

KFF
543
J64

A STUDY OF THE ARBITRATION AND MEDIATION PROGRAM
OF THE SIXTH JUDICIAL CIRCUIT
STATE OF FLORIDA

BY
SUE A. JOHNSON
DEPUTY ADMINISTRATOR, COURT PROGRAMS
SIXTH JUDICIAL CIRCUIT, STATE OF FLORIDA
150 5th Street North
St. Petersburg, Florida 33701

May 19, 1989

read 2/23/94

This final report is submitted to the Institute for Court Management of the National Center for State Courts in fulfillment of the requirements for successful completion of Phase III of the Court Executive Development Program.

KFF
543
J64

Library
National Center for State Courts
300 Newport Ave.
Williamsburg, VA 23187-8798

ACKNOWLEDGMENTS

Numerous people provided valuable assistance to the completion of this report. Roger Hanson of the National Center for State Courts was a continuing source of moral support and provided invaluable recommendations regarding study design and presentation. Karl D. Schultz of the Office of the State Courts assisted in the analysis of the data collected from the questionnaires and was always a source of levity at the most trying times. Last but certainly not least, my husband Bill was always there with words of encouragement and support.

TABLE OF CONTENTS

LIST OF FIGURES	i
LIST OF APPENDICES	ii
ABSTRACT	iii
CHAPTER 1 ALTERNATIVE DISPUTE RESOLUTION	1
Historical Background	
Mediation and Arbitration	
Florida's Response to the Need for Court Reform	
Assessing the Sixth Judicial Circuit's	
Implementation of Mediation and Arbitration	
CHAPTER 2 THE SIXTH JUDICIAL CIRCUIT PROGRAM	10
Impetus Leading to Implementation	
Arbitration and Mediation Program Development	
Management/Administration	
Program Goals	
Program Policies	
Rules	
Program Costs and Funding	
Program Staff	
Mediation Procedures	
Arbitration Procedures	
Court Appointed Mediators	
Training Program Standards	
Duties of the Mediator	
Court Appointed Arbitrators	
Recruitment of Mediators and Arbitrators	
Payment of Mediators and Arbitrators	
Case Assignment and Mediator Assessment	
CHAPTER 3 VIEWS OF KEY PARTICIPANTS	43
Questionnaire Responses	
CHAPTER 4 CONCLUSIONS AND RECOMMENDATIONS	52
Conclusions from the Study	
Recommendations for the Arbitration and Mediation	
Program	
APPENDICES	57
BIBLIOGRAPHY	119

LIST OF FIGURES

FIGURE		PAGE
1	IS ADR LESS COSTLY THAN GOING TO TRIAL?	45
2	ATTORNEYS' VERSUS PARTIES' VIEWS IS ADR LESS COSTLY THAN TRIAL?	47
3	IS ADR A VIABLE OPTION TO TRIAL?	48
4	SATISFIED WITH ADR RESOLVED CASE RESULTS?	49
5	SATISFIED WITH SKILLS OF ARBITRATORS/MEDIATORS?	51

LIST OF APPENDICES

APPENDIX		PAGE
A.	Laws of Florida, Chapter 44 MEDIATION ALTERNATIVES TO JUDICIAL ACTION	58
B.	Supreme Court of Florida RULES OF CIVIL PROCEDURE 1.700-1.830 (proposed)	62
C.	Administrative Order No. 88-59	80
D.	Alternative Dispute Resolution Organizational Chart	84
E.	Florida Rules of Civil Procedure 1.700-1.830	86
F.	Order of Referral to Mediation	94
G.	Section 61.183, Florida Statutes	97
H.	Order of Referral to Family Mediation	99
I.	Order of Referral to Arbitration	101
J.	Supreme Court of Florida, Administrative Order (Amended), Mediation and Arbitration Training Committee	104
K.	Mediator/Arbitrator Payment Voucher	107
L.	Mediator Evaluation Form	109
M.	Study Questionnaire	111
N.	Information Sheets on Arbitration/Mediation	115

ABSTRACT

In 1988, the Sixth Judicial Circuit, State of Florida was called on to implement an Arbitration and Mediation Program as an option to traditional trial court litigation.

This study addresses step-by-step program development, including policy and procedures, with a focus on the programs's possible cost savings, the participant's satisfaction with the program and the participant's assessment of the assigned mediators or arbitrators. Questionnaires were mailed to key participants in the Sixth Circuit's Program to explore their views concerning the issue of cost savings, their degree of satisfaction with the programs's results, and their degree of satisfaction with the assigned mediators or arbitrators.

In all areas of focus, the Sixth Judicial Circuit's program received positive responses from the key participants who completed the questionnaire.

General recommendations arising from this study suggest the need for the program to keep additional management information data in order to permit greater accountability, and the need to develop educational information on the subject of alternative dispute resolution for the judiciary, the bar and the litigants.

CHAPTER 1

ALTERNATIVE DISPUTE RESOLUTION

Historical Background

In 1906 Roscoe Pound stunned the American Bar Association audience with his address entitled "The Causes of Popular Dissatisfaction with the Administration of Justice".¹ He openly criticized the court system. He claimed that the system of courts was archaic in three respects: 1) in its multiplicity of courts, 2) in preserving concurrent jurisdictions and 3) in the waste of judicial power which it involves.² Roscoe Pound became the grandfather of advocacy for judicial reform and his address has become mandatory reading for all of those involved in the court system.

Given the multitude of existing problems associated with the introduction of change, court reform could become the proverbial opening of "Pandora's Box". According to Carl Baar one goal and objective of court reform would be a simplification of court procedures.³ He believes that future court reform must "shift from a consideration of the needs of judges and court administrative personnel to a consideration of the needs of

¹Roscoe Pound, The Causes of Popular Dissatisfaction With the Administration of Justice, address delivered at annual convention of American Bar Association in 1906.

²Ibid.

³Carl Baar, "The Scope and Limits of Court Reform," The Justice System Journal (Spring, 1980).

litigants and other members of the public served by the courts.⁴

Substantial sums of money are allocated to our "modern" court system but dissatisfaction runs rampant. With tightening tax dollars and escalating demands the legislative, executive and judicial branches of government are seeking ways to assuage the public outcry. Members of the public, it is reasonable to assume, want impartial, but expeditious justice. Their own cases are their only concern. Frequently, they find that it has been months and many dollars later since they first visited their attorneys, but there appears to be no resolution of their dispute in sight. The legal process with all its pleadings, motions, depositions, interrogatories, continuances and myriad of other nuances means very little to the individual who wants justice in his or her own case.

Mediation and Arbitration

The answer to court delay and often prolonged costly litigation may be more judges, case management, master calendars or an alternative to traditional court methods. The optimum solution is not known but Alternative Dispute Resolution (ADR) may have merit. ADR is exactly what the name implies -- an alternative method(s) of resolving disputes other than the

⁴Ibid.

traditional trial court track. There are various options available in ADR such as mediation and arbitration.

Mediation is a process whereby a neutral third party (the mediator) assists the parties to a dispute reach the resolution of their conflict. The mediator does not determine which party is right or wrong but acts to facilitate communication and agreement among the parties. Arbitration is a procedure where an arbitrator (or panel of arbitrators) listens to the facts of a case, usually informally presented as opening and closing arguments, and after deliberation makes an award. The parties generally have a right to file for a trial de novo (a new trial) should they not accept the arbitrator's award.

Despite its appeal, ADR has not realized its full potential and development. One recent study concluded that the adoption of ADR programs in the United States were hovering around the base of the J-curve, with the movement poised for programs that will refine and improve the ADR process.⁵ Moreover, proponents of ADR may be too optimistic over the potential benefits of alternative programs. Does ADR actually achieve the anticipated expeditious resolution of disputes at a reduced cost to the parties? Does ADR reduce the need for additional judges and reduce the cost of court operations? Is ADR a viable

⁵Susan Keilitz, Geoff Gallas, Roger Hanson, "State Adoption of Alternative Dispute Resolution, Where Is It Today?," 12 State Court Journal (1988) 5-11.

alternative to traditional court methods? Are the participants satisfied with the results? These and other questions will be examined in this paper.

Florida's Response to the Need for Court Reform

In Florida, Citizen Dispute Settlement Programs (CDS) have been in operation for a number of years with legislation providing statutory funding authority adopted in 1985. These programs provide voluntary mediation services to the community in an effort to resolve minor disputes prior to the filing of lawsuits. The programs are well received, but they may have had only minimal impact on volume and delay in the courts. Nevertheless, the success of the local programs led to the idea of expanding the basic concepts of mediation to the post-filing arena.

In June of 1985, the Governor of the State of Florida approved Senate Bill No. 44 which created that Study Commission on Alternative Dispute Resolution. The Study Commission was charged with studying the feasibility of trial court administered alternative means for dispute resolution, and to make recommendations for legislation and court rules necessary to implement such means.

The Study Commission concluded that, with the adoption of alternative dispute resolution, citizens might gain greater access to methods for the resolution of their disputes; achieve more expedited resolution at a reduced cost; and existing judicial resources would be better utilized. The Study Commission submitted the following conclusions and

recommendations:⁶

1. The need for additional judicial appointments at the trial level should be abated for the near future.
2. The per capita cost of handling disputes referred to the courts for resolution will decrease.
3. Citizens will enjoy greater access to the dispute resolution services of the courts through the provision of alternative forms of dispute resolution.
4. Disputes reaching the courts will achieve faster resolutions, overall, because of the speed and efficiency which can be effected through mediation and voluntary binding arbitration and through the early achievement of realistic appraisals of the values of cases and their outcomes through non-binding arbitration.
5. The system will provide personnel trained in not only the techniques and procedures of trials, but also in the techniques and procedures of effective mediation, binding arbitration, and non-binding arbitration. This facet of our program will gain in importance as interest groups seek the best possible mechanisms for the resolution of their disputes. Rather than creating special "courts" for special interest groups, utilization of a standardized system for dispute resolution within the judicial branch of government will be possible.

Based on the recommendations of the Study Commission, the Florida Legislature enacted legislation, effective January 1, 1988, which provided for the referral of contested civil cases or issues to mediation or binding and nonbinding arbitration. Chapter 87-173, Laws of Florida. In accordance with that legislation, the Florida Supreme Court promulgated rules setting forth procedural standards, including the qualifications and

⁶Study Commission on Alternative Dispute Resolution, Final Report (February 1, 1986), pgs. 9-10

educational requirements of mediators and arbitrators, to be followed by the Courts in implementing the provisions of this legislation. Fla. R. Civ. P. 1.700 et seq.

Assessing The Sixth Judicial Circuit's
Implementation of Mediation and Arbitration

In response to the legislation, the Chief Judge of the Sixth Judicial Circuit, State of Florida, appointed a local study committee consisting of three judges, the Court Counsel and myself to review the legislation and make recommendations concerning program implementation. This paper will address the Arbitration and Mediation Program established in the Sixth Judicial Circuit.

The research issues deal with the views of program participants concerning the concept of alternative dispute resolution. Specifically, the following questions were examined: Did the participants consider ADR a viable alternative to traditional trial court methods? Were they satisfied with the results of mediation or arbitration? Were they satisfied with the arbitrators and mediators assigned to their case? Did the participants consider alternative dispute resolution to be less costly than going to trial? By addressing these questions, this report will help gauge how realistic are the conclusions and recommendations of the Study Commission concerning the benefits of alternative dispute resolution at the trial court level. Additionally, a key purpose of this report is to determine if the Sixth Judicial Circuit program is on the right track with its current policies and procedures. For this reason, participants were asked for their suggestions

concerning program improvement. Finally, this research should help other circuits in Florida with the development of their own programs. Despite the legislation and rules enacting ADR, individual trial courts need guidance in order to implement the program successfully.

CHAPTER 2

THE SIXTH JUDICIAL CIRCUIT PROGRAM

Impetus Leading to Implementation

The Sixth Circuit is among the first trial courts to initiate alternative dispute resolution in Florida. As a way of establishing a basis for making comparisons, I will describe the Sixth Circuit briefly. The territorial jurisdiction of the twenty judicial circuits in Florida follow county lines, with the Sixth Circuit encompassing both Pinellas (St. Petersburg, Clearwater) and Pasco Counties (New Port Richey, Dade City). Of the twenty circuits, the Sixth Circuit ranks third in resident population (1.3 million), third in number of case filings and third in number of judges (thirty-two circuit and sixteen county).⁷ Of the thirty-two circuit judges, sixteen are assigned to circuit civil divisions, two to probate, one to juvenile, seven to criminal and six to Pasco county. Of the sixteen county court judges, seven are civil, six criminal and three are assigned to Pasco county.⁸ The Sixth Circuit has been known state wide as an extremely progressive circuit, hence, it was no surprise that subsequent to the passing of the arbitration and mediation legislation, the circuit began to make

⁷J. William Lockhart, Court Administrator for the Sixth Judicial Circuit was the source for this information.

⁸Pasco County judges are assigned to geographic areas and are not assigned to specialized divisions. They handle a variety of cases (e.g., probate, juvenile, civil).

implementation plans. In early February of 1988, Philip A. Federico, Chief Judge of the Sixth Circuit, appointed a study committee for just such a purpose. The committee members were David F. Patterson, Circuit Judge, James R. Case, Circuit Judge, W. Douglas Baird, County Administrative Judge, Thomas J. Walsh, II, Esq., Court Counsel and myself as Deputy Administrator in charge of court programs.⁹

Other than the commitment to establish an arbitration and mediation program in the Sixth Circuit, little direction for program development resulted from the committee. It was determined that arbitration and mediation of cases would be made available for circuit court cases only, as that was the area of greatest need.¹⁰ A small claims pre-trial conference mediation procedure was already in place for county court judges. It was also decided that the Sixth Circuit program would be court annexed, meaning the program would have assignment, scheduling and monitoring control.

Two sets of guidelines were utilized in the implementation of the Sixth Circuit program. The first set was the legislative enactment of Chapter 87-173, Laws of Florida, specifically

⁹The Honorable David F. Patterson is now a District Court of Appeal Judge and the Honorable W. Douglas Baird is now a Circuit Court Judge. The Honorable James R. Case continues to serve as an adviser to the program.

¹⁰Florida has a two tier court system consisting of Circuit and County Courts. The Circuit Court has general jurisdiction and the County Court has limited jurisdiction.

Chapter 44, MEDIATION ALTERNATIVES TO JUDICIAL ACTION.¹¹ The second set was the Supreme Court of Florida's proposed rules for implementation of Florida Statutes Sections 44.301 - .306, which were effective January 1, 1988 and subject to amendment.¹²

Administrative Order No. 88-59 was signed by Philip A. Federico, Chief Judge on June 8, 1988 regarding IMPLEMENTATION OF FLORIDA'S MEDIATION AND ARBITRATION ACT, CHAPTER 87-173, LAWS OF FLORIDA.¹³ Among other things, this order created the Office of the Coordinator for the Arbitration and Mediation Program, which operates under the supervision of the Office of the Courts Administrator. Unfortunately, the program was pressed into service with very limited resources, vaguely defined goals and few working procedures. As I go through the program's development and it's metamorphosis, I hope that other circuits may learn from our successes and mistakes.

¹¹Chapter 44, Laws of Florida is found in Appendix A.

¹²The Supreme Court of Florida proposed rules are in Appendix B.

¹³Administrative Order 88-59 is in Appendix C.

Arbitration and Mediation Program Development

As I reflect on the years spent in court work and the education and training received, I believe that virtually all management guides stress the need for establishing measurable goals. One must address management, staff, funding, goals, policies, etc. as they directly relate to a given program.

A. Management/Administration: All court adjunct programs are under the umbrella of the Office of the Courts Administrator with the Chief Judge having final authority.¹⁴

The program coordinator is responsible for day to day operations, including liaison with the bar and judiciary. It was not felt initially that the coordinator position needed to be filled with an attorney. However, we quickly learned this was not the case. The program's first coordinator, who was hired in May of 1988, was an out of state attorney, who wanted to locate in Florida and was willing to accept a relatively low salary. This was fortuitous because the coordinator is confronted with questions concerning statute interpretation and legal issues. The coordinator must draft applicable court orders and motions pertaining to arbitration and mediation. The original coordinator resigned in November of 1988 and was

¹⁴The organizational chart for the Arbitration and Mediation Program and other alternative dispute resolution programs in the Sixth Circuit are in Appendix D.

replaced with a Florida attorney.¹⁵ I would strongly recommend that a Florida attorney be attached to any court annexed alternative dispute program.

Assisting with program management are three alternative dispute resolution administrative judges. Each one is assigned to a location, namely, the St. Petersburg Judicial Building, the Clearwater Courthouse and Pasco County. These judges are also the civil administrative judges at each location. Their responsibilities are set forth in Administrative Order No. 88-59. In that Order, specifically paragraph 1(b), the ADR administrative judges were to hear any motion to dispense with or to defer mediation and arbitration. It was decided that motions to dispense or to defer would be heard by the referring judge, as the ADR administrative judges felt they were placed in an appellate posture when disposing of such motions.

B. Program Goals: Although not clearly defined or even reduced to writing initially, the goals of the Sixth Judicial Circuit's Arbitration and Mediation Program follow those of the ADR Study Commission. The following are the program's goals:

1. To provide litigants with a viable alternative for resolution of their disputes other than the traditional trial court track.
2. To provide litigants with a less costly forum for the resolution of their disputes.

¹⁵ Gay Inskeep, Esq. is the coordinator for the Arbitration and Mediation Program.

3. To provide litigants, in a timely manner, with greater access to dispute resolution services.
4. To certify and assign only qualified mediators and arbitrators to provide alternative dispute resolution services.
5. To monitor and evaluate the parties satisfaction with the assigned mediators and arbitrators.
6. To monitor and evaluate the participants' satisfaction with awards and agreements resulting from alternative dispute resolution techniques and procedures.
7. To provide continuing education on alternative dispute resolution procedures, techniques and program policies to the judiciary, the bar, the participants, and the certified mediators and arbitrators.
8. To help relieve Circuit Civil docket congestion.

