

CIA 2-5-90

Circuit Court, Fifteenth Judicial Circuit, Florida  
County Courthouse  
West Palm Beach, Florida 33401

75,151

CHAMBERS OF  
DANIEL T. K. HURLEY  
CHIEF JUDGE

Thursday, January 25th, 1990

407/355-2258

The Honorable Sid J. White  
Clerk of the Supreme Court  
Supreme Court Building  
Tallahassee, Florida 32399-1925

FILED  
SID J. WHITE  
JAN 26 1990  
CLERK, SUPREME COURT  
Deputy Clerk

Dear Mr. White:

I respectfully request that this letter with its two attachments be received and filed with the Court as a comment on the proposed amendment to Rule 1.760(c), Fla.R.Civ.P.

As reflected in the attached letters, the judiciary in the Fifteenth Judicial Circuit strongly supports a rule which will permit retired out-of-state judges to be certified as circuit court mediators. Our circuit has benefited from the mediation efforts by several of these retired judges and we have seen that when the right of selection is given to the parties, they often favor mediators with prior judicial experience.

Quite frankly, we prefer the present rule. But we can live with the proposed amendment which permits a chief judge to exercise his discretion to certify a retired out-of-state judge to serve as a circuit court mediator. These individuals have proven their capability to mediate successfully. Indeed, our circuit maintains written evaluations by the parties which document the contributions by retired out-of-state judges. They are an invaluable asset and their role should not be curtailed.

Daniel T. K. Hurley  
Chief Judge

Encl.

Circuit Court, Fifteenth Judicial Circuit, Florida  
County Courthouse  
West Palm Beach, Florida 33401

CHAMBERS OF  
DANIEL T. K. HURLEY  
CHIEF JUDGE

Tuesday, October 10th, 1989

407/355-2258

Lawrence M. Watson, Jr., Esquire  
Chairperson, Mediation/Arbitration Rules Committee  
225 S. Orange Avenue, Suite #1600  
Orlando, Florida 32802

FILED  
JAN 10 1990

Dear Mr. Watson:

I am writing to voice my concern about  
before your committee to amend rule **1.760(c)** to exclude  
out-of-state judges from serving as circuit court mediators.

Retired out-of-state judges have been the backbone  
our circuit's mediation program. Judge Silverman, from  
Massachusetts, started the program and other qualified  
judges have joined him in making a substantial contribution  
to Palm Beach County.

The mediators in the Fifteenth Judicial Circuit are  
selected by the parties, not by the court. The program's  
statistics reflect a high demand for retired **out-of-state**  
judges. Thus I cannot understand the proposal to exclude  
these competent mediators. Experienced attorneys  
consistently select these mediators because they produce  
results and render an invaluable service to the justice  
system.

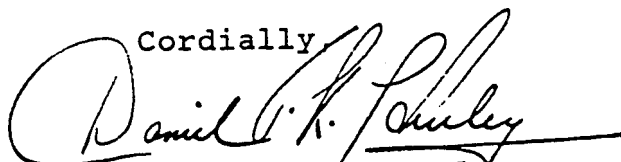
I respectfully suggest that the committee should  
endorse an open market approach and retain the present rule.  
The retired out-of-state judges have proved their value to  
the system. To exclude them when their presence enhances  
competition would be wrong. Our aim should be to provide  
the largest possible pool of qualified mediators, and we  
should leave the final choice to the parties.

As an addendum, I am enclosing a proposed bill which

would provide monies for court-sponsored family mediation.  
Any encouragement or endorsement which your committee could  
provide would be appreciated.

Thank you for your consideration.

Cordially,



Daniel T. K. Hurley

Daniel T. K. Hurley  
Chief Judge



CHAMBERS OF  
JACK H. COOK  
CIRCUIT COURT JUDGE

PALM BEACH COUNTY COURTHOUSE  
WEST PALM BEACH, FLORIDA 33401

October 12, 1989

(407) 355-3730

John J. Upchurch, Esquire  
Special Committee on Mediation and Arbitration Rules  
Rules Subcommittee Chairman  
P. O. Box 191  
Daytona Beach, Florida 32115

Re: Proposed change to Rule 1.760

Dear John,

I apologize for not being able to attend the subcommittee meeting on September 19, 1989. However, as I explained to you, I was duty judge that week and had two other local committee meetings scheduled for that date which I could not rearrange.

