on the adequacy of the standards previously set forth in Rule 1.770, it was unanimously agreed these standards should be developed and applied by entities responsible for producing mediation training programs, not by Rules of Civil Procedure.
~~(a) Circuit Court Mediators. Mediation training for mediators of Circuit Court matters, other than family matters, should consist of a minimum of 40 hours training in a program approved by the Supreme Court. The training should address the following:~~	

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~~(1) mediation theory~~ ~~(2) mediation process and techniques~~ ~~(3) standards of conduct for mediators~~ ~~(4) conflict management and intervention skills~~ ~~(5) community resources and referral processes~~ ~~(6) successful completion of an examination at such time as a form of examination shall have been approved by the Supreme Court of Florida.~~ ~~(b) Family Mediators. Mediation training for mediators of family matters should consist of a minimum of 40 hours of training in a program approved by the Supreme Court. That training should address those areas required in subsection (c) of this rule and in addition the following:~~ ~~(1) psychological issues in separation, divorce and family dynamics~~ ~~(2) issues concerning the needs of children in the context of divorce~~ ~~(3) family law, including issues of custody, child support, and asset evaluation and distribution as it related to divorce~~ ~~(4) family economics~~ ~~(5) successful completion of an examination at such time as a form of examination shall have been approved by the Supreme Court of Florida.~~ ~~(c) County Court Mediators. Mediation training for county court mediators should consist of a minimum of 20 hours training in a program approved by the Supreme Court. That training should address the following:~~	

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~~(1) written and oral communication~~ ~~(2) mediation theory~~ ~~(3) the mediation process and techniques~~ ~~(4) standards of conduct for mediators~~ ~~(5) conflict management and intervention skills~~ ~~(6) the court process~~ ~~(7) community resources and referral processes~~ ~~(8) successful completion of an examination at such time as a form of examination shall have been approved by the Supreme Court of Florida.~~ ~~(d) [Suspension of Examination Requirement.] The requirement of successful completion of an examination is suspended until a form of examination has been approved by the Supreme Court of Florida. Upon approved of a form of examination, practicing mediators, who have previously completed a course of training later approved by the Supreme Court of Florida, will not be required to retake such a course if they successfully complete the approved form of examination.~~	
~~RULE 1.780 DUTIES OF THE MEDIATION~~ ~~(a) The mediator has a duty to define and describe the process of mediation and its cost during an orientation session with the parties before the mediation conference begins. The orientation should include the following:~~ ~~(1) the differences between mediation and other forms of conflict resolution, including therapy and counseling;~~ ~~(2) the circumstances under which the mediator may meet alone with either of the parties or with any other person;~~ ~~(3) the confidentiality provision as provided by Florida Law;~~	Unnecessary. The duties of a mediator are the proper subject of mediation training program, ethical standards and, ultimately, measures of performance which will be evolved in substantive law and practice. While the Committee has no opinion as to the substantive merits of the duties previously set forth in Rule 1.780, it is their unanimous opinion that the subject is inappropriate to treat this matter in procedural rules.

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~~(4) the duties and responsibilities of the mediator and of the parties;~~ ~~(5) the fact that any agreement reached will be reached by mutual consent of the parties;~~ ~~(6) the information necessary for defining the disputed issues~~ ~~(b) The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.~~	