C. Program Policies: Since we are in the early stage of alternative dispute resolution in Florida, program policies in this circuit are developed as needed. As with program goals, the policies were not put in writing prior to the initiation of this study. The following are program policies:

1. Only Circuit Civil Court cases or issues may be referred to the Arbitration and Mediation Program.¹⁶
2. Absent a stipulation by the parties or a specific request by the referring judge, cases are assigned to certified mediators on a rotation basis.
3. The attorneys of record are given the opportunity to select and agree upon an arbitration panel from the list of certified arbitrators within ten days from the Order of Referral. Absent a stipulation from the attorneys, a panel will be selected on an availability

¹⁶Chapter 44, Laws of Florida provide for the referral of both Circuit and County Court cases or issues.

basis.¹⁷

4. The program is responsible for coordinating the date, time and place for an arbitration hearing or mediation conference. The attorneys of record, the assigned mediators or arbitrators, the availability of space and the time requirements¹⁸ of the rules are all considered in the coordination.

5. All forms essential to program procedure and administration are promulgated by the Coordinator of the Arbitration and Mediation Program.

6. Once the case has been referred to arbitration or mediation, the program is responsible for case management and monitoring.

7. The program is responsible for making recommendations to the Chief Judge concerning the certification of an arbitrator or mediator and maintaining a list of certified arbitrators and mediators.

8. Utilizing the rules and absent the specific recommendation of the referring judge, the program is responsible for establishing criteria for case assignment to either mediation or arbitration.

9. The program is responsible for establishing a financial procedure encompassing payment to the mediators or arbitrators and collection of fees from the parties.

10. The program is responsible for maintaining statistical data.

D. Rules: The program follows the rules promulgated by the Supreme Court of Florida. Fla. R. Civ. P. 1.700 et

¹⁷The program was able to implement this policy because of an increase in the certified arbitrators pool and an increase in program staff. Prior policy was assignment of an arbitration panel without input from the attorneys of record.

¹⁸When the program was first implemented the hearings were scheduled without coordination with the attorneys of record. This was a major complaint from the attorneys.

seq.¹⁹ It is interesting to note that a rules committee appointed by the Chief Justice will begin to meet and make recommendations for amendment of the existing rules.

E. Program Costs and Funding: As alluded to earlier, the Sixth Judicial Circuit program was pressed into service with extremely limited resources. The State of Florida provided funding for a pilot program in the Thirteenth Circuit but funding was not available to other circuits. At the local level there were no earmarked funds in FY 87-88 budget for the Arbitration and Mediation program. The coordinator and secretary salaries were paid from another court program budget. A special budget request was submitted to the Pinellas County Board of County Commissioners for consideration in FY 88-89.²⁰

The Board of County Commissioners approved a budget request of \$147,610.00 for FY 88-89. They also established a revolving account of \$300,000.00 for the payment of mediator and arbitrator fees. This account requires that the program collect the mediation or arbitration fees from the parties to reimburse the account. Uncollected fees must be covered from other court accounts and constitute a program expenditure. This system did not take into account indigent parties, fee disputes or bad

¹⁹The Florida Rules of Civil Procedure 1.700 et seq are in Appendix E.

²⁰The Pinellas County Fiscal Year is from October 1st to September 30th.

debts.

F. Program Staff: For six months, the program staff consisted of a coordinator and a secretary. It was obvious from the beginning that the program was understaffed. The usual new program start up problems were heightened because of the shortage of personnel and lack of experience. Education of the judiciary, the bar and the public was almost nonexistent; hence, there was confusion over the process. Orders of referral were not processed within the time limits. There was no scheduling coordination with attorney's offices, no criteria for case selection, no financial system in place, and there were only a few "certifiable" mediators and arbitrators.²¹ The coordinator at that time had a computer science background, so the program did have a data base management system in place. Unfortunately, the data management system and word processing software were not compatible with other software being used in the courts. The end result was chaos.

In November of 1988, a new coordinator took over and an administrative assistant was added to program staff. Additionally, the civil judges were asked not to refer new cases for a period of two weeks so that the program could reorganize. A part time law clerk was hired to assist with the program. In

²¹I use the term "certifiable" because the Administrative Order listing certified mediators and arbitrators was not signed until December 1988.

February of 1989, the program secretary was promoted to administrative assistant and a receptionist was added. This brought the program staff to four full time positions and one part time position. A secretary from another court program is used to process and monitor the program's financial aspects.

G. Mediation Procedures: Pursuant to Section 44.301(1), Florida Statutes, "Mediation" means a process whereby a neutral third party acts to encourage and to 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. Contested Circuit Civil Mediation: The process begins with the referral of a case or issues in a case from the court to the Arbitration and Mediation Program. Usually, the court on its own motion will determine that a case is appropriate for referral to the program. This is accomplished either by the referring judge's review of the docket or by the judge's recognition during the course of a hearing that the case would benefit from mediation. Parties or counsel may motion to have the case referred, or may stipulate to the referral with the courts approval. Exclusions from the mediation process are found in Rule 1.710(b).

Case type and time of referral are somewhat elusive when considering a case for mediation. Generally, the more complex cases--those with most of the discovery completed--are the most

appropriate for mediation. Large amounts of money are usually in controversy and there is often a continuing relationship between the parties.

An Order of Referral to Mediation is prepared by the program and forwarded to the referring judge for signature.²² The signed referral is returned to the program for an assignment of a certified mediator and the coordination of the date, time and place of the conference. This must be accomplished within ten days after receiving the executed order of referral. A certificate of service is completed and mailed to the attorneys, parties and mediator with the order and notice. The mediator is also sent a copy of the case pleadings. Within 15 days after the order of referral, any party may file a motion with the court to defer or forego the process. Mediation is tolled until disposition of the motion. Fla. R. Civ. P. 1.700(c)

The first mediation conference must be held within 60 days from the order of referral. Fla. R. Civ. P. 1.700 (a)(1) Mediation must be completed within 30 days of the first mediation conference unless extended by order of the court. No extension of time shall be for a period exceeding 60 days from the first mediation conference. Fla. R. Civ. P. 1.710(a)

In cases where the parties do not reach any agreement through mediation, the mediator shall report immediately such to

²²The Order of Referral to Mediation is in Appendix F.

the court without comment or recommendation. Fla. R. Civ. P. 1.730(a) (emphasis added)

In cases where agreement or partial agreement is reached through mediation, the agreement shall be reduced to writing, signed by the parties and their counsel, if any, and submitted immediately to the court. If counsel neither signs nor objects, in writing, to the agreement within 10 days of service on counsel, then the agreement is conclusively presumed to be approved by counsel and shall then be 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. Fla. R. Civ. P. 1.730(b)

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. 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 give notice to all parties declaring the agreement void. Fla. R. Civ. P. 1.730(c)

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, including taxing of the fees and costs of the mediation. Fla. R. Civ. P. 1.720(b)

2. Contested Circuit Civil Family Mediation: The Sixth Circuit has had a Family Mediation Program since January of 1984. Pursuant to Section 61.183 Florida Statutes, Section 44.302 Florida Statutes and Rule 1.700 et seq., Florida Rules of Civil Procedure, in any proceeding in which the issues of custody, primary residence, or visitation of a child are contested, the court may refer the parties to mediation.²³

Family Mediation is a court adjunct program that provides parents of minor children the opportunity to resolve parental responsibilities, primary residence and visitation issues through the process of mediation rather than court litigation. It is the intent of this program to preserve the parental relationship before, during and after dissolution of marriage by assisting parents to resolve conflicts concerning their children constructively and amicably. The program is available on a voluntary basis or may be a mandatory referral by the court. There is no fee to the parties for mediation services through this program.

The certified family mediator has a master's degree and only mediates parental responsibility issues. In cases in which there are substantial tax, financial or property issues, the court shall refer such issues to a lawyer or Certified Public Accountant mediator. Fla. R. Civ. P. 1.740

²³Section 61.183, Florida Statutes is located in Appendix G.

The Arbitration and Mediation Program and the Family Mediation Program have developed a procedure to mediate court referrals involving both parental responsibility issues and financial or property issues. The referring judge would execute two orders of referral to mediation. The parental responsibility issues are directed to the Family Mediation Program at no fee to the parties.²⁴ The financial or property issues are directed to a certified attorney mediator to either co-mediate or completely bifurcate the case. In most cases the parties are ordered to pay the attorney mediator for services at a current rate of \$100.00 per hour. There is a certified attorney mediator employed by the court as a hearings officer and he may be used on an availability basis to assist with financial or property issues at no cost to the parties. We are in the process of working out the details with this procedure.

Other than co-mediating or bifurcating parental responsibility and financial or property issues, the family mediation procedures are the same as contested circuit civil mediation. Dissolution of Marriage cases involving only financial or property issues are referred on a rotation basis to private attorneys certified as family mediators. The parties are assessed a fee of \$100.00 per hour, usually paid on a proportionate basis by each party.

²⁴The Order of Referral to Family Mediation is in Appendix H.

H. Arbitration Procedures: Pursuant to Section 44.301(2), Florida Statutes, "Arbitration" means a process whereby a neutral third party or panel listens to the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding in accordance with the provisions of the act.

The arbitration hearing is conducted informally. Advocates are expected to present the controversy in the form of dissertations that encompass both fact and law. If there is a controversy, counsel is expected to inform the panel and may present sworn live testimony. Attorneys are expected to exchange a list of witness they intend to offer prior to the arbitration proceedings. Attorneys should expect the panel to ask questions during the presentations. In most cases thirty minutes of presentation time per party are sufficient.

1. Nonbinding arbitration: The process begins with the referral of a case or issues in a case from the court to the Arbitration and Mediation Program.²⁵ Usually, the smaller dollar value case which is in early stage of discovery is better suited to arbitration than mediation. This seems to be true because of the minimal cost of an arbitration hearing compared to the costs of possible lengthy mediation. Also, the smaller dollar value case does not have a great deal of negotiation

²⁵The Order of Referral to Arbitration is in Appendix I.

leeway which is unfavorable in the mediation process. There are several case exclusions from arbitration including Chapter 61 dealing with Dissolution of Marriage; Support; Custody. Fla. R. Civ. P. 1.820

Once the Order of Referral to Arbitration is executed by the judge it is immediately mailed to the attorneys of record with an accompanying list of certified arbitrators by area of expertise. The attorneys have 10 days to agree upon a three member arbitration panel. If this is not accomplished within the time limit, the program will appoint the arbitration panel and designate the chief arbitrator. Within 10 days from the order of referral the administrative assistant coordinates a date, time and place with the arbitrators and attorneys. The arbitrators are compensated by a fee of not more than \$75.00 per day plus 20 cents per mile. 44.303(2) Laws of Florida. The fees are usually paid by the parties on a proportional basis. As with mediation the first arbitration hearing must be held within 60 days from the order of referral. The notice of hearing is mailed with certificate of service to all participants.

The arbitration process shall be completed within 30 days of the first arbitration hearing unless extended by order of the court on motion of the chief arbitrator or of a party. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing. Fla. R. Civ. P. 1.820(1) Upon the completion of the arbitration process, the

arbitrator(s) shall render a decision. In the case of a panel, a decision shall be final upon a majority vote of the panel.

Fla. R. Civ. P. 1.820(2) Within 10 days of the final adjournment of the arbitration hearing, the arbitrator(s) shall, in writing, notify the parties of their decision on a form approved by the Supreme Court. The decision and the originals of any transcripts shall be sealed and filed with the Clerk of Court at the time the parties are notified of the decision.

Fla. R. Civ. P. 1.820(3)

Any party may file a motion for a trial de novo. If a motion for a trial de novo is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.303(4), Florida Statutes. Fla. R. Civ. P. 1.820(h)

According to section 44.303(5), Florida Statutes, the party having filed for a trial de novo shall be assessed the arbitration costs, court costs, and other reasonable costs of the party, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. The court may waive an assessment of costs required upon a finding that the imposition of costs would create a substantial economic handicap or would not be in the interest of justice.

2. Voluntary binding arbitration: The arbitration procedure is essentially the same for both voluntary binding arbitration and court ordered arbitration, except the parties may agree in writing to submit the dispute to voluntary binding arbitration. The arbitrators are compensated by the parties at an amount not less than \$75.00 per day.

A voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Fla. R. Civ. P. 1.830(c)(2) The appeal shall be taken to the circuit court and shall be limited to review on the record and not de novo, of: a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence; b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party; c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida. The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised. 44.304(10) Florida Statutes

I. Court Appointed Mediators: There are three separate categories of mediators addressed in the rules. Training requirements, education and experience are different for certification in each category.

1. County Court Mediators: According to the Rules of Civil Procedure 1.760(a) for certification by the Chief Judge of the Circuit, a mediator of county court matters must:

- a. have completed a minimum of a 20 hour training program certified by the Supreme Court; and
- b. have observed a minimum of four mediation conferences with a court certified mediator; and
- c. have co-mediated a minimum of three mediation conferences with a court certified mediator; and
- d. have conducted a mediation conference under observation of a court certified mediator; and
- e. have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3), Florida Statutes (1987)
- f. or, be certified as a circuit court mediator.

2. Family Mediators: According to the Rules of Civil Procedure 1.760(b) for certification by the Chief Judge of the Circuit, a mediator of family and dissolution of marriage issues must:

- a. have a Master's Degree 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
- b. have at least four years practical experience in one of the above mentioned fields; and
- c. have completed a minimum of 40 hours in a mediation training course certified by the Supreme Court; or have received a Masters Degree in family mediation from an accredited college or university; and
- d. have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3).

3. Circuit Court Mediators: According to the Rules of Civil Procedure 1.760(c) for certification by the Chief Judge

of the Circuit, a mediator of Circuit Court matters, other than family matters, must:

- a. 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 Florida practice; and
- b. complete a minimum of a 40 hour mediation training program certified by the Supreme Court.

J. Training Program Standards: According to the Rules of Civil Procedure 1.770 each category of mediators must meet minimum training requirements in a program approved by the Florida Supreme Court.

1. County Court Mediator Training: The 20 hours of training should address the following: written and oral communication; mediation theory; the mediation process and techniques; standards of conduct for mediators; conflict management and intervention skills; the court process; community resources and referral processes; successful completion of an examination approved by the Supreme Court of Florida. To date there is not an approved Supreme Court of Florida examination.

2. Family Mediator Training: The 40 hours of training should include the subject areas addressed in county court mediation training in addition to the following: psychological issues in separation, divorce and family dynamics; issues concerning the needs of children in the context of divorce; family law, including issues of custody, child support, and asset evaluation and distribution as it relates to divorce; family economics; successful completion of an examination

approved by the Supreme Court of Florida. To date there is not an approved examination.

3. Circuit Court Mediator Training: The 40 hours of training should address the following: mediation theory; mediation process and techniques; standards of conduct for mediators; conflict management and intervention skills; community resources and referral processes; successful completion of an examination approved by the Supreme Court of Florida. To date there is not an approved examination.

K. Duties of the Mediator: According to the Rules of Civil Procedure 1.780 et seq., the following are the duties of the mediator.

(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;
- (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.

L. Court Appointed Arbitrators: According to the Rules of Civil Procedure 1.810, arbitrators must be members of the Florida Bar, except where otherwise agreed by the parties. The Chief Judge of the Circuit maintains a list of qualified persons who have agreed to serve as arbitrators. In the Sixth Circuit, an administrative order was signed by the Chief Judge that certifies individuals to serve as arbitrators. Cases referred to arbitration are assigned to an arbitrator or to a panel of three arbitrators. In the Sixth Circuit program, cases are usually heard by a three member panel of arbitrators. In the case of a panel, one of the arbitrators is appointed as chief arbitrator. The chief arbitrator must have been a member of the Florida Bar for a minimum of five years. All arbitrators must attend 4 hours of training in a program approved by the Supreme Court of Florida.

M. Recruitment of Mediators and Arbitrators: Trained and qualified arbitrators and mediators were a rare commodity in the early going. The Chief Judge sent a letter and questionnaire to members of the St. Petersburg Bar, the Clearwater Bar and the Pasco County Bar to determine interest in serving as an arbitrator or mediator with the Sixth Circuit. This letter actually served another purpose as it briefly explained the new legislation and the Sixth Circuit's commitment to implementing an arbitration and mediation program. Although the response and interest in serving was excellent the real problem was getting

the required mediation training program.

The Supreme Court approved and sponsored three state wide mediation training programs located in various geographic areas throughout Florida. Enrollment was limited to approximately sixty participants per location with court based mediators receiving priority. Each program consisted of a twenty hour base curriculum which would meet the requirements for county court training. The participants split into either family mediation or circuit civil mediation for an additional twenty hours of training. Other training programs have been screened for either retroactive or future training credit by the Supreme Court Committee on Mediation and Arbitration Training with recommendations to the Supreme Court.²⁶ This same committee recently submitted for Supreme Court approval training standards for county, family and circuit court mediation. Once approved, mediation training programs should be more readily available through private vendors.

Initially, due to the limited number of certified mediators, the Sixth Circuit was inundated with proposals from private mediation companies to provide services to the court. They wanted the judges to make direct referrals to them with no court supervision or monitoring. They wanted to charge an

²⁶The Supreme Court of Florida Administrative Order establishing the Mediation and Arbitration Training Committee is in Appendix J.

administrative fee for each case in addition to the hourly rate for mediation. Although the Sixth Circuit rejected their proposals, the original program coordinator did assign cases to these private mediators with no administrative fee and with court monitoring. The program discontinued the use of private mediation companies because of complaints received by the litigants over alleged protracted mediation sessions which resulted in extremely high assessments against the parties. In fact some of the fees assessed have not yet been collected. Additionally, attorneys objected to a "company type referral" because they had no way of knowing the qualifications of the mediator or even who the mediator might be as the order read "..... or his designee". According to statute, the attorneys have an opportunity to object to an assigned mediator which was not possible under those circumstances.