The lawyers and judges in Palm Beach County are extremely concerned with the proposed deletion of Rule 1.760(c)(1), which authorizes the use of former trial court judges who are members of the Bar in other states as certified mediators.

I am enclosing a copy of a letter to Larry Watson from Chief Judge Dan Hurley relative to this matter, as well as some statistical information concerning mediation in Palm Beach County.

As you know, we use retired judges extensively in our court mediation program. Our statistics show that in 1988, sixty-eight percent of the cases referred to mediation were resolved. This figure is slightly lower for the first five months of 1989, showing that sixty percent of the cases referred have been resolved. Thus, the retired judges have demonstrated themselves to be effective as mediators.

We have been conducting an evaluation of our mediators' performance over recent months. I am enclosing a copy of the returns which we have received for our retired out-of-state judge mediators. You will see that out of 232 responses, 150 attorneys have rated these mediators as excellent, 52 as above average and 18 as average. Only 10 responses have rated these mediators as either below average or poor. Thus, these evaluations clearly show that contrary to the 1 or 2 anecdotal reports relied upon to criticize retired judges, retired judges from other jurisdictions are proving to be excellent mediators in the eyes of those who are practicing in front of them,

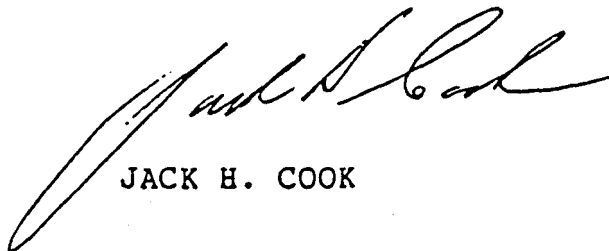
John J. Upchurch, Esq.  
October 12, 1989  
Page -2-

Lastly, I am enclosing evaluation forms relating specifically to individual retired judges. Among those is an evaluation form of Judge Eielson, who has just begun mediating in Palm Beach County. You will see that of the 2 responses received relative to Judge Eielson, both have rated him as excellent. This demonstrates that not only are the retired judges who have been in Palm Beach County **for** some time performing well, but this is a resource which is continuing to provide new individuals of high quality.

I also want to note that one of the advantages of using retired judges is their willingness to perform pro bono mediation. I have never had a retired judge balk at handling any mediation case without charge. Most of these gentlemen have an alternate income source and they are more than willing to give freely of their time without limitation when the court deems it necessary.

I will insure that I attend the next rules subcommittee meeting and at that time will try to respond further to this proposed rule change with written recommendations from members of the Bar from several circuits in the State of Florida who have participated in mediations conducted by our retired judges.

Very truly yours,

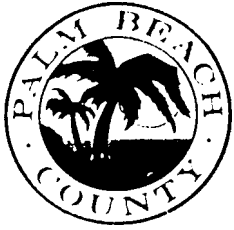


JACK H. COOK

JHC/jl

Enclosures

cc: Larry Watson, Esq.  
Michael Bridenback, Esq.  
Ms. Sharon Press  
Steve Stinson, Esq.  
Honorable Daniel T.K. Hurley  
Honorable Albert Silverman



# COURT MEDIATION SERVICES

Suite 427, Courthouse, 300 North Dixie Highway, West Palm Beach, FL 33401

P O Box 1989, West Palm Beach, FL 33402-1989

(407)355-2739

(South County) 276-1200, ext 2739

November 2, 1989

TO: Judge Jack H. Cook  
FROM: Albert S. Silverman  
RE: Mediator Evaluation Count

This is the evaluation summary your requested as of November 2, 1989:

	E	AA	A	BA	P	NO*
Judge Rodney S. Eielson	5	6				
Judge W. Howard Hartley	11	10	5	2	1	1
Judge Paul S. Lawrence	12	1	4			1
Judge Edwin S. Malmed	48	12	3	1	1	1
Judge Plummer M. Shearin	19	7	4	3		4
Judge Albert S. Silverman	42	13	3	2		1
Judge Nathan Tannenbaum	28	a	2	-	1	3
Totals	165 (62%)	57 (22%)	21 (8%)	a (3%)	3 (1%)	11 (4%)

Code: E - Excellent  
AA - Above Average  
A - Average  
BA - Below Average  
P - Poor  
NO - No Opinion

AS/rak

Note: The prior evaluation report contained the following error:  
Judge Silverman - Below Average - 0; Poor - 2. It should have  
showed Below Average - 2; Poor - 0.