

**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

**IN RE: AMENDMENTS TO FLORIDA  
RULES FOR CERTIFIED AND COURT  
APPOINTED MEDIATORS**

**CASE NO. SC05-998**

**MOTION TO CORRECT NOTICE OF PUBLICATION;  
OBJECTION TO THE COURT'S CONSIDERATION OF  
COMMENTS BASED ON INCORRECT NOTICE;  
REQUEST FOR REASONABLE TIME TO RESPOND  
SUBSEQUENT TO PUBLICATION OF CORRECT NOTICE**

Comes now the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (Committee) by and through its Chair, Judge Shawn L. Briese and moves pursuant to rule 9.330(a), Florida Rules of Appellate Procedure, to correct the publication Notice issued October 11, 2006 in the instant case. The Committee would also object to the Court's consideration of any comments received pursuant to publication of rules that do not reflect the Committee's proposed rules. The Committee also requests reasonable time to respond subsequent to publication of the correct Notice. These requests are based on the following:

1. The Court on October 11, 2006, pursuant to rule 2.140(f), Florida Rules of Judicial Administration, through its Clerk ordered

publication of rules in The Florida Bar News and sent copies of the Clerk's publication letter along with the Notice to the individuals specifically listed in the Rule.

2. The first paragraph of the Notice correctly states that the Committee continues to urge the removal of The Florida Bar membership requirement for Circuit Court Mediators, while The Bar takes the position that the requirement should be retained with minor modification.

3. The second paragraph of the Notice invites interested persons to comment on "the committee's proposed amendments, which are reproduced in full below..." The rules, which follow, specifically rule 10.100(d), Florida Rules for Certified and Court-Appointed Mediators, and the table illustrating the point system in the Committee Note to rule 10.105 incorrectly reflect the Committee's proposed amendments, because the rules included in the Notice retain the requirement of membership in The Florida Bar for circuit mediators.

4. The Committee believes that this may have been the result of the Court's initial opinion in this case issued on May 11, 2006 wherein the Court approved the new mediator certification requirements point system modified in relation to circuit court mediators and outlined in administrative order In re Rules Governing Certification of Mediators, Fla. Admin. Order No. AOSC06-9 (May 11, 2006).

5. The Court in footnote 10 of the May 11 opinion asked The Florida Bar to file its comment on the issue of requiring Florida Bar membership for certified circuit mediators by August 9, 2006 and permitted the Committee to file a response thereto, which was timely filed on September 8, 2006. The Court also asked the Committee to submit by August 9, 2006, rule proposals that incorporated the new point system outlined in the administrative order into the Rules for Certified and Court-Appointed Mediators.

6. The Committee, in its Supplemental Petition filed on August 7, 2006 complied with the Court's Order and moved the new point system from the administrative order into proposed rules. These rules included the interim modification made by the Court, retaining the

Florida Bar membership, until the Bar complied with the Court's Order to comment. In addition, the Committee included on page three of its August 7, 2006 Supplemental Petition, a proposed amendment to rule 10.100(d) which eliminated the Florida Bar requirement for circuit mediators. The proposed amendment was consistent with the Committee's position in the original Petition filed on May 11, 2005.

7. The Committee subsequently submitted its proposed rules eliminating Florida Bar membership for circuit mediators in Appendices A and B of its September 8, 2006 Response to the Bar's letter filed on August 10, 2006.

8. It appears that the Court in its publication notice used the interim rule referenced in paragraph 6, supra, rather than the rules submitted on September 8, referenced in paragraph 7, supra.

9. The proposed rules in the Court's Notice **do not** represent the Committee's position and **are not** the proposed rules of the Committee.

10. Based on the above and the foregoing timeline and sequence of events/filings the Committee respectfully requests that the Court correct the Notice and direct publication of the Committee's proposed attached rules, as previously filed with the Court. See paragraph 7, supra.

11. The Committee would also object to the Court's consideration of any comments received pursuant to the publication of incorrect proposed rules, given the confusion that may be generated by the inconsistency between the published rule and the accompanying narrative.

12. The Committee would also request the full twenty (20) days the Court originally allotted for the Committee to respond to any comments received subsequent to publication of the Notice with the correct rules proposed by the Committee.

13. The Petition has been pending since May 11, 2005. The Committee is eager to have the Court decide the remaining issue (in its favor) and will file an appropriate response, if necessary, as soon as

possible hopefully using only a small portion of the total time requested.

14. Lastly, the undersigned would request the Notice reflect his correct address as listed below.

Wherefore, based on the above and foregoing, the Committee moves that the Court correct its Notice of Publication issued October 11, 2006, not consider any comments received pursuant to publication of rules that do not reflect the Committee's proposed rules, and requests reasonable time to respond subsequent to publication of the correct Notice.

Respectfully Submitted,

Shawn L. Briese, Circuit Judge  
Chair, Supreme Court Committee on  
ADR Rules and Policy  
125 East Orange Avenue, Room 310  
Daytona Beach, FL 32114  
386/257-6090

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on \_\_\_\_\_, 2006 a copy of the foregoing was furnished by United States mail to the following individuals by a member of the DRC staff.

John F. Harkness, Jr. Executive Director  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

John W. Day  
535 Central Avenue  
St. Petersburg, FL 33703

Terry Wheeler, President  
Association for Conflict Resolution  
1015 18<sup>th</sup> Street NW, Suite 1150  
Washington DC 20036

Jayne Lambert  
Post Office Box 2925  
Tampa, FL 33601-2925

Debra Carter, President  
Florida Chapter AFCC  
4835 27<sup>th</sup> Street, West, Suite 220

Barbara Rutberg  
7780 Blue Heron Way  
West Palm Beach, FL 33412

Kenneth R. Hart  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302-0391

Merrett R. Stierheim  
One Biscayne Tower  
Suite 2930  
2 South Biscayne Blvd.  
Miami, FL 33131

Martin G. Holleran  
8272 Doubletree Drive  
Hobe Sound, FL 33455

---

Judge Shawn L. Briese, Chair  
Supreme Court Committee on  
Alternative Dispute Resolution Rules and Policy  
125 East Orange Avenue, Room 310  
Daytona Beach, FL 32114  
386/257-6090