The Sixth Circuit Arbitration and Mediation program presently has a pool of forty-one County Court mediators (not being used at this time), thirty-eight Circuit Civil mediators and twelve Family mediators. The pool of certified mediators continues to grow as training becomes available.

Arbitration training was more accessible due to sponsorship by various Bar associations of the four hour program. In fact, the Sixth Circuit in conjunction with the local bar associations, the local junior college and the Florida Dispute Resolution Center sponsored and conducted a four hour arbitration training. As a result we now have an available

certified arbitration pool of approximately eighty attorneys. As with mediation, the certified arbitration pool continues to expand.

The program has finally reached the point where recruitment of mediators and arbitrators is no longer a priority. In fact, word has gotten out that mediation can be a lucrative occupation. Fees currently are at \$100.00 per hour, with the private sector mediator fees set at an even higher rate. Arbitrators by statute, are limited to a maximum of \$75.00 per day plus mileage unless the case is a binding arbitration. Attorneys who serve on arbitration panels are really providing a pro bono service to the court.

N. Payment of Mediators and Arbitrators: The procedure for payment of the mediators and arbitrators is constantly being revised and is currently under revision. I will go through the various revisions and explain the reasons for change.

The Board of County Commissioners established a \$300,000 revolving account to process mediator and arbitrator vouchers for payment and the deposit of fees received from the parties to cover the outgoing payments. The understanding with the county being that money paid out of this fund will be reimbursed by the parties.

Initially, we accepted a voucher from the mediator or arbitrator with the amount owed. This voucher immediately was forwarded to the finance department of the Board of County Commissioners for processing payment to the mediator or

arbitrator. A letter was then sent to the attorney of record for each party stating the proportionate amount owed for the service provided. Unfortunately, the parties more often than not either objected to the amount billed or virtually ignored the letter. Each objection required time consuming research and follow-up. Second letters were sent to those who ignored the first billing. The second letter would bring in a trickle of payments or generate a complaint or again was ignored. A third and "final notice" letter was often sent. The result of this procedure was a considerable deficit in our revolving account.

We changed the order of referral to mediation or arbitration by stating that the parties should be prepared to pay for services at the time rendered. We continued to process the mediator and arbitrator vouchers upon their receipt. The glitch with this change was that even if no payment was received at the time of service, the mediation or arbitration was held as scheduled. Arbitration was not such a problem due to the relatively low fees involved. The same procedure with multiple letters brought the same kind of results, (e.g., disagreement over fees, dissatisfaction with outcome, ignoring billing correspondence). We encouraged the mediators to become involved with fee collection by reminding the attorney of this provision when talking with them prior to the mediation conference. Yet, the deficit continued to grow.

Hence, we modified the mediator and arbitrator voucher and added a signature line for the parties and or the attorney of

record to acknowledge service and cost.²⁷ It was believed that this would eliminate the disagreement over the amount of fees charged. The order of referral still had the provision for payment at the time of service. We continued to process vouchers upon receipt. This procedure assisted somewhat with collection but our "nice" billing letters were still being ignored.

We finally decided not to process the mediator or arbitrator voucher prior to payment from the parties being received. This action encouraged the individuals providing services to get involved in collection of fees. We also went to a two billing letter system with the first letter advising the attorney of record of the amount owed and requesting payment from the party within twenty days. The second letter stated that an Order to Show Cause may be issued if payment was not received within ten days. This system was more fruitful than previous methods, but it still had its difficulties. One example being if a party failed to appear after receiving proper notice, the mediator was entitled to receive a minimum of two hours fee with the entire fee being levied against the errant party as a sanction. In this case collection is difficult but an Order to Show Cause may be issued. Sanctions are in the order of referral so they do not come as a surprise. The Alternative Dispute Resolution

²⁷The mediator/arbitrator payment voucher is found in Appendix K.

Judges are allocating a block of docket time for Order to Show Cause hearings on delinquent payment cases. Once the word gets out that the Court will utilize its powers of contempt much of the collection problem should be eliminated.

The Court Administrator of the Sixth Judicial Circuit is not satisfied with the aforementioned procedure. He has advocated for a minimum of \$300.00 (usually split between the parties) as payment in advance to be held on deposit prior to assignment of the case to a mediator or arbitration panel. The case will be referred to the Arbitration and Mediation program with a notice sent to the attorney of record for advance payment to be made within ten days. Should payment not be received within the allotted time an Order to Show Cause may be issued. However, this proposed procedure will not be implemented until the entire program is automated and integrated with the Pinellas County Management Information mainframe system.

O. Case Assignment and Mediator Assessment: As previously stated, cases referred to the Arbitration and Mediation Program are assigned to a certified mediator on a rotation basis absent a stipulation by the parties to a specific mediator. The program maintains a file on each mediator which contain the mediators' resume, copies of training certificates, letters received by the program concerning the individual mediator and periodic performance assessments or evaluations, although performance evaluations have not yet been conducted. The mediator evaluations will be conducted by the program

coordinator or myself on a regular basis. The evaluator will rate each mediator across several categories and will discuss the completed evaluation with each mediator, including areas for improvement. In addition, periodic mediator meetings are held which give the mediators an opportunity to exchange ideas and techniques, to voice suggestions for program improvement, and to learn of program procedure changes.

The mediators will be evaluated on 1) preparation 2) opening statement 3) mediation process 4) general mediator demeanor and conduct.²⁸ Criteria for evaluation of each category is as follows:²⁹

1. Preparation: Does the mediator 1) review the summary of the case provided? 2) prepare the room and seating for the hearing? 3) greet the parties personally, informally and professionally? 4) record the names for accurate spelling, pronunciation, identification and titles? 5) make sure that all proper parties are present and have full authority to settle the case?

2. Opening statement: The evaluator will assess the mediator on the statement's completeness, accuracy, and clarity. The statement should include 1) definition and description of process 2) explanation of the differences

²⁸The mediator evaluation form is found in Appendix L.

²⁹Criteria submitted by Bruce Talcott, Esq., Certified Mediator from Duval County.

between mediation and other forms of conflict resolution 3) explanation of the circumstances when the mediator may meet alone with the parties 4) explanation of the confidentiality requirement 5) explanation of the fact that any agreement reached will be by mutual consent of the parties.

In addition, does the mediator's opening statement 1) set the proper tone for the conference (i.e. relaxed, informal, first name basis, safe)? 2) imbue the process with neutrality, impartiality, lack of bias, etc.? 3) educate the parties to the collaborative negotiation process (i.e. role of the parties, good faith, empower the parties to resolve their own dispute, explain the roles of attorneys and the law)? 4) explain the mediation process in detail (i.e. complaining party presents initial overview of the case without interruption, equal opportunity to the other side, identify all relevant facts clarifying both factual agreements and disputes, and if an agreement is reached it will be written up and signed by the parties, etc.)? 5) ask for questions before beginning the process?

3. Process: Does the mediator 1) maintain control of the session with informality but professional composure? 2) permit some ventilation by the parties to occur? 3) determine and be responsive to the needs and interests of the parties as well as the issues? 4) completely understand the facts, legal issues, analysis of the case? 5) test the validity and credibility of the data? 6) encourage dialogue between the

parties and make every effort to assure that they share perceptions, interpretations and concerns? 7) sell the parties on the idea of settlement rather than a particular settlement? 8) not jump at the first opportunity for settlement but make sure it is a satisfactory settlement from the parties' point of view (i.e. it is not premature or incomplete)? 9) reduce the settlement agreement to writing with clear and concise language and have it signed by the parties? 10) acquire closure without making the parties feel rushed, ignored, pushed, etc.? 11) invite final questions regarding the process and refrain from implying personal feelings about the case? 12) avoid leaving with or conversing with one of the parties once the conference is completed?

4. General mediator demeanor and conduct: Does the mediator 1) seem relaxed and comfortable throughout the process? 2) remain neutral, impartial and unbiased in the eyes of the parties? 3) remain in control of the process without being overly directive? 4) provide a safe and fair process for the parties? 5) ask questions rather than make statements? 6) exhibit good listening skills, nonverbal communication and eye contact? 7) have good sense of timing regarding interventions, reality testing, calling a caucus? 8) allow venting but keep the parties future focused? 9) not impose personal will, ideas, standards of fairness on the parties, but empower the parties to develop their own standards of fairness to resolve their dispute?

In summary, I believe the following are salient considerations in the set up and operation of an arbitration and mediation program:

1. A working committee established with members from the judiciary, court administration and possibly the bar to identify program objectives.

2. A Florida attorney should be associated with the program.

3. Establish in writing, clearly defined measurable goals, program policies and procedures.

4. Develop a comprehensive management information system to include at a minimum the date of filing, date of answer, case type, date of referral, attorneys of record with mailing addresses, litigant's mailing addresses, mediator or arbitrator(s) assigned, date(s) scheduled for conference or hearing, and the disposition of the case. Ideally, for program accountability a case monitoring system which tracks the case to final court disposition would be helpful.

5. Develop a comprehensive financial management information system to integrate with the case management system.

6. Exercise strict compliance with the rules in certifying mediators and arbitrators for the program.

7. On a consistent basis evaluate and assess the program, the mediators and the arbitrators. Query the participants and the judiciary, plus observe hearings and conferences.

8. Continually be educators on the alternative dispute resolution philosophy and the program's goals, policies and procedures.

9. Be flexible. Keep informed. Make necessary procedure changes. Admit mistakes and make every effort to rectify them.

CHAPTER 3

VIEWS OF KEY PARTICIPANTS

Questionnaire Responses

One hundred and seventy three questionnaires were sent to key participants in the first fifty-six cases that were considered closed by the program.³⁰ Due to the relative newness of the arbitration and mediation program these cases were not a random sample but the entire closed caseload containing both arbitration and mediation cases.³¹ One hundred and seven responses were returned for a respectable sixty-two percent response rate, although not all of those who returned the questionnaire answered every question. The questions focused on four areas regarding the participants' views of the alternative dispute resolution process: (1) the costs involved, (2) satisfaction with the results, (3) satisfaction with the assigned mediator and arbitration panel, and (4) whether or not alternative dispute resolution was a viable alternative to tradition court methods.

A. Costs of mediation and/or arbitration: Question five of the questionnaire addressed the costs of alternative dispute resolution to the parties, to the attorneys and to the Court. Overall the responses indicate that mediation and arbitration

³⁰The questionnaire is found in Appendix M.

³¹Questionnaires were mailed in late November, 1988.

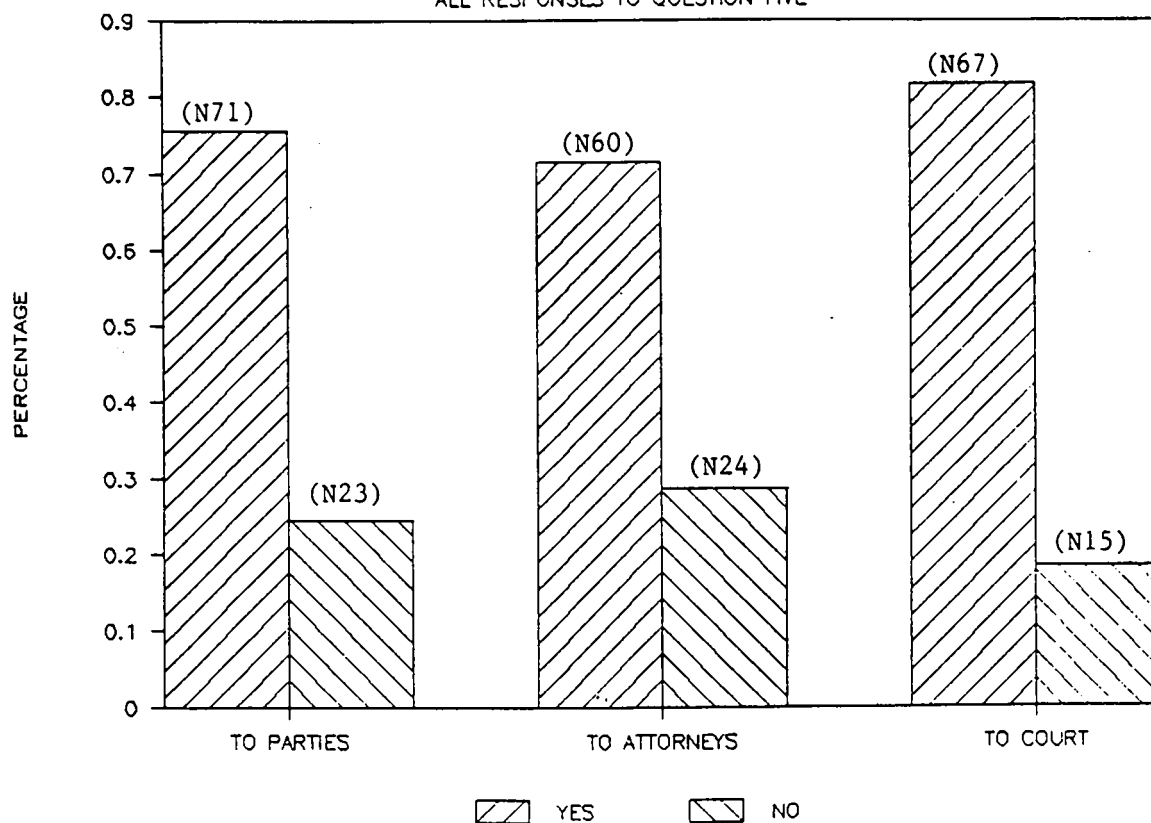
are seen as less costly than traditional court methods to all three groups. As far as costs are concerned, the courts are viewed as the group benefiting to the greatest extent by an alternative dispute resolution program. I believe that the participants feel this is true because their case is not being heard by a judge and the participants themselves are paying the costs of mediation or arbitration. However, the response to this question gives credibility to the Study Commissions conclusion that "the per capita cost of handling disputes referred to the courts for resolution will decrease".³² Realistically, it is too soon to make that assumption because of new program start up costs and the lack of volume to make a fair comparison. See figure 1.

In addition to the total responses to question five, I separated the responses of the litigants from those from the attorneys. It is interesting to note that the attorney responses to the cost of alternative dispute resolution were less positive in all three areas than the view of the parties themselves. I feel that this is an indication of the resistance to the alternative dispute resolution process expressed by some members of the legal community. This certainly did not come as a surprise as any change in tradition is not always welcomed by all those persons involved. Time, education and refinement of

³²Ibid., 5.

IS ADR LESS COSTLY THAN GOING TO TRIAL?

ALL RESPONSES TO QUESTION FIVE



Question 5.

In your opinion, was the arbitration or mediation proceeding less costly than going to trial?

_____ yes	_____ no	a. to the parties
_____ yes	_____ no	b. to the attorneys
_____ yes	_____ no	c. to the Court

FIGURE 1

procedure should eventually eliminate much of the resistance to mediation and arbitration. See figure 2.

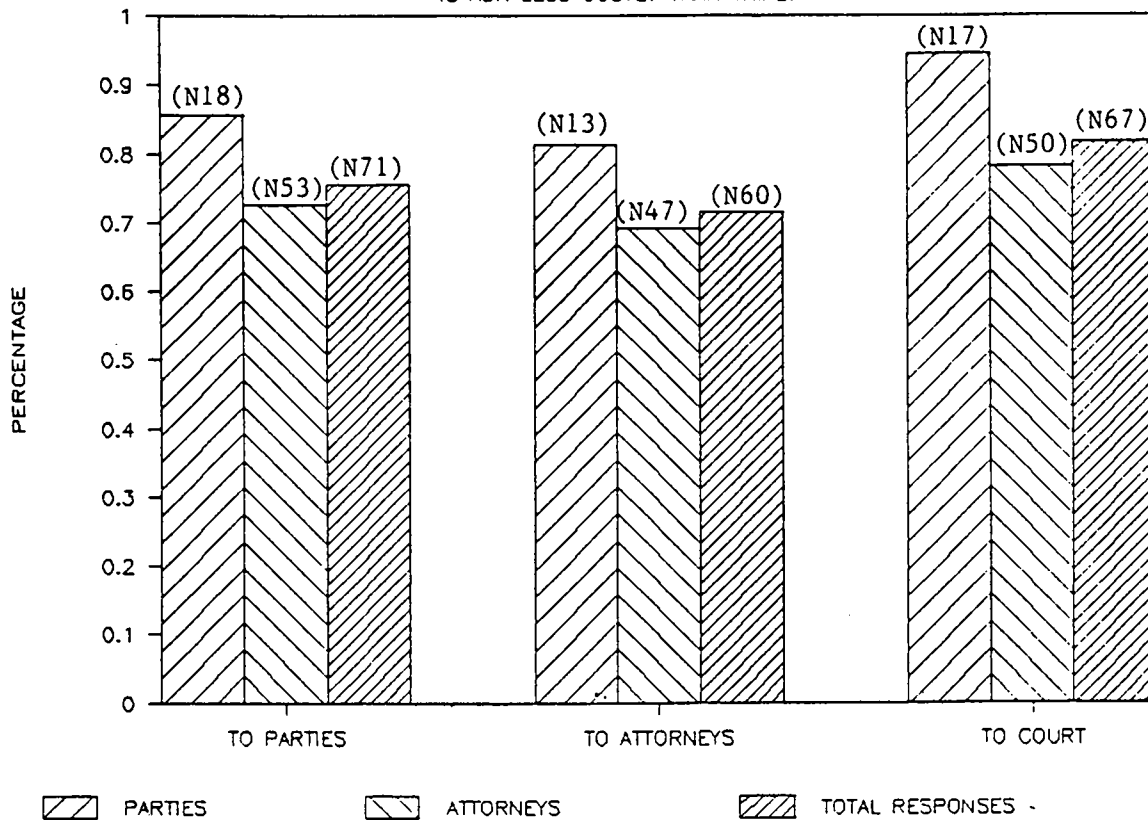
B. Viable alternative: Question six of the questionnaire addressed the overall concept of alternative dispute resolution as a viable alternative to the traditional court methods of conflict resolution. The overwhelmingly positive response (i.e. 88.54 percent) to this question was certainly reassuring to those of us working to establish an alternative dispute resolution program in this circuit. I believe if mediation and arbitration are, at the very least, accepted or viewed as viable options to traditional methods of dispute resolution than the program has a real opportunity for success. See figure 3.

C. Satisfaction with results: Question seven of the questionnaire dealt with participant satisfaction with the results of a case resolved by either arbitration or mediation. Response to this question was also on the positive side, as 79.41 percent were satisfied with the results of an arbitration or mediation procedure in resolving their disputes. I hope to see an increase in the positive response to this question, as satisfaction with the results of a case resolved by arbitration or mediation would certainly mean greater compliance with agreements reached, less requests for trial de novo, reduction in post judgement filings and increased participant acceptance of the process. See figure 4.

D. Skills of Arbitrator(s) and Mediator: Questions ten and fifteen addressed the participants' confidence in the skills

ATTORNEYS' VERSUS PARTIES' VIEWS

IS ADR LESS COSTLY THAN TRIAL?



Question 5.

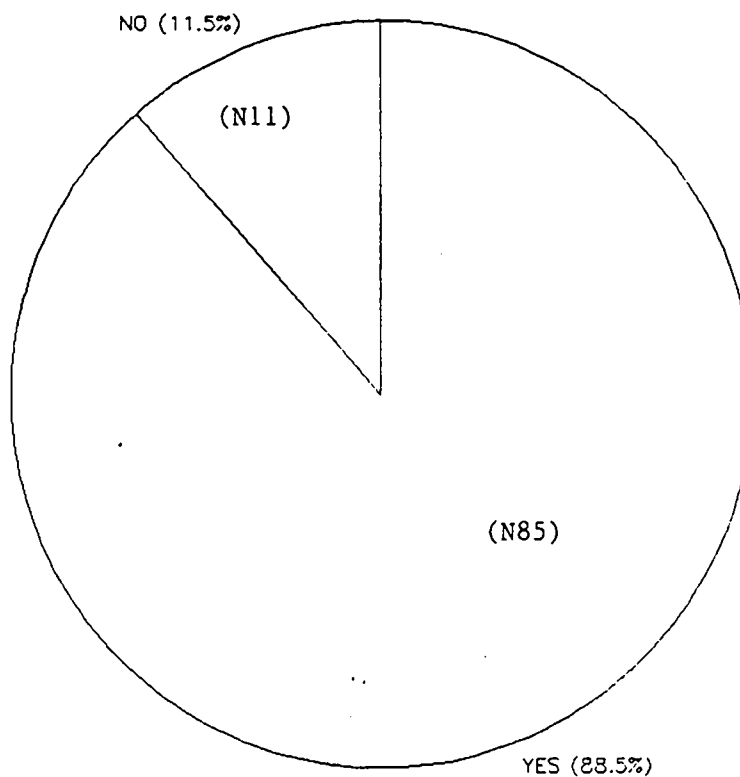
In your opinion, was the arbitration or mediation proceeding less costly than going to trial?

<input type="checkbox"/> yes	<input type="checkbox"/> no	a. to the parties
<input type="checkbox"/> yes	<input type="checkbox"/> no	b. to the attorneys
<input type="checkbox"/> yes	<input type="checkbox"/> no	c. to the Court

FIGURE 2

DOES ADR PROVIDE A VIABLE OPTION?

ALL RESPONSES TO QUESTION SIX



Question 6.

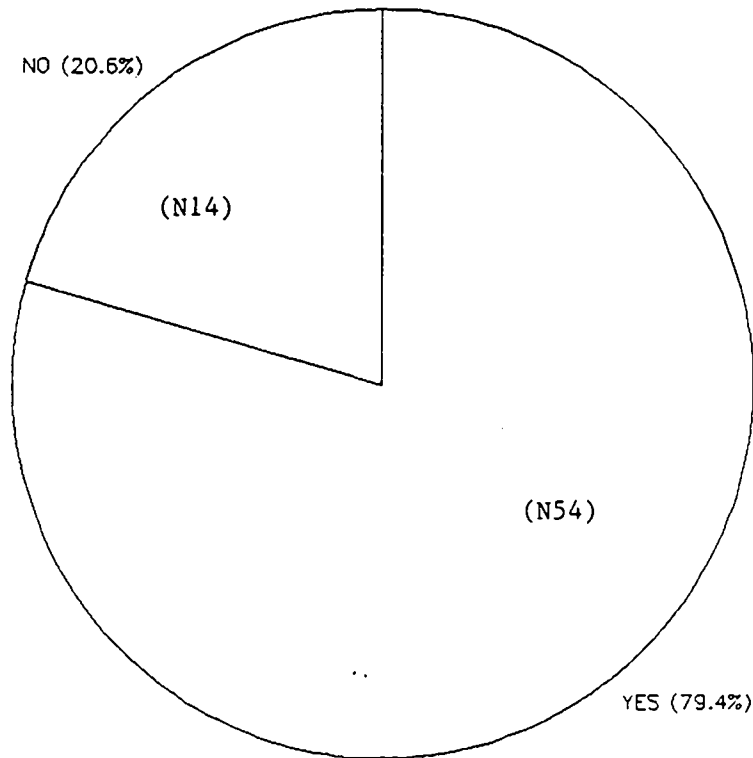
Overall, do you believe that mediation or arbitration provides a viable alternative to the traditional court methods for the settlement of disputes?

____yes ____no

FIGURE 3

SATISFIED WITH RESOLVED CASE RESULTS?

ALL RESPONSES TO QUESTION SEVEN



Question 7.

If your case was resolved by arbitration or mediation were you satisfied with the final results of the case?

_____yes _____no

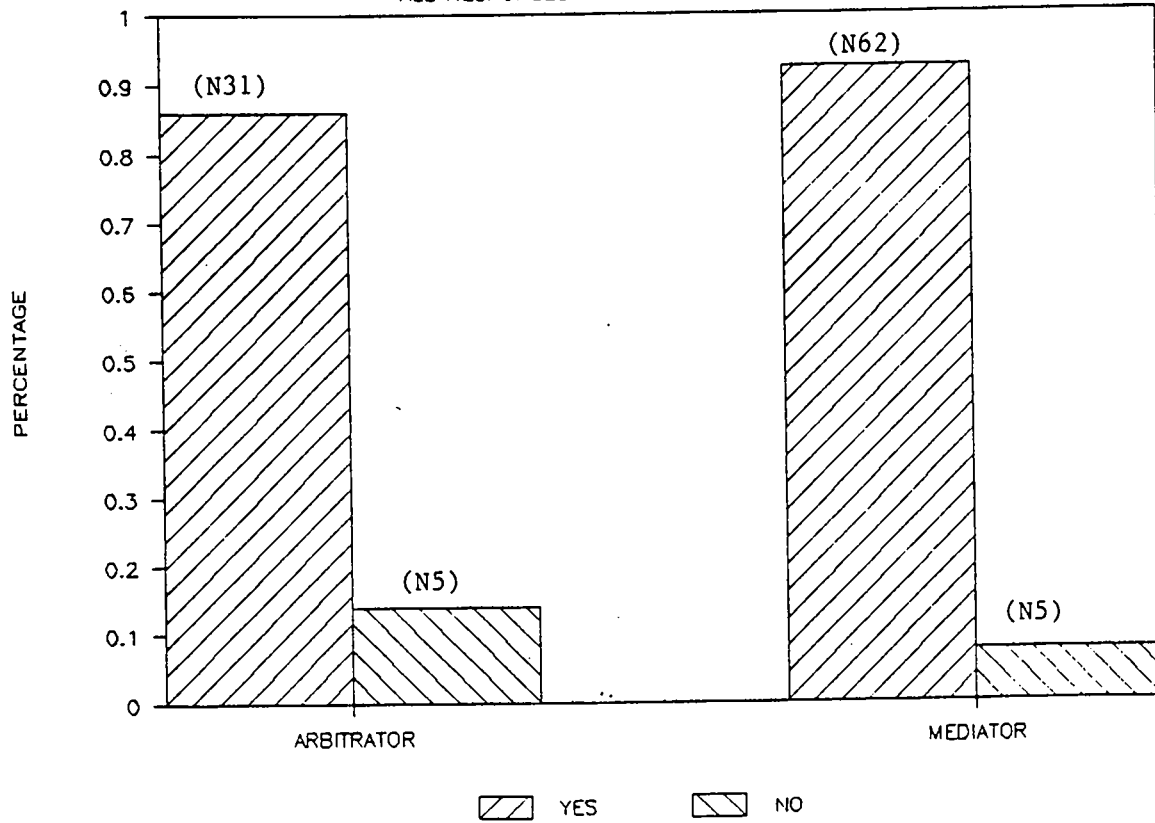
FIGURE 4

of the arbitrator(s) and/or mediator that heard or mediated their case. The arbitrators rated 86.11 percent and the mediators rated 92.54 percent in the participants' confidence in their skills. The extremely positive responses to these questions were reassuring considering the limited pool of arbitrators and mediators that the program had in the beginning stages. I believe that these high results were due in part to the program's commitment to certify only fully qualified individuals who had received the required training. The overall integrity of the program was not compromised by certifying individuals who did not meet minimum qualifications in order to meet an initial pressing need. See figure 5.

In summary, one could ascertain from the positive response to the four areas of focus in this study that alternative dispute resolution may be the wave of the future in the Sixth Judicial Circuit. Acceptance of the alternative dispute resolution process is a major hurdle in the start up of any new procedure, however eighty-nine percent of the participants' viewed mediation and arbitration as viable options to traditional court methods. The overall results of this limited empirical data seem to lend credence to the basic assumptions inherent in the alternative dispute resolution process.

SATISFIED WITH SKILLS OF MED/ARB?

ALL RESPONSES TO QUESTIONS 10 & 15



Question 10.

Did you feel confident that the arbitrator(s) had the skills necessary to consider your case?

____yes ____no

Question 15.

Did you feel confident that the mediator(s) had the skills necessary to mediate your case?

____yes ____no

FIGURE 5

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

Conclusions from the Study

The development and operation of the Arbitration and Mediation Program in the Sixth Judicial Circuit of Florida was examined in this study. The data indicate participant satisfaction with the results of alternative dispute resolution; participant satisfaction with the assigned mediator or arbitrator(s); participant acceptance of mediation or arbitration as a viable alternative to trial; and the participant's opinion that mediation and arbitration may be less costly than a trial. Although the survey is based on a limited number of cases, the results lend credibility to the assumptions set forth by the Study Commission's Final Report of February, 1986. The results are also congruent with the goals of the Sixth Judicial Circuit program.

The costs associated with mediation or arbitration are viewed by a vast majority of program participants as less than the cost of going to trial. This conclusion was the most surprising, as mediation costs associated with complex cases can amount to several hundred dollars. One implication from this is that the costs associated with a complex litigation trial are much higher than I imagined. An additional inference is that even if the parties fail to reach an agreement through the mediation process, the effort alone has intrinsic value. Perhaps the "costs" involved in arbitration or mediation extend

beyond dollars and is a topic for further study.

The affirmative response to the acceptance of alternative dispute resolution as a viable option to traditional court methods seems to indicate that the participants want greater access to a means to resolve their disputes. I anticipate that our local program will expand tremendously in the upcoming months.

The participants positive response to satisfaction with the skills of the assigned mediator and arbitrator(s) is a credit to program management and administration. It was decided at the onset to adhere to strict compliance with the rules of certification. The statute provides a "grandfather clause" for certification of mediators who have experience but may lack other requirements (i.e. education or membership in the Florida Bar, etc.), and the Sixth Circuit closely construed these provisions in exercising this certification authority. Our mediation pool may have been limited because of this restraint, however, we did not lower standards in order to have any warm body assigned to a case. The positive response to participant satisfaction with the results of resolved cases also reinforces the programs position of using only certified individuals to handle cases.

Recommendations for the Arbitration and Mediation Program

In conducting this study of the Arbitration and Mediation Program, I discovered policy and procedural issues that needed modification and clarification. I also found that the program's

statistical information was limited and in need of expansion.

The following are recommendations concerning program management, policy, procedures and future research that require attention:

1. An information pamphlet should be developed concerning alternative dispute resolution procedures. The program is enclosing an information sheet along with the Order of Referral that provides an overall synopsis of either the mediation or arbitration process.³³ The information should be available to all interested persons, (e.g. judges, the bar, litigants, etc.) not just program participants.

2. A procedure for screening cases as to their suitability for alternative dispute resolution methods. The program does review the case file which often does not reflect the true nature of the case. As a pilot program we are going to process one hundred cases through an orientation hearing conducted by an experienced mediator. The mediator will meet with the parties and the attorneys, explain the arbitration and mediation process, conduct a review of the case and then recommend either arbitration, mediation or trial.

3. An efficient payment and collection system must to be developed. The financial portion of the program is to be integrated with the anticipated data management mainframe system. This will eliminate file duplication for the various

³³The arbitration and mediation information sheets are in Appendix N.

program components.

4. An expansion of management information data such as case type (e.g. personal injury, contract, auto negligence, etc.), judicial activity in a case after program involvement (i.e. if a case does not settle through mediation does it eventually settle prior to trial?), settlement rate including case type to assist with referral criteria, mailing address of plaintiff/petitioner and defendant/respondent, etc., is needed for program accountability and future research in the ADR arena.

5. A procedure should be developed for continued program evaluation. A questionnaire similar to the one used in this study may be physically handed to program participants when their case is considered closed.

6. A comprehensive comparison of cases referred to alternative dispute resolution with those cases that remain on the traditional court trial track. Included in this study would be time of filing to time of disposition, monitoring of cases that go to trial, cases that settle prior to trial but settle at the last moment resulting in the loss of judicial docket time, etc. This research is needed to determine if alternative dispute resolution is impacting volume and delay in the courts.

7. A simple, reliable and valid method for data collection from the various circuits should be developed at the state office level in order to evaluate the alleged benefits of ADR to both the participants and the court.

8. A recommendation on my own agenda would be to gain

program support from the Court Administrator of the Sixth
Judicial Circuit. He questions alternative dispute resolution
programs on the grounds that the money would be better spent on
additional judges.

APPENDICES

APPENDIX A

**LAWS OF FLORIDA, CHAPTER 44
MEDIATION ALTERNATIVES TO JUDICIAL ACTION**

CHAPTER 44

MEDIATION ALTERNATIVES TO JUDICIAL ACTION

- 44.101 Family mediation or conciliation services.
- 44.201 Citizen Dispute Settlement Centers; establishment and elements of operation; confidentiality of information.
- 44.301 Definitions.
- 44.302 Court-ordered mediation.
- 44.303 Court-ordered, nonbinding arbitration.
- 44.304 Voluntary binding arbitration.
- 44.305 Limitation on referral.
- 44.306 Standards for mediator and arbitrator qualifications; rules of professional conduct and training.

44.101 Family mediation or conciliation services.—

(1) A county may establish a family mediation or conciliation service to assist parties in resolving any controversy involving the family.

(2) The court on its own motion or on motion of a party may refer the parties to this service.

(3) Notwithstanding the provisions of s. 119.14, all oral or written communications in mediation or conciliation proceedings are exempt from the requirements of chapter 119 and shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless both parties agree otherwise. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(4) A family mediation or conciliation service is hereby declared to serve a valid public purpose. The board of county commissioners may support such a service by appropriating moneys from county revenues or by levying a service charge of no more than \$2 on any circuit court proceeding.

(5) The provisions of this section shall be liberally construed in order to carry out effectively the purposes of this section.

History.—ss. 2, 4, ch. 82-98, s. 1, ch. 86-20.

Note.—Former s. 749.01

cf.—s. 61.052 Dissolution of marriage.

s. 61.09 Alimony and child support unconnected with dissolution.

s. 61.10 Adjudication of obligation to support spouse or minor child unconnected with dissolution; child custody, child's primary residence, and visitation.

s. 61.14 Modification of support, maintenance, or alimony judgment or agreement.

44.201 Citizen Dispute Settlement Centers; establishment and elements of operation; confidentiality of information.—

(1) The chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, may establish a Citizen Dispute Settlement Center for such county or counties, with the approval of the Chief Justice.

(2)(a) Each Citizen Dispute Settlement Center shall be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge of the judicial circuit shall serve as chairman of the council and shall appoint the other members of the council. The membership of the council shall include a representative of the state attorney, each sheriff, a county court judge, and each board of county commis-

sioners within the geographical jurisdiction of the center. In addition, council membership shall include two members of the general public who are not representatives of such officers or boards. The membership of the council also may include other interested persons.

(b) The council shall establish qualifications for and appoint a director of the center. The director shall administer the operations of the center.

(c) A council may seek and accept contributions from counties and municipalities within the geographical jurisdiction of the Citizen Dispute Settlement Center and from agencies of the Federal Government, private sources, and other available funds and may expend such funds to carry out the purposes of this section.

(3) The Citizen Dispute Settlement Center, subject to the approval of the council and the Chief Justice, shall formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Such plan shall prescribe:

(a) Objectives and purposes of the center;

(b) Procedures for filing complaints with the center and for scheduling informal mediation sessions with the parties to a complaint;

(c) Screening procedures to ensure that each dispute mediated by the center meets the criteria of fitness for mediation as set by the council;

(d) Procedures for rejecting any dispute which does not meet the established criteria of fitness for mediation;

(e) Procedures for giving notice of the time, place, and nature of the mediation session to the parties and for conducting mediation sessions;

(f) Procedures to ensure that participation by all parties is voluntary; and

(g) Procedures by which any dispute that was referred to the center by a law enforcement agency, state attorney, court, or other agency and that fails at mediation, or that reaches settlement that is later breached, is reported to the referring agency.

(4)(a) Each mediation session conducted by a Citizen Dispute Settlement Center shall be nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center.

(b) A Citizen Dispute Settlement Center may refer the parties to judicial or nonjudicial supportive service agencies.

(5) Any information relating to a dispute obtained by any person while performing any duties for the center from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, is privileged and confidential and shall not be publicly disclosed without the written consent of all parties to the dispute. Any research or evaluation effort directed at assessing program activities or performance shall protect the confidentiality of such information. Each party to a Citizen Dispute Settlement Center proceeding has a privilege during and after those proceedings to refuse to disclose and to prevent another from disclosing communications made during such proceedings, whether or not the dispute was successfully resolved. This

subsection shall not be construed to prevent or inhibit the discovery or admissibility of any information which is otherwise subject to discovery or which is admissible under applicable law or rules of court, except that any conduct or statements made during such mediation sessions or in negotiations concerning such sessions shall be inadmissible in any judicial proceeding.

(6) No officer, council member, employee, volunteer, or agent of a Citizen Dispute Settlement Center shall be held liable for civil damages for any act or omission in the scope of his employment or function, unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

(7) Any Citizen Dispute Settlement Center in operation on October 1, 1985, may continue its operations in its current form with the approval of the chief judge of the judicial circuit in which such center is located, except that paragraph (4)(b) and subsections (5) and (6) shall apply to such centers.

(8) Any utility regulated by the Florida Public Service Commission is excluded from the provisions of this act.

History.—s. 2, ch. 85-228.

144.301 Definitions.—As used in ss. 44.301-44.306, unless the context requires otherwise:

(1) "Mediation" means 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.

(2) "Arbitration" means a process whereby a neutral third party or panel listens to the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding in accordance with the provisions of ss. 44.301-44.306.

History.—s. 1, ch. 87-173.

Note.—Effective January 1, 1988.

144.302 Court-ordered mediation.—

(1) Except as provided by rules promulgated by the Supreme Court, a court may refer all or any portion of a contested civil action filed in a circuit court or of any contested civil action filed in county court in which there is a dispute as to any issue, to mediation, if an appropriate mediation program has been established in the circuit or county over which the court has jurisdiction.

(2) Each party involved in the mediation proceeding has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during such proceeding whether or not the dispute was successfully resolved. This subsection shall not be construed to prevent or inhibit the discovery or admissibility of any information which is otherwise subject to discovery or admission under applicable law or rules of court. There is no privilege as to communications made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or a fraud. Nothing in this subsection shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

(3) The chief judge of each judicial circuit shall maintain a list of mediators who may be appointed to carry

out the provisions of this section. The chief judge shall, by administrative order, certify those persons who are eligible and qualified to serve as mediators in accordance with standards established by the Supreme Court. Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed.

(4) Mediation shall be conducted according to rules of practice and procedure as adopted by the Supreme Court.

History.—s. 2, ch. 87-173.

Note.—Effective January 1, 1988.

144.303 Court-ordered, nonbinding arbitration.—

(1) Except as provided by rules promulgated by the Supreme Court, subject to the availability of funds for the payment of arbitration services, a court may refer any contested civil action filed in a circuit or county court to court-annexed, nonbinding arbitration. Arbitration shall be conducted according to rules of practice and procedure as adopted by the Supreme Court.

(2) Arbitrators shall be selected in accordance with rules adopted by the Supreme Court. Arbitrators shall be compensated by a fee of not more than \$75 per day plus 20 cents per mile for each mile of travel necessitated by service as an arbitrator.

(3) An arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmation and to conduct the proceedings as the rules of court shall provide. At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(4) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a request for a trial de novo is not filed within the time provided by rules promulgated by the Supreme Court. The decision shall not be made known to the judge who may preside over the case unless no request for trial de novo is made as herein provided or unless otherwise provided by law. If no request for trial de novo is made within the time provided, the decision shall be referred to the presiding judge in the case who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court, and for which judgments execution shall issue on request of a party.

(5) The party having filed for a trial de novo shall be assessed the arbitration costs, court costs, and other reasonable costs of the party, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. The court may waive an assessment of costs required upon a finding that the imposition of costs would create a substantial economic handicap or would not be in the interest of justice.

History.—s. 3, ch. 87-173.

Note.—Effective January 1, 1988.

Note.—The words "an arbitrator" were substituted by the editors for the words "a mediator" to provide consistency of terminology with the context.

144.304 Voluntary binding arbitration.—

(1) Two or more parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.

(2) If the parties have entered into an agreement which provides for a method for the appointment of one or more arbitrators, the court shall proceed with the appointment as prescribed, except that at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.306. In the absence of an agreement, or if the agreement method fails or for any reason cannot be followed, the court, on application of a party, shall appoint one or more qualified arbitrators.

(3) The arbitrators shall be compensated by the parties according to their agreement, but not at an amount less than \$75 per day.

(4) Within 10 days of the submission of the request for binding arbitration, the court shall provide for the appointment of the arbitrator or arbitrators. Once appointed, the arbitrators shall notify the parties of the time and place for the hearing.

(5) Application for voluntary binding arbitration shall be filed and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate the records of the applications for voluntary binding arbitration from all other civil actions.

(6) Filing of the application for binding arbitration will toll the running of the applicable statutes of limitation.

(7) The chief arbitrator shall have such power to administer oaths or affirmation and to conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(8) The hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision.

(9) The Florida Evidence Code shall apply to all proceedings under this section.

(10) An appeal shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:

(a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.

(b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.

(c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.

The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

(11) If no appeal is taken within the time provided by rules promulgated by the Supreme Court, then the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court and for which judgments execution shall issue on request of a party.

History.—s. 4, ch. 87-173.

Note.—Effective January 1, 1988.

144.305 Limitation on referral.—The court shall not refer an issue to mediation or nonbinding arbitration if such issue has been referred to arbitration or mediation under mandate of Florida law.

History.—s. 5, ch. 87-173.

Note.—Effective January 1, 1988.

144.306 Standards for mediator and arbitrator qualifications; rules of professional conduct and training.—

The Supreme Court shall establish minimum standards for qualifications, rules of professional conduct, and training standards for mediators and arbitrators who are appointed pursuant to this act. No person may be appointed to serve as a mediator or arbitrator unless he has been certified by the chief judge of a circuit in accordance with the standards established by the Supreme Court.

History.—s. 6, ch. 87-173.

Note.—Effective January 1, 1988.

APPENDIX B

SUPREME COURT OF FLORIDA
RULES OF CIVIL PROCEDURE 1.700-1.830 [PROPOSED]

Supreme Court of Florida

CORRECTED OPINION

No. 71,312

RULES OF CIVIL PROCEDURE

IN RE: PROPOSED RULES FOR
IMPLEMENTATION OF
FLORIDA STATUTES SECTIONS
44.301 - .306.

[December 31, 1987]

PER CURIAM.

The 1987 Legislature enacted Chapter 87-173, Laws of Florida, to be codified at sections 44.301-.306, Florida Statutes (1987), dealing with arbitration and mediation, effective January 1, 1988. Under section 44.306, this Court is charged with the responsibility of promulgating rules of procedure and practice and establishing minimum standards for qualifications, rules of professional conduct, and training standards for mediators and arbitrators who are appointed pursuant to the act. This Court, by administrative order issued July 24, 1987, appointed a Mediation and Arbitration Committee to make recommendations to the Court on appropriate rules to adopt.

The committee submitted its proposed rules on October 19. Interested parties were asked to submit comments and suggestions after publication of the proposed rules. Oral argument was held on December 3, 1987, at which time the committee was asked to

reconsider its proposal in light of the objections and comments received. A modified proposal was submitted December 23, 1987.

As an interim measure, in light of the January 1, 1988 effective date of the act, we adopt the proposed rules as modified by the committee. The attached rules shall become effective 12:01 A.M., January 1, 1988 and shall be subject to amendment after further consideration by the Court. Interested parties are invited to submit comments and suggestions regarding the modified rules as adopted on or before March 1, 1988.

It is so ordered.

MCDONALD, C.J., and OVERTON, ERELICH, SHAW, BARNETT, GRIMES and KOGAN, JJ., Concur

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

1.700 Rules Common to Mediation or Arbitration.

(a) Referral by presiding judge. Except as hereinafter provided, the presiding judge may refer any contested civil matter or selected issues for assignment to mediation or arbitration.

(1) Hearing date. The first mediation conference or arbitration hearing shall be held within 60 days of referral, unless sooner ordered by the court.

(2) Notice. Within 10 days after the case has been referred for either mediation or arbitration, the court or its designee shall notify the parties and either the mediator or arbitrator in writing of the date, time and place of the conference.

(b) A party may move, within 15 days after the order of referral, to dispense with mediation and with arbitration, respectively, if the issue to be considered has been previously mediated or arbitrated between the same parties pursuant to Florida law.

(c) Waiver or deferral of mediation or arbitration. Within 15 days of the court order assigning the case to mediation or arbitration, any party may file a motion with the court to defer or forego the process. Such motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation or arbitration shall be tolled until disposition of the motion.

(d) Calculation of times. All times hereunder shall be calculated in accordance with Rule 1.030(a) Fla. R. Civ. P.

(e) Disqualification of a mediator or arbitrator. Any party may move the court to disqualify a mediator or an arbitrator 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 limit the discretion of a mediator or arbitrator to refuse 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 periods in which mediation or arbitration is deferred pending determination of a disqualification motion.

1.710 Mediation Rules.

(a) Completion of mediation. Mediation shall be completed within 30 days of the first mediation conference unless extended by order of the court 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 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 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
- (8) Such other matters as may be specified by order of the Chief Judge in the Circuit

(c) Discovery. Discovery pursuant to 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.

1.720 Mediation Procedures.

(a) Interim or emergency relief. Either party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such 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 motions.

(b) 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.

(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.

(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 shall at all times be permitted to privately communicate with their clients. Presence of counsel is not required and in the discretion of the mediator, mediation may proceed in the absence of counsel.

(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.

(f) Appointment and compensation of 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 an uncompensated volunteer, a government employee or may be compensated according to the written agreement of the parties. In the absence of such written agreements 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.

1.730 Completion of Mediation.

(a) Report of no agreement. In cases where the parties do not reach any agreement as to any matter as a result of mediation, the mediator shall immediately report such to the court without any comment or recommendation.

(b) 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. If counsel neither signs nor objects, in writing, to the agreement within 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.

(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 the order, give notice to all parties declaring the agreement void.

Committee Note

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.

(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.

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.

1.750 Small Claims Matters.

(a) 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) 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) 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 1.740(c), the stipulation shall be entered as an order of the court.

1.760 Mediator Qualifications.

(a) County court mediators. For certification by the Supreme Court, a mediator of county court matters must:

(1) have completed a minimum of a 20 hour training program certified by the Supreme Court; and

(2) have observed a minimum of four 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

(4) have conducted a mediation conference under observation of a court certified mediator; and

(5) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3), Florida Statutes (1987)

(6) or, be certified as a circuit court mediator.

(b) Family mediators. For certification by the Supreme Court, a mediator of family and dissolution of marriage issues must

(1) have a Masters Degree 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 five years practical experience in one of the above mentioned fields; and

(3) have completed a minimum of 40 hours in a mediation training course certified by the Supreme Court; or have received a Masters Degree in family mediation from an accredited college or university; and

(4) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3).

(c) Circuit court mediators. For certification by the Supreme Court, the mediator of Circuit Court matters, other than family matters, must

(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 Florida practice; and

(2) complete a minimum of a 40 hour mediation training program certified by the Supreme Court.

(d) Special conditions. Prior to January 1, 1999, the Chief Judge of each Circuit may certify any mediator who is currently mediating in an established mediation program and who

(1) has been actively engaged in the practice of mediation for the preceding year; and

(2) completes the minimum training specified in these rules for the particular type of mediation. Mediators presently practicing pursuant to section (1) of this subsection 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 in the field of prior practice.

1.770 Standards for Mediation Training Programs.

(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. That training should address the following:

- (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 relates 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:

- (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) 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 approval 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.

1.780 Duties of the Mediator.

(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;
 - (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.

1.800 Case Eligibility for Court-ordered Non-binding Arbitration.

(a) Exclusions from arbitration. The following categories of claims shall not be referred to non-binding arbitration except upon petition of all parties:

- (1) Appeals from rulings of administrative agencies
- (2) Bond estreatures
- (3) Forfeitures of seized properties
- (4) Habeas corpus or other extraordinary writs
- (5) Bond validations
- (6) Declaratory relief
- (7) Collection matters supported by duly executed promissory obligations
- (8) Mortgage foreclosures
- (9) Condemnation actions
- (10) Proceedings under Chapters 61, 63, 88 and 742
- (11) Name changes
- (12) Any litigation expedited by statute or rule
- (13) Cases in which there has been previous statutorily mandated arbitration
- (14) Civil or criminal contempt
- (15) Such other matters as may be specified by order of the Chief Judge in the Circuit
- (16) Cases referred to mediation pursuant to Rule 1.700(a) of these rules.

1.810 Selection, Qualification, Training and Compensation of Arbitrators.

(a) Selection. The Chief Judge of the Circuit or his designee shall maintain a list of qualified persons who have agreed to serve as arbitrators. Cases assigned to arbitration shall be assigned to an arbitrator or to a panel of three arbitrators. The court shall determine the number of arbitrators and designate them within 15 days after service of the order of referral in the absence of an agreement by the parties. In the case of a panel, one of the arbitrators shall be appointed as the chief arbitrator.

(b) Qualification. Arbitrators shall be members of the Florida Bar, except where otherwise agreed by the parties. The chief arbitrator shall have been a member of the Florida Bar for at least five years. Individuals who are not members of the Florida Bar may serve as arbitrators upon the agreement of all parties.

(c) Training. All arbitrators shall attend 4 hours of training in a program approved by the Supreme Court of Florida.

(d) Compensation. The Chief Judge of each Judicial Circuit shall establish the compensation of arbitrators subject to the limitations in section 44.303(2), Florida Statutes (1987).

1.320 Hearing Procedures for Non-binding Arbitration.

(a) Authority of the chief arbitrator. The chief arbitrator shall have authority to commence and adjourn the arbitration hearing and carry out other such duties as are prescribed by section 44.303, Florida Statutes. The chief arbitrator shall not have authority to hold any person in contempt or to in any way impose sanctions against any person.

(b) Conduct of the arbitration hearing.

(1) The Chief Judge of each Judicial Circuit shall set procedures for determining the time and place of the arbitration hearing and may establish other procedures for the expeditious and orderly operation of the arbitration hearing to the extent such procedures are not in conflict with any Rules of Court.

(2) Hearing procedures established by the court should be disseminated to the local bar and shall be included in the notice of arbitration hearing sent to the parties and arbitration panel.

(3) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the chief arbitrator for good cause shown.

(c) Rules of evidence. The hearing shall be conducted informally. Presentation of testimony shall be kept to a minimum, and matters shall be presented to the arbitrator(s) primarily through the statements and arguments of counsel.

(d) Orders. The chief arbitrator may issue instructions as are necessary for the expeditious and orderly conduct of the hearing. The chief arbitrator's instructions are not appealable. Upon notice to all parties the chief arbitrator may apply to the presiding judge for orders directing compliance with such instructions. Instructions enforced by a court order are appealable as are other orders of the court.

(e) Default of a party. Where a party fails to appear at a hearing, the chief arbitrator may proceed with the hearing and the arbitration panel shall render a decision based upon the facts and circumstances as presented by the parties present.

(f) Record and transcript. Any party may have a record and transcript made of the arbitration hearing at the party's expense.

(g) Completion of the arbitration process.

(1) Arbitration shall be completed within 30 days of the first arbitration hearing unless extended by order of the court on motion of the chief arbitrator or of a party. No extension of time shall be for a period exceeding 30 days from the date of the first arbitration hearing.

(2) Upon the completion of the arbitration process, the arbitrator(s) shall render a decision. In the case of a panel, a decision shall be final upon a majority vote of the panel.

(3) Within ten days of the final adjournment of the arbitration hearing, the arbitrator(s) shall, in writing, notify the parties of their decision on a form approved by the Supreme Court. The arbitration decision may set forth the issues in controversy and the arbitrator(s)'s conclusions and findings of fact and law. The arbitrator(s)'s decision and the originals of any transcripts shall be sealed and filed with the clerk at the time the parties are notified of the decision.

(h) Time for filing motion for trial de novo. Any party may file a motion for a trial de novo. If a motion for a trial de novo is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.303(4), Florida Statutes (1987).

Committee Note

Arbitration proceedings should be informal and expeditious. The court should take into account the nature of the proceedings when determining whether to award costs and attorneys fees after a trial de novo. Counsel are free to file exceptions to an arbitration decision or award at the time it is to be considered by the court. The court should consider such exceptions when determining whether to award costs and attorneys fees. The court should consider Rule 1.442, Fla. R. Civ. P. concerning offers of judgment and section 45.061, Florida Statutes (1985) concerning offers of settlement, as statements of public policy in deciding whether fees should be awarded.

1.830 Voluntary Binding Arbitration.

(a) Absence of party agreement.

(1) Compensation. In the absence of an agreement by the parties as to compensation of the arbitrator(s), the court shall determine the amount of compensation subject to the provisions of section 44.304(3), Florida Statutes (1987).

(2) Hearing procedures. Subject to these rules and section 44.304, Florida Statutes, the parties may, by written agreement before the hearing, establish the hearing procedures for voluntary binding arbitration. In the absence

of such agreement, the court shall establish the hearing procedures.

(b) Record and transcript. A record and transcript may be made of the arbitration hearing if requested by any party or at the direction of the chief arbitrator. The record and transcript may be used in subsequent legal proceedings subject to the Florida Rules of Evidence.

(c) Arbitration decision and appeal.

(1) The arbitrator(s) shall serve the parties with notice of the decision and file the decision with the court within 10 days of the final adjournment of the arbitration hearing.

(2) A voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in section 44.304(10), Florida Statutes (1987).

(3) If no appeal is filed within the time period set out in subsection (2) of this rule, the decision shall be referred to the presiding judge who shall enter such orders and judgments as required to carry out the terms of the decision as provided under section 44.304(11), Florida Statutes (1987).

Original Proceeding - Rules of Civil Procedure

David U. Strawn, Chairman, Mediation and Arbitration Committee, Orlando, Florida; Richard Doelker, President, Florida Association of Professional Family Mediators, and Peter O. Brick, Vice-President, Port Richey, Florida,

for Petitioner

Terrence Russell, Ft. Lauderdale, Florida; Geraldine Lee Waxman, Plantation, Florida; Carole S. Priada, Director, Family Court Services, Hillsborough County Courthouse, Tampa, Florida; Ira Abrams, Chairman, Family Law Section Rules Committee, Miami, Florida; Maurice Jay Kutner, Chairman, Family Law Section, Miami, Florida; Ira Abrams of Abrams & Abrams, P.A., Co-Chairman, Family Law Section Rules Committee, Coconut Grove, Florida; Cynthia Green, Chairman, Family Law Section Amicus Committee, Miami, Florida; Joseph R. Boyd and William H. Branch of Boyd and Branch, P.A., Tallahassee, Florida and Chriss Walker, Florida Department of Health and Rehabilitative Services, Tallahassee, Florida, for the State of Florida, Department of Health and Rehabilitative Services; John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida and Terrence Russell, Chairman, Alan T. Dimond, Miami, Florida, and Ben H. Hill, III, Tampa, Florida, on behalf of the Board of Governors; Gerald T. Wetherington, Chief Judge, and Leslie Ratliff and Donald Pollock, Eleventh Judicial Circuit Administrative Office of the Courts Legal Division, Miami, Florida; Rene Grafals, Regional Vice President, American Arbitration Association, Miami, Florida; Gilbert A. Smith, Chief Judge, Twelfth Judicial Circuit, The Association of Retired Attorneys, Inc., Sarasota, Florida; D. T. K. Hurley, Chairperson, M. Cadwell, Court Mediator and Susan d. Ferrante, Court Administrator, Fifteenth Judicial Circuit, West Palm Beach, Florida; Michael P. McMahon, Chairman, Citizens Dispute Settlement Center, Orange County Bar Association, Orlando, Florida; and other Florida Bar members,

Responding to Petition

Supreme Court of Florida

No. 71,312

RULES OF CIVIL PROCEDURE

IN RE: PROPOSED RULES FOR
IMPLEMENTATION OF
FLORIDA STATUTES SECTIONS
44.301 - .306.

[November 23, 1988]

PER CURIAM.

This Court recently adopted Florida Rules of Civil Procedure 1.700 - 1.830 implementing chapter 87-173, Laws of Florida (codified at sections 44.301-.306, Florida Statutes (1987)) which deals with arbitration and mediation. In re: Proposed Rules for Implementation of Florida Statutes Sections 44.301 - .306, 518 So.2d 908 (Fla. 1987). In light of the January 1, 1988 effective date of the act, we adopted the proposed rules as an interim measure. Interested parties were invited to submit comments and suggestions regarding the rules as adopted on or before March 1, 1988.

After reviewing the comments submitted, we find two of the suggestions offered merit adoption. A technical amendment is made to rule 1.700(b). Rule 1.700(c) is amended to ensure that motions to defer or forego mediation or arbitration will be

brought to the court's attention prior to the time that the mediation or arbitration hearing is scheduled. The attached amendments to rule 1.700 shall become effective upon the filing of this opinion.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

NO MOTION FOR REHEARING WILL BE ALLOWED.

Rule 1.700

(a) No Change

(b) A party may move, within 15 days after service of the order of referral, to dispense with mediation and with arbitration, respectively, if the issue to be considered has been previously mediated or arbitrated between the same parties pursuant to Florida law.

(c) Waiver or deferral of mediation or arbitration. Within 15 days of the court order assigning the case to mediation or arbitration, any party may file a motion with the court to defer or forego the process and shall set such motion for hearing prior to the date that mediation or arbitration has been ordered with notice to all interested parties, including any mediator or arbitrator that has been appointed. Such motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation or arbitration shall be tolled until disposition of the motion.

Original Proceeding - Rules of Civil Procedure

David U. Strawn, Chairman, Mediation and Arbitration Committee, Orlando, Florida; Richard Doelker, President, Florida Association of Professional Family Mediators, and Peter O. Brick, Vice-President, Port Richey, Florida,

for Petitioner

Carole S. Priede, Director, Family Court Services, Hillsborough County Courthouse, Tampa, Florida; Maurice Jay Kutner, Chairman, Family Law Section, Miami, Florida; Ira Abrams of Abrams & Abrams, P.A., Co-Chairman, Family Law Section Rules Committee, Coconut Grove, Florida; Cynthia Green, Chairman, Family Law Section Amicus Committee, Miami, Florida; Joseph R. Boyd and William H. Branch of Boyd and Branch, P.A.; Tallahassee, Florida and Chriss Walker, Tallahassee, Florida, for the State of Florida, Department of Health and Rehabilitative Services; John F. Harkness, Jr., Executive Director, The Florida Bar; and Terrence Russell, Chairman, Fort Lauderdale, Florida, Alan T. Dimond, Miami, Florida and Ben H. Hill, III, Tampa, Florida, on behalf of the Board of Governors; Gerald T. Wetherington, Chief Judge, and Leslie Ratliff and Donald Pollock, Eleventh Judicial Circuit Administrative Office of the Court Legal Division, Miami, Florida; Rene Grafals, Regional Vice-President, American Arbitration Association, Miami, Florida; Gilbert A. Smith, Chief Judge, Twelfth Judicial Circuit, The Association of Retired Attorneys, Inc., Sarasota, Florida; D. T. K. Hurley, Chairperson, M. Cadwell, Court Mediator and Susan D. Ferrante, Court Administrator, Fifteenth Judicial Circuit, West Palm Beach, Florida; Michael P. McMahon, Chairman, Citizens Dispute Settlement Center, Orange County Bar Association, Orlando, Florida; Melvin A. Rubin, South Florida Counsel on Divorce Mediation, Miami, Florida; Geraldine Lee Waxman, Plantation, Florida; Theodore Babbitt of Babbitt and Hazouri, P.A., West Palm Beach, Florida; and other Florida Bar members,

Responding to Petition

APPENDIX C

ADMINISTRATIVE ORDER 88-59

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS AND PASCO COUNTIES, FLORIDA

ADMINISTRATIVE ORDER NO. 88- 59 S1088059

RE: IMPLEMENTATION OF FLORIDA'S MEDIATION AND ARBITRATION ACT
CHAPTER 87-173, LAWS OF FLORIDA

WHEREAS, Chapter 87-173, Laws of Florida set forth procedures for the referral of civil cases to mediation and arbitration by the Court, and

WHEREAS, the Supreme Court of the State of Florida has adopted rules of procedure under which the statutory provisions shall be implemented, and

IN ORDER to set forth a uniform procedure for the referral of cases by the Court to either mediation or arbitration pursuant to the direction of Rule 1.700(a), Florida Rules of Civil Procedure, and

IN ORDER to implement a systematic approach to the monitoring, calendaring, and evaluation of such procedures, it is

ORDERED:

1) That there is hereby created at the St. Petersburg Judicial Building, the Clearwater Courthouse and in Pasco County an administrative judge assignment to be in charge of the Sixth Circuit's Arbitration and Mediation Program. The alternative dispute resolution administrative judges shall be responsible for the administration of the Arbitration and Mediation Program hereby created to implement Chapter 87-173, Laws of Florida. Such responsibilities shall include, but not be limited to:

a) The periodic issuance of limitations on referrals based upon the availability of arbitrators or mediators.

b) The disposition of any motion to dispense with or defer mediation and arbitration as provided for by Rule 1.700(b) and 1.700(c), Florida Rules of Civil Procedure and Section 44.305, Florida Statutes (1987).

c) The adoption and enforcement of any final orders of voluntarily binding arbitration pursuant to the provisions of Florida Rule of Civil Procedure 1.830(c)(3), and Section 44.304(11), Florida Statute (1987).

d) The disposition of any motions for the extension of time pursuant to Florida Rule of Civil Procedure 1.820(g) and 1.710, the enforcement of any orders, or the imposition of sanctions for failure to

mediate or arbitrate in good faith pursuant to the provisions of Rule 1.720, Florida Rule of Civil Procedure.

e) The disposition of any motions to compel and production filed pursuant to Florida Statutes s 44.303(3)(1987).

f) The disposition of any motions for orders directing compliance with the chief arbitrator's instructions, pursuant to Florida Rule of Civil Procedure 1.820(d).

2) The alternative dispute resolution administrative judges shall set aside sufficient calendar time for the timely completion of the tasks as assigned above. The following judges are hereby designated as the alternative dispute resolution judges from the effective date of this Order through December 31, 1988.

Clearwater Courthouse - Judge John S. Andrews

St. Petersburg Courthouse - Judge Fred L. Bryson

Pasco County - Judge W. Lowell Bray, Jr.

3) There is hereby created the Office of the Coordinator for the Arbitration and Mediation Program. This office, which shall operate under the supervision of the Office of the Courts Administrator, shall perform such duties as are assigned by the Chief Judge, the Alternative Dispute Resolution Judges and the Court Administrator.

4) The Office of the Arbitration and Mediation Coordinator shall:

a) Promulgate the necessary referral forms to be distributed to the Court for utilization by the Court in making case referrals to arbitration or mediation.

b) Promulgate the necessary forms to be distributed to the Court for administering the Arbitration and Mediation Program.

c) Maintain a listing of mediators and arbitrators who are certified and willing to serve the Court in that capacity.

d) Compile and maintain a list of mediators and arbitrators who are qualified and willing to serve in that capacity.

e) Be responsible for the case management of cases referred to mediation or arbitration.

f) Prepare any necessary documentation for submission to the Court on request of an arbitrator or mediator.

g) The calendaring of objections to referral, motions for

extension of time, and motions for enforcement sought by arbitrators, mediators, the parties or their counsel to be heard before the alternative dispute resolution administrative judges.

h) The maintenance of required statistical information.

1) Such other duties as assigned.

5) Upon referral of the Court of any issue or issues for mandatory nonbinding arbitration or mediation, a copy of the Order of Referral shall be forwarded to the Arbitration and Mediation Coordinator. The Office of the Arbitration and Mediation Coordinator shall be responsible for the scheduling of the arbitration or mediation hearing.

6) The Clerk of the Circuit Court for Pinellas County, Florida is hereby directed to furnish a copy of this Order to the members of the Bar maintaining offices within Pinellas County, Florida. The Clerk of the Circuit Court for Pasco County, Florida is hereby directed to furnish a copy of this Order to the Pasco Bar Association presidents and each law firm maintaining offices in Pasco County, Florida. The Clerk of the Circuit Court for Pinellas, and the Administrative Assistant for Pasco County, shall maintain sufficient copies of this Order in their offices to provide a copy to any member of the Bar and public who request a copy thereof.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this 8th day of June, 1988.

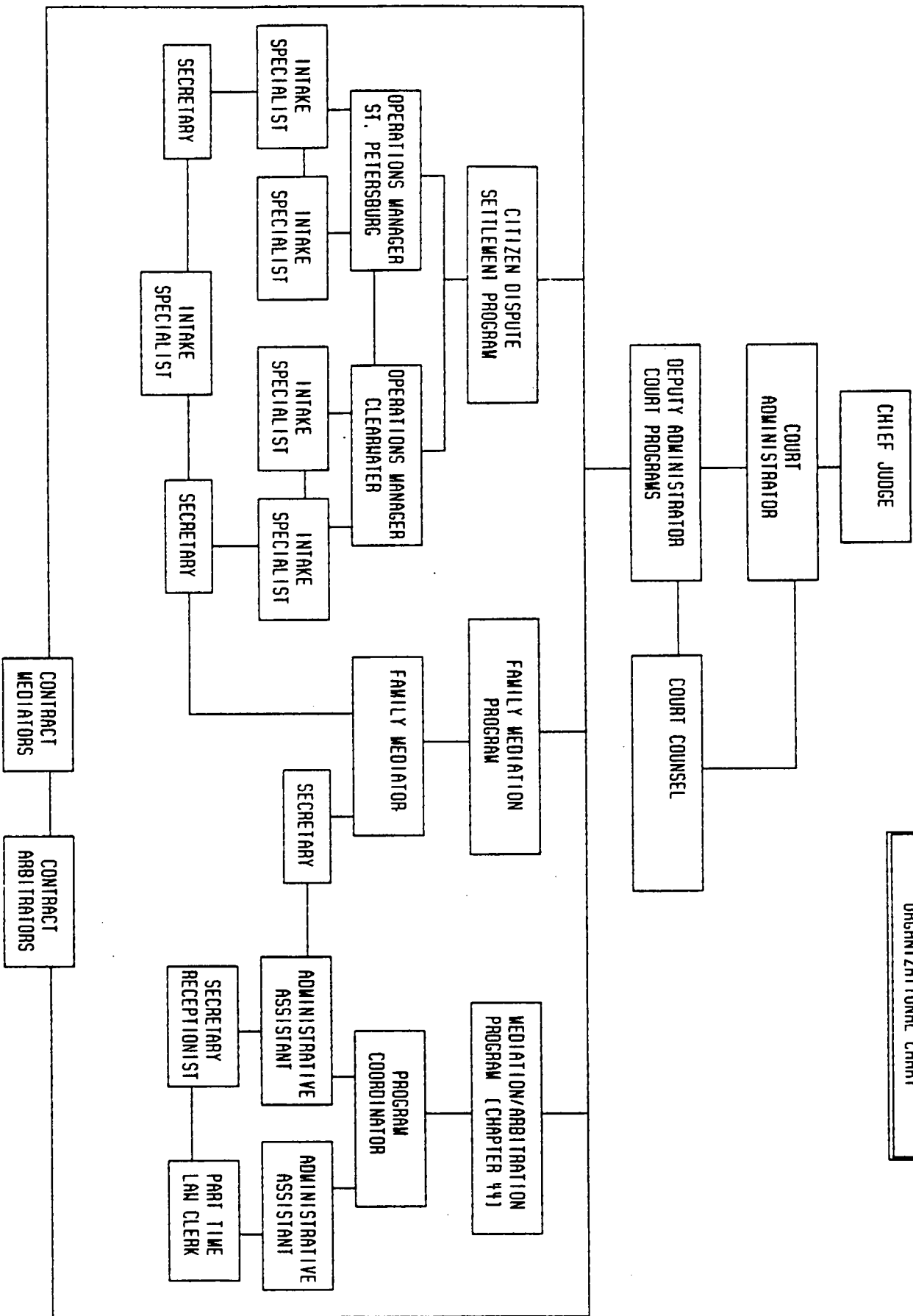

Philip A. Federico, Chief Judge

cc: All Pinellas and Pasco Judges
All Pinellas and Pasco Bar Associations
H. Sandra Combee
Betty Henderson
Kerry Rice
State Attorney
Public Defender
All Law Libraries
Court Administrator

APPENDIX D

ALTERNATIVE DISPUTE RESOLUTION ORGANIZATIONAL CHART

SIXTH JUDICIAL CIRCUIT
ALTERNATIVE DISPUTE RESOLUTION
ORGANIZATIONAL CHART



APPENDIX E

FLORIDA RULES OF CIVIL PROCEDURE 1.700-1.830

Rule 1.650

RULES OF CIVIL PROCEDURE

faith requirements of Section 768.57, Florida Statutes.

(C) **Physical examinations**—Upon receipt by a party of a notice of intent to initiate litigation and within the presuit screening period, a party may require a claimant to submit to a physical examination. The party shall give reasonable notice in writing to all parties of the time and place of the examination. Unless otherwise impractical, a claimant shall be required to submit to only one examination on behalf of all parties. The practicality of a single examination shall be determined by the nature of the claimant's condition as it relates to the potential liability of each party. The report of examination shall be made available to all parties upon payment of the reasonable cost of reproduction. The report shall not be provided to any person not a party at any time. The report shall only be used for the purpose of presuit screening and the examining physician may not testify concerning the examination in any subsequent civil action. All requests for physical examinations or notices of unsworn statements shall be in writing and a copy shall be served upon all parties. The requests or notices shall bear a certificate of service identifying the name and address of the person upon whom the request or notice is served, the date of the request or notice, and the manner of service.

(3) **Work Product.** Work product generated by the presuit screening process that is subject to exclusion in a subsequent proceeding is limited to verbal or written communications that originate pursuant to the presuit screening process.

(d) Time Requirements.

(1) The Notice of Intent to Initiate Litigation shall be served by certified mail, return receipt requested, prior to the expiration of any applicable statute of limitations. If an extension has been granted under Section 768.495(2), Florida Statutes, or by agreement of the parties, the notice shall be served within the extended period.

(2) The action may not be filed against any defendant until 90 days after the Notice of Intent to Initiate Litigation was mailed to that party. If the defendant is the State or any subdivision subject to Section 768.29(6)(a), Florida Statutes, the action may not be filed against that defendant until 180 days after the Notice of Intent to Initiate Litigation was mailed to that party. The action may be filed against any party at any time after the Notice of Intent to Initiate Litigation has been mailed after the claimant has received a written rejection of the claim from that party.

(3) To avoid being barred by the applicable statute of limitations, an action must be filed within 60 days or within the remainder of the time of the

statute of limitations after the Notice of Intent to Initiate Litigation was mailed, whichever is longer, after the earliest of the following:

(A) The expiration of 90 days after the date of mailing of the Notice of Intent to Initiate Litigation; or

(B) The expiration of 180 days after mailing of the Notice of Intent to Initiate Litigation if the claim is controlled by Section 768.28(6)(a), Florida Statutes; or

(C) Receipt by claimant of a written rejection of the claim; or

(D) The expiration of any extension of the 90-day presuit screening period stipulated to by the parties in accordance with Section 768.57(4), Florida Statutes.

Former Rule 1.650 repealed June 19, 1968, effective Oct. 1, 1968 (211 So.2d 206). New Rule 1.650 adopted and effective Sept. 29, 1988 (536 So.2d 193).

RULE 1.660 [REPEALED]

Repealed Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165).

Committee Notes

1980 Repeal. This rule is repealed because it has been superseded by Rules 9.010, 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.

RULE 1.670 [REPEALED]

Repealed June 19, 1968, effective Oct. 1, 1968 (211 So.2d 206).

RULE 1.680 [REPEALED]

Repealed Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165).

Committee Notes

1980 Repeal. This rule is repealed because it has been superseded by Rules 9.010, 9.030(c) and 9.100 of the Florida Rules of Appellate Procedure.

RULES 1.690 TO FORMER 1.720 [REPEALED]

Repealed June 19, 1968, effective Oct. 1, 1968 (211 So.2d 206).

RULE 1.700 RULES COMMON TO MEDIATION OR ARBITRATION

(a) **Referral by Presiding Judge.** Except as hereinafter provided, the presiding judge may refer any contested civil matter or selected issues for assignment to mediation or arbitration.

(1) *Hearing Date.* The first mediation conference or arbitration hearing shall be held within 60 days of referral, unless sooner ordered by the court.

(2) *Notice.* Within 10 days after the case has been referred for either mediation or arbitration, the court or its designee shall notify the parties and either the mediator or arbitrator in writing of the date, time and place of the conference.

(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 arbitration, respectively, if the issue to be considered has been previously mediated or arbitrated between the same parties pursuant to Florida law.

(c) *Waiver or Deferral of Mediation or Arbitration.* Within 15 days of the court order assigning the case to mediation or arbitration, any party may file a motion with the court to defer or forego the process and shall set such motion for hearing prior to the date that mediation or arbitration has been ordered with notice to all interested parties, including any mediator or arbitrator that has been appointed. Such motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation or arbitration shall be tolled until disposition of the motion.

(d) *Calculation of Times.* All times hereunder shall be calculated in accordance with Rule 1.090(a) Fla.R.Civ.P.

(e) *Disqualification of a Mediator or Arbitrator.* Any party may move the court to disqualify a mediator or an arbitrator 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 limit the discretion of a mediator or arbitrator to refuse 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 periods in which mediation or arbitration is deferred pending determination of a disqualification motion.

* Suggested title added by Publisher.

Former Rule 1.700 repealed June 19, 1968, effective Oct. 1, 1968 (211 So.2d 296). Current Rule 1.700 adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908); amended and effective Nov. 23, 1988 (534 So.2d 1150).

RULE 1.710 MEDIATION RULES

(a) *Completion of Mediation.* Mediation shall be completed within 30 days of the first mediation

conference unless extended by order of the court 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 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 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

(8) Such other matters as may be specified by order of the Chief Judge in the Circuit

(c) *Discovery.* Discovery pursuant to 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.

Former Rule 1.710 repealed June 19, 1968, effective Oct. 1, 1968 (211 So.2d 206). Current Rule 1.710 adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.720 MEDIATION PROCEDURES

(a) *Interim or Emergency Relief.* Either party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such 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 motions.

(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.

(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.

(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 shall at all times be permitted to privately communicate with their clients. Presence of counsel is not required and in the discretion of the mediator, mediation may proceed in the absence of counsel.

(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.

(f) **Appointment and Compensation of 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 an uncompensated volunteer, a government employee or may be compensated according to the written agreement of the parties. In the absence of such written agreements 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.

Former Rule 1.720 repealed June 19, 1968, effective Oct. 1, 1968 (211 So.2d 206). Current Rule 1.720 adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.730 COMPLETION OF MEDIATION

(a) **Report of No Agreement.** In cases where the parties do not reach any agreement as to any matter as a result of mediation, the mediator shall immediately report such to the court without any comment or recommendation.

(b) **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. If counsel neither signs nor objects, in writing, to the agreement within 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.

(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 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.

(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.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

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.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.750 SMALL CLAIMS MATTERS

(a) **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) **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) **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.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.760 MEDIATOR QUALIFICATIONS

(a) **County Court Mediators.** For certification by the Supreme Court, a mediator of county court matters must:

(1) have completed a minimum of a 20 hour training program certified by the Supreme Court; and

(2) have observed a minimum of four 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

(4) have conducted a mediation conference under observation of a court certified mediator; and

(5) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3), Florida Statutes (1987)

(6) or, be certified as a circuit court mediator.

(b) **Family Mediators.** For certification by the Supreme Court, a mediator of family and dissolution of marriage issues must

(1) have a Masters Degree 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 mentioned fields; and

(3) have completed a minimum of 40 hours in a mediation training course certified by the Supreme Court; or have received a Masters Degree in family mediation from an accredited college or university; and

(4) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3).

(c) **Circuit Court Mediators.** For certification by the Supreme Court, the mediator of Circuit Court matters, other than family matters, must

(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 Florida practice; and

(2) complete a minimum of a 40 hour mediation training program certified by the Supreme Court.

(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 mediation program and who

(1) has been actively engaged in the practice of mediation for the preceding year; and

(2) completes the minimum training specified in these rules for the particular type of mediation. Mediators presently practicing pursuant to section (1) of this subsection 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 in the field of prior practice.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.770 STANDARDS FOR MEDIATION TRAINING PROGRAMS

(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. That training should address the following:

(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

Rule 1.770

RULES OF CIVIL PROCEDURE

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 relates 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:

(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 approval 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.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (508 So.2d 908).

RULE 1.780 DUTIES OF THE MEDIATOR

(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;

(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.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (508 So.2d 908).

RULE 1.800 CASE ELIGIBILITY FOR COURT-ORDERED NON-BINDING ARBITRATION

(a) **Exclusions From Arbitration.** The following categories of claims shall not be referred to non-binding arbitration except upon petition of all parties:

(1) Appeals from rulings of administrative agencies

(2) Bond estreatures

(3) Forfeitures of seized properties

(4) Habeas corpus or other extraordinary writs

(5) Bond validations

(6) Declaratory relief

(7) Collection matters supported by duly executed promissory obligations

(8) Mortgage foreclosures

(9) Condemnation actions

(10) Proceedings under Chapters 61, 63, 88 and 742

(11) Name changes

(12) Any litigation expedited by statute or rule

(13) Cases in which there has been previous statutorily mandated arbitration

(14) Civil or criminal contempt

(15) Such other matters as may be specified by order of the Chief Judge in the Circuit

(16) Cases referred to mediation pursuant to Rule 1.700(a) of these rules.

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.810 SELECTION, QUALIFICATION, TRAINING AND COMPENSATION OF ARBITRATORS

(a) **Selection.** The Chief Judge of the Circuit or his designee shall maintain a list of qualified per-

sons who have agreed to serve as arbitrators. Cases assigned to arbitration shall be assigned to an arbitrator or to a panel of three arbitrators. The court shall determine the number of arbitrators and designate them within 15 days after service of the order of referral in the absence of an agreement by the parties. In the case of a panel, one of the arbitrators shall be appointed as the chief arbitrator.

(b) Qualification. Arbitrators shall be members of the Florida Bar, except where otherwise agreed by the parties. The chief arbitrator shall have been a member of the Florida Bar for at least five years. Individuals who are not members of the Florida Bar may serve as arbitrators upon the agreement of all parties.

(c) Training. All arbitrators shall attend 4 hours of training in a program approved by the Supreme Court of Florida.

(d) Compensation. The Chief Judge of each Judicial Circuit shall establish the compensation of arbitrators subject to the limitations in section 44.303(2), Florida Statutes (1987).

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.820 HEARING PROCEDURES FOR NON-BINDING ARBITRATION

(a) Authority of the Chief Arbitrator. The chief arbitrator shall have authority to commence and adjourn the arbitration hearing and carry out other such duties as are prescribed by section 44.303, Florida Statutes. The chief arbitrator shall not have authority to hold any person in contempt or to in any way impose sanctions against any person.

(b) Conduct of the Arbitration Hearing.

(1) The Chief Judge of each Judicial Circuit shall set procedures for determining the time and place of the arbitration hearing and may establish other procedures for the expeditious and orderly operation of the arbitration hearing to the extent such procedures are not in conflict with any Rules of Court.

(2) Hearing procedures established by the court should be disseminated to the local bar and shall be included in the notice of arbitration hearing sent to the parties and arbitration panel.

(3) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the chief arbitrator for good cause shown.

(c) Rules of Evidence. The hearing shall be conducted informally. Presentation of testimony shall be kept to a minimum, and matters shall be presented to the arbitrator(s) primarily through the statements and arguments of counsel.

(d) Orders. The chief arbitrator may issue instructions as are necessary for the expeditious and orderly conduct of the hearing. The chief arbitrator's instructions are not appealable. Upon notice to all parties the chief arbitrator may apply to the presiding judge for orders directing compliance with such instructions. Instructions enforced by a court order are appealable as are other orders of the court.

(e) Default of a Party. Where a party fails to appear at a hearing, the chief arbitrator may proceed with the hearing and the arbitration panel shall render a decision based upon the facts and circumstances as presented by the parties present.

(f) Record and Transcript. Any party may have a record and transcript made of the arbitration hearing at the party's expense.

(g) Completion of the Arbitration Process.

(1) Arbitration shall be completed within 30 days of the first arbitration hearing unless extended by order of the court on motion of the chief arbitrator or of a party. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing.

(2) Upon the completion of the arbitration process, the arbitrator(s) shall render a decision. In the case of a panel, a decision shall be final upon a majority vote of the panel.

(3) Within ten days of the final adjournment of the arbitration hearing, the arbitrator(s) shall, in writing, notify the parties of their decision on a form approved by the Supreme Court. The arbitration decision may set forth the issues in controversy and the arbitrator(s)'s conclusions and findings of fact and law. The arbitrator(s)'s decision and the originals of any transcripts shall be sealed and filed with the clerk at the time the parties are notified of the decision.

(h) Time for Filing Motion for Trial de Novo. Any party may file a motion for a trial de novo. If a motion for a trial de novo is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.303(4), Florida Statutes (1987).

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

Committee Notes

Arbitration proceedings should be informal and expeditious. The court should take into account the nature of the proceedings when determining whether to award costs and attorneys fees after a trial de novo. Counsel are free to file exceptions to an arbitration decision or award at the time it is to be considered by the court. The court should consider such exceptions when determining whether to

award costs and attorneys fees. The court should consider Rule 1.442, Fla.R.Civ.P. concerning offers of judgment and section 45.061, Florida Statutes (1985) concerning offers of settlement, as statements of public policy in deciding whether fees should be awarded.

RULE 1.830 VOLUNTARY BINDING ARBITRATION

(a) Absence of Party Agreement.

(1) *Compensation.* In the absence of an agreement by the parties as to compensation of the arbitrator(s), the court shall determine the amount of compensation subject to the provisions of section 44.304(3), Florida Statutes (1987).

(2) *Hearing Procedures.* Subject to these rules and section 44.304, Florida Statutes, the parties may, by written agreement before the hearing, establish the hearing procedures for voluntary binding arbitration. In the absence of such agreement, the court shall establish the hearing procedures.

(b) *Record and Transcript.* A record and transcript may be made of the arbitration hearing if requested by any party or at the direction of the chief arbitrator. The record and transcript may be used in subsequent legal proceedings subject to the Florida Rules of Evidence.

(c) Arbitration Decision and Appeal.

(1) The arbitrator(s) shall serve the parties with notice of the decision and file the decision with the

court within 10 days of the final adjournment of the arbitration hearing.

(2) A voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in section 44.304(10), Florida Statutes (1987).

(3) If no appeal is filed within the time period set out in subsection (2) of this rule, the decision shall be referred to the presiding judge who shall enter such orders and judgments as required to carry out the terms of the decision as provided under section 44.304(11), Florida Statutes (1987).

Adopted Dec. 31, 1987, effective Jan. 1, 1988 (518 So.2d 908).

RULE 1.900 FORMS

(a) The following forms of process, notice of lis pendens and notice of action are sufficient. Variations from the forms do not void process or notices that are otherwise sufficient.

(b) The other forms are sufficient for the matters that are covered by them. So long as the substance is expressed without prolixity, the forms may be varied to meet the facts of a particular case.

(c) Captions, except for the designation of the paper, are omitted from the forms. A general form of caption is the first form. Signatures are omitted from pleadings and motions.

Added June 19, 1968, effective Oct. 1, 1968 (211 So.2d 174).

APPENDIX F
ORDER OF REFERRAL TO MEDIATION

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
Circuit Civil No.

ORDER OF REFERRAL TO MEDIATION

THIS COURT has reviewed its docket and the case file in the above styled cause and has determined that the cause is appropriate for mediation. Whereupon, in accordance with Sections 44.301-44.306, Florida Statutes, and Rules 1.700-1.830, Florida Rules of Civil Procedure, and upon the court's own motion, it is

ORDERED AND ADJUDGED THAT:

1. The above styled cause is hereby referred to mediation.
2. All parties shall proceed to mediation in good faith. Counsel may, but are not required to, attend the conference with the parties. A corporate party must send a corporate representative other than the attorney with full authority to settle the case. An insurance carrier must send a company representative, other than the attorney, who has full authority to resolve the matter for an amount which is the lesser of the policy limits or the most recent demand of the adverse party. Proceeding to mediation in the absence of good faith and/or with authority limited to a prior evaluation of the case is not acceptable and may be subject to sanctions.
3. The Arbitration and Mediation Program, 150 5th Street North, Room 314, St. Petersburg, 33701, shall hereafter be responsible for all administrative matters pertaining to this referral, including the assignment of the mediator and the scheduling of the mediation conference.
4. The mediator shall be compensated at the rate of \$100.00 an hour. This cost shall be borne equally by the parties, with payment due at the conclusion of each day's proceedings. Checks shall be made payable to the Board of County Commissioners. Cancellation without 48 hours prior notice may result in an assessment of the cost of a (2) hour mediation. Failure to appear without having been excused, failure to make payment of the mediation costs, and any other failure

to comply with the terms of this order, may subject the parties to the contempt powers of the court.

5. All proceedings, with the exception of discovery, are stayed pending the resolution of this referral. During its pendency, any matter pertaining to this referral shall be heard by the Civil Administrative Judge. (See: Administrative Order No. 88-59) Time for completion of mediation shall be tolled where mediation is interrupted pending resolution of such matters. Interim or emergency relief not specifically pertaining to this referral may be heard by the referring judge. Mediation shall continue while such relief is pending unless otherwise ordered.

6. Any party may move to have this cause deferred from mediation within fifteen (15) days of the date of this order. Such motion shall be heard by the referring judge.

DONE AND ORDERED in the chambers, at Clearwater, Florida, this _____ day of _____, 1989.

Circuit Judge

This action has been set for Mediation Conference on the _____ day of _____, 1989, at _____, at _____
with _____ as the designated mediator.

Gay Inskip, Coordinator
Arbitration and Mediation Program
150 5th Street North, Room 314
St. Petersburg, Florida 33701
813/892-7583

APPENDIX G

SECTION 61.183, FLORIDA STATUTES

61.183 Mediation of certain contested issues.—

(1) In any proceeding in which the issues of custody, primary residence, or visitation of a child are contested, the court may refer the parties to mediation. Mediation services may be provided by the court or by any court-approved mediator.

(2) If an agreement is reached by the parties on the contested issues, a consent order incorporating the agreement shall be prepared by the mediator and submitted to the parties and their attorneys for review. Upon approval by the parties, the consent order shall be reviewed by the court and, if approved, entered. Thereafter, the consent order may be enforced in the same manner as any other court order.

(3) Any information from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, relating to a mediation proceeding pursuant to this section¹ and obtained by any person performing mediation duties is privileged and confidential and may not be disclosed without the written consent of all parties to the proceeding. Any research or evaluation effort directed at assessing program activities or performance must protect the confidentiality of such information. Each party to a mediation proceeding has a privilege during and after the proceeding to refuse to disclose and to prevent another from disclosing communications made during the proceeding, whether or not the contested issues are successfully resolved. This subsection shall not be construed to prevent or inhibit the discovery or admissibility of any information that is otherwise subject to discovery or that is admissible under applicable law or rules of court, except that any conduct or statements made during a mediation proceeding or in negotiations concerning the proceeding are inadmissible in any judicial proceeding.

¹History.—s. 128, ch. 86-220.

¹Note.—The word "and" was added by the editors.

APPENDIX H

ORDER OF REFERRAL TO FAMILY MEDIATION

CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
ORDER OF REFERRAL

DATE _____

TO: _____ PETITIONER

AND

RESPONDENT

CIRCUIT COURT CASE NO: _____ JUDGE: _____

ATTORNEY FOR PETITIONER: _____
NAME TELEPHONE

PETITIONER'S ADDRESS: _____
STREET NUMBER APARTMENT

CITY STATE ZIP CODE

TELEPHONE: _____
HOME WORK

ATTORNEY FOR RESPONDENT: _____
NAME TELEPHONE

RESPONDENT'S ADDRESS: _____
STREET NUMBER APARTMENT

CITY STATE ZIP CODE

TELEPHONE: _____
HOME WORK

This cause coming on the Court's own motion, the parties hereto are Ordered to participate in the Family Conciliation Unit of the Pinellas County Circuit Court.

DONE AND ORDERED in _____, Florida,
this _____ day of _____, 19 ____.

CIRCUIT JUDGE

Copies: Original - Court File
All Other Copies - Family Conciliation Unit

CT CIV 99 (03-16-84)

APPENDIX I
ORDER OF REFERRAL TO ARBITRATION

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

CIRCUIT CIVIL NO.

Plaintiff,

vs.

Defendant,

ORDER OF REFERRAL TO NONBINDING ARBITRATION

THIS COURT has reviewed its docket and the case file in the above styled cause and has determined that the cause is appropriate for arbitration. Whereupon, in accordance with Sections 44.301-44.306, Florida Statutes, and Rules 1.700-1.830, Florida Rules of Civil Procedure, and upon the court's own motion, it is

ORDERED AND ADJUDGED THAT:

1. The above styled cause is hereby referred to arbitration.
2. The parties and their counsel shall proceed to arbitration in good faith. Failure to appear at a scheduled conference without good cause shown may result in the arbitration panel rendering a decision based upon the evidence presented by the parties in attendance.
3. The Arbitration and Mediation Program, 150 5th Street N., Room 314, St. Petersburg, 33701, shall hereafter be responsible for all administrative matters pertaining to this referral, including the assignment of an arbitration panel and the scheduling of an arbitration conference.
4. Each arbitrator shall be compensated at the rate of \$75 per day. This cost shall be borne equally by the parties, with payment due at the conclusion of each day's proceedings. Checks shall be made payable to the Board of County Commissioners. Cancellation without 48 hours prior notice may result in an assessment of the costs of one day's proceedings. Failure to appear without having been excused, failure to make payment of

the arbitration costs, and any other failure to comply with the terms of this order, may subject the parties to the contempt powers of the court.

5. All proceedings, with the exception of discovery, are stayed pending the resolution of this referral. During its pendency, any matter pertaining to this referral shall be heard by the Civil Administrative Judge. (See Administrative Order 88-59)

6. Any party may move to have this cause deferred from arbitration within fifteen (15) days of the date of this order. Such motion shall be heard by the referring judge.

DONE AND ORDERED in Chambers, at _____, Pinellas County, Florida, this _____ day of February, 1989.

CIRCUIT JUDGE

This action has been set for Arbitration Conference on the _____ day of _____, 1989, from _____ to _____, at _____, with the following persons sitting as the arbitration panel:

Gay Inskeep, Coordinator
Arbitration and Mediation Program
150 5th Street North, Room 314
St. Petersburg, Florida 33701
813/892-7583

APPENDIX J

**SUPREME COURT OF FLORIDA. ADMINISTRATIVE ORDER (AMENDED)
MEDIATION AND ARBITRATION TRAINING COMMITTEE**

Supreme Court of Florida

AMENDED ORDER

ADMINISTRATIVE ORDER

Florida Statute 44.306 requires the Supreme Court to establish standards for qualifications, professional conduct and training for court appointed mediators and arbitrators. To assist the Supreme Court in implementing this law, I deem it necessary to appoint a special committee on mediator and arbitrator training. Accordingly, I appoint the following persons to this committee:

James J. Alfini, Tallahassee

Frank Orlando, Ft. Lauderdale, Chairperson

Leslie Ratliff, West Palm Beach

Linda M. Soud, Jacksonville

Charles M. Rieders, Cocoa

Susan H. Walsh, Tampa

Sue Johnson, St. Petersburg

Ailene Hubert, Ft. Lauderdale

Shawn L. Brieese, Daytona Beach


The committee shall perform the following functions:

- 1) Develop and implement procedures and criteria for the screening and evaluation of requests for certification of training programs which are targeted at qualifying individuals to serve as county, circuit and family mediators.
- 2) Develop procedures for gathering and reviewing documentation on training programs for mediators offered by local court programs. Procedures would provide for full or partial certification of such programs as may be offered within the specified or limited number of years preceeding the effective date of the rule.
- 3) Develop a set of instructions to private training service providers, consultants, CLE faculty, professional associations and education institutions that may wish to have their training programs certified by the Supreme Court.
- 4) Screen all requests for certification of training programs and make recommendations to the Supreme Court, for or against certification.

- 5) Consider the feasibility of policy that would allow individual mediators to apply for credit for orientation or training programs in which they have already participated. If such a policy is approved by the Court, the committee or designated members thereof will be responsible for reviewing such requests.
- 6) Develop and implement procedures and criteria for the assessment of training offerings for arbitrators.
- 7) Evaluate the requirements for and the feasibility of the examination provisions of the Rule.


I request that this committee meet as needed. The Office of the State Courts Administrator will provide support staff. Justice Parker Lee McDonald shall serve as Supreme Court liaison.

DONE AND ORDERED at Tallahassee, Florida, on
October 6 _____, 1988.



Chief Justice
Supreme Court of Florida

ATTEST:



Sid J. White
Clerk Supreme Court

APPENDIX K
MEDIATOR/ARBITRATOR PAYMENT VOUCHER

STATEMENT OF ARBITRATION/MEDIATION EXPENSES

() Arbitration _____ days at \$75 per day.

() Mediation _____ hours at \$100 per hour.

() Other _____

(maximum assessment when parties fail to appear, or cancel without 48 hours notice: Arbitrators - \$75; Mediators - two hours x hourly rate)

TOTAL EXPENSE _____

I do solemnly swear that this account is just and true in all respects and that payment therefor has not been received.

Signature of Arbitrator _____

Date _____

I hereby verify that the amount being billed above is true and correct.

Party/Counsel

Party/Counsel

Party/Counsel

Party/Counsel

Dept. Arbitration and Mediation Service
Account No. 0101/5310000/1920105

Signature of Departmental Approval

MAIL TO:

CIRCUIT CIVIL NO.

Plaintiff(s),

vs.

Defendant(s),

Plaintiff/Petitioner Attorney and Billing Address:

Defendant/Respondent Attorney and Billing Address:

Continued _____ Settled _____ Impasse _____

APPENDIX L
MEDIATOR EVALUATION FORM

MEDIATOR EVALUATION FORM

NAME: _____ DATE EVALUATED: _____

CASE TYPE: County _____ Family _____ Circuit Civil _____

CASE STYLE: _____

Ratings: 1 = Unsatisfactory 2 = Conditional 3 = Satisfactory
 4 = Above Satisfactory 5 = Outstanding

PREPARATION:

Comments: _____

OPENING STATEMENT:

Comments: _____

MEDIATION PROCESS:

Comments: _____

GENERAL MEDIATOR DEMEANOR AND CONDUCT:

Comments: _____

OVERALL PERFORMANCE

EVALUATOR: _____

TITLE: _____

I have read this evaluation and discussed the contents with the evaluator.

MEDIATOR: _____

DATE: _____

APPENDIX M
STUDY QUESTIONNAIRE



PHILIP A. FEDERICO
CHIEF JUDGE

The Sixth Judicial Circuit of Florida

Office of the Courts Administrator

150 - 5TH STREET NORTH
ST. PETERSBURG, FLORIDA 33701
(813) 892-7843

J. WILLIAM LOCKHART
COURT ADMINISTRATOR

Date

Name

Address

Address

Re:

Dear Name:

The Sixth Judicial Circuit has implemented an arbitration and mediation program to assist in the case management of contested civil litigation. According to our records you were recently involved in a civil suit that was referred to either arbitration or mediation by the presiding Judge.

Would you please complete the enclosed questionnaire which will help the court evaluate this program. We are interested in your responses as well as suggestions for program improvement. This questionnaire is being used for statistical purposes only and all responses will be kept strictly confidential.

Thank you for your assistance with this evaluation.

Sincerely,

Sue A. Johnson
Deputy Administrator, Court Programs

Enclosure

ARBITRATION AND MEDIATION QUESTIONNAIRE

1. I was involved in the following type of dispute resolution proceeding:
☐ a. arbitration (nonbinding)
☐ b. arbitration (binding)
☐ c. mediation
2. Was your case set for trial at the time of referral to arbitration or mediation? ☐ yes ☐ no If yes, how much time was set aside on the judge's calendar to hear the case? _____
3. Do you believe that your case would have been settled prior to trial?
☐ yes ☐ no
4. After the referral to arbitration or mediation was a settlement between the parties obtained through informal negotiations?
☐ a. prior to the scheduled arbitration or mediation
☐ b. prior to the conclusion of the proceedings
5. In your opinion, was the arbitration or mediation proceeding less costly than going to trial?
☐ yes ☐ no a. to the parties
☐ yes ☐ no b. to the attorneys
☐ yes ☐ no c. to the Court
6. Overall, do you believe that mediation or arbitration provides a viable alternative to the traditional court methods for the settlement of disputes?
☐ yes ☐ no
If you answered no, would you please specify your reasons?

7. If your case was resolved by arbitration or mediation were you satisfied with the final results of the case?
☐ yes ☐ no
If you answered no, would you please specify your reasons?

8. Based on your exposure to the arbitration or mediation process, do you have any observations or suggestions that may be considered for program improvement?
☐ yes ☐ no
If you answered yes, would you please note your comments?

9. If you participated in arbitration, how many members were on the arbitration panel? _____
10. Did you feel confident that the arbitrator(s) had the skills necessary to consider your case?
_____yes _____no
If you answered no, would you please specify your reasons?

11. If you participated in arbitration, how many hearings were held? _____
12. If you participated in arbitration, what was the approximate total amount of time the hearing(s) took? _____

13. Was a trial de novo requested?
_____ a. yes, by plaintiff or petitioner
_____ b. yes, by defendant or respondent
_____ c. no

14. If you participated in mediation, how many sessions were held? _____

15. Did you feel confident that the mediator(s) had the skills necessary to mediate your case?
_____yes _____no
If you answered no, would you please specify your reasons?

16. If you participated in mediation, approximately how much total time did the session(s) take? _____

17. If you participated in mediation, was an agreement reached?
_____ a. yes
_____ b. no
_____ c. partial agreement reached

Please return the completed questionnaire to:

Sue A. Johnson
Deputy Administrator, Court Programs
Office of the Courts Administrator
150 5th Street North
St. Petersburg, Florida 33701

A stamped self-address envelope is enclosed for your convenience.

APPENDIX N

INFORMATION SHEETS ON ARBITRATION AND MEDIATION

BRIEF DESCRIPTION OF THE MEDIATION PROCESS

Authority

Pursuant to Section 44.302, Florida Statutes, and Rule 1.700 et seq., Florida Rules of Civil Procedure, judges have the authority to order most types of contested civil cases to mediation prior to trial. Exclusions from the mediation process are found in Rule 1.710(b).

Definition

Mediation is defined as the use of a neutral, impartial third party to help resolve a dispute. The purpose is to open up lines of communication and to explore all possibilities of settlement in order to resolve the dispute and to relieve the overburdened court dockets. Mediation is essentially a communications process with the mediator serving as manager of that process. The role of the mediator is to help the parties analyze the issues and generate alternatives for a negotiated settlement. The role of the parties is to recognize that people in dispute can come to the table to negotiate in good faith to try to resolve their differences. The mediation conference is informal, confidential and nonadversarial. The mediator has no decision making power. Any agreement reached will be by mutual consent of the parties and is reduced to writing.

Special Rules or Procedures

The mediation conference is held on neutral ground, such as in the courthouse. Generally, mediation conferences last approximately three hours.

While the presence of legal counsel is not required, lawyers in fact usually attend the court-ordered mediation conference. Attorneys are encouraged to submit a brief written summary of the facts of the case to the mediator at least one week before the scheduled conference. At the conference, counsel should be prepared to discuss the facts and legal issues involved in the case and to generally help the parties evaluate the case. The ultimate decision making authority of whether or not to settle the case rests with the parties, with the advice of counsel. A written agreement that is signed is immediately submitted to the court. When an agreement is not signed, it will be submitted to the court after ten (10) days if the parties have made no objection during that time. The court then determines whether the terms are lawful and whether they are within its jurisdiction. The agreement shall become binding on the parties if the court does not file a written objection within ten (10) days after receiving same.

A corporate party must send a corporate representative, other than the attorney, with full authority to settle the case. An insurance carrier must send a company representative, other than the attorney, who has full authority to resolve the matter for an amount which is the lesser of the policy limits or the most recent demand of the adverse party. Proceeding to mediation with authority limited to a prior evaluation of the case is not acceptable and may be subject to sanctions.

Prepared by the Arbitration and Mediation Program,
Sixth Judicial Circuit, Pinellas and Pasco Counties,
with assistance from Bruce W. Talcott, Esquire,
Certified Mediator

BRIEF DESCRIPTION OF THE NONBINDING ARBITRATION PROCESS

Authority

Judges have the power to refer most types of civil cases to nonbinding arbitration pursuant to Section 44.301 et seq., Florida Statutes, and Rule 1.700 et seq., Florida Rules of Civil Procedure. Exclusions from the nonbinding arbitration process are found in Rule 1.800(a).

Description

Court-annexed arbitration can be described as a potentially impotent quasi-judicial proceeding. It is quasi-judicial because the arbitration panel is a finder of fact and applier of law, i.e., it functions as judge and jury. Its decision is potentially impotent because the award will not ripen into judgment if the parties choose to seek a trial de novo. (See Section 44.303(4), Florida Statutes and Rule 1.820(h), Florida Rules of Civil Procedure.)

If a party in nonbinding arbitration is not satisfied with the award and seeks a trial de novo, as allowed, he does so at the peril of having to pay all arbitration costs, court costs, attorneys' fees, investigation expenses, expenses for expert testimony or evidence, and other "reasonable costs" if the ultimate decision "is not more favorable than the arbitration decision." (See Section 44.303(5), Florida Statutes) These possible sanctions bear consideration and analysis because the statute requires that the unsuccessful trier de novo shall be assessed the specified costs.

The court has authority to assign one arbitrator or a panel of three. Appointees to a panel must have been certified by the Chief Judge of the Circuit and must be members of the Florida Bar in good standing. The Chief Arbitrator of a panel must have been a member of the Florida Bar in good standing for at least five years unless all parties waive the requirement. All arbitrators must have attended training approved by the Florida Supreme Court.

In practice, the courts regularly assign a panel of three arbitrators. Their award need not be unanimous. Contrary to some types of arbitration hearings, Florida court-annexed arbitrators are neutrals; none are advocates for any party and all are bound to neutrality.

Process

The arbitration hearing is conducted informally. Advocates are expected to present the controversy in the form of dissertations that encompass both fact and law. If there is a controversy as to either, counsel is expected to inform the panel and may present sworn, live testimony. (Attorneys are expected to exchange a list of any witnesses that they intend to offer in the arbitration prior to the proceedings.) Lawyers should expect the panel to ask questions during the presentations. In most cases a maximum of thirty minutes or less of presentation time per party is sufficient. Preparation of an outline and delivery of the presentation in the form of a combined opening and closing statement will aid in the smooth and expeditious flow of the proceedings. Also, a brief summary of the issues and facts should be submitted to all arbitrators at least one week before the arbitration conference.

At the conclusion of the presentations the panel retires to consider and discuss what it has heard and to render the award. The award is then reduced to writing and submitted to the parties within ten days. The parties then have twenty (20) days from the date of service of the award to move for a trial de novo. The award remains sealed in the court file until the twenty days has elapsed. If no such motion is made, the decision is referred to the presiding judge who enters any orders or judgments as may be required to carry out the terms of the award.

Prepared by the Arbitration and Mediation Program,
Sixth Judicial Circuit, Pinellas and Pasco Counties
with assistance from Jack E. Dadswell, Esquire, Retired Judge,
Certified Arbitrator and Mediator

BIBLIOGRAPHY

BIBLIOGRAPHY

Alfini, James J., Richard W. Moore, "Court-Annexed Arbitration: A Review of the Institute for Civil Justice Publications", The Justice System Journal, Volume 12, Number 2 (1987): 260-268.

Baar, Carl, "The Scope and Limits of Court Reform", The Justice System Journal, Volume 5, Number 3 (1980).

Hanson, Roger, Geoff Gallas, Susan Keilitz, "The Role of Management in State Court-Annexed Arbitration", State Court Journal, Spring (1988): 14-19.

Keilitz, Susan, Geoff Gallas, Roger Hanson, "State Adoption of Alternative Dispute Resolution, Where Is It Today?", State Court Journal, Spring (1988): 4-11.

Kritzer, Herbert M., Jill K. Anderson, "The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, and Cost in the American Arbitration Association and the Courts", The Justice System Journal, Volume 8, Number 1 (1983): 6-19.

Lind, E. Allan, John E. Shapard, Evaluation of Court-Annexed Arbitration in Three Federal District Courts, Washington, D.C.: The Federal Justice Center, revised September (1983).

McGillis, Daniel, Community Dispute Resolution Programs and Public Policy, Washington, D.C.: National Institute of Justice, U.S. Department of Justice, December (1986).

Pearson, Jessica, "An Evaluation of Alternatives to Court Adjudication", Institute for Court Management Journal, Winter (1982): 420-444.

Pound, Roscoe, The Causes of Popular Dissatisfaction with the Administration of Justice, address delivered at annual convention of American Bar Association in 1906.

Shuart, Kathy, Sandra Smith, Michael D. Planet, "Settling Cases in Detroit: An Examination of Wayne County's 'Mediation' Program", The Justice System Journal, Volume 8, Number 3 (1983): 307-324.

Study Commission on Alternative Dispute Resolution, by David U. Strawn, Chairman. Tallahassee: Final Report, February 1, 1986.

Tyler, Tom R., "What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures", Law & Society Review, Volume 22, Number 1 (1988): 103-135.

Weller, Steven, "Commentary on An Evaluation of Alternatives to Adjudication", The Justice System Journal, Volume 7, Number 3 (1982): 445-448.