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November 17, 2010

FILED

NOV 18 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Tracie K. Lindeman
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

Re: Draft Amendments to Amended Foreclosure Mediation Rules
(10/21/2010) ADKT 435

ADKT 0435

Dear Ms. Lindeman:

Pursuant to the Court's November 9, 2010, Order Scheduling Public Haring, I offer the comments set forth below on the proposed amendments. I will be out of the country and unable to participate in the December 6, 2010, hearing.

Rule *The proposed amendment reads:*

2(5)(c):

"(c) For good cause the Administrator may temporarily discontinue assigning mediation cases to a mediator for a maximum of 60 days."

My comments:

Without a definition of "good cause," it is difficult to know what problem this change is intended to address.

Rule *The proposed amendment reads:*

4(2):

"(2) A mediator who has a personal or past or present significant professional relationship with any of the parties or a financial interest in the matter of the mediation shall immediately recuse himself or herself as a mediator in the particular case. For purposes of these rules a presents significant professional relationship shall include representation of homeowners or lenders at mediations."

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CLERK OF SUPREME COURT
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Rule *My comments:*
4(2)

Contd.: **Does this mean:**

- (a)** **Representation of either the homeowner(s) or lender(s) in the pending mediation; or**
- (b)** **Representation of any other homeowner or lender in any other mediation pending at the same time the mediator is conducting a mediation; or**
- (c)** **Representation of any homeowner or lender in a prior mediation that has been concluded?**

Rule *The proposed amendment reads:*
5(9)(c):

“(c) An eligible participant may represent him or herself. In any circumstances where the eligible participant retains representation, his or her representative must meet the qualifications provided in Rule 5.9(a) and (b).”

My comments:

This amendment appears to be partially unnecessary and partially redundant. Isn't an eligible participant (borrower) always eligible to represent himself or herself? The qualifications for lender's representatives are set forth in Rule 5.9(a), and for eligible participants (borrowers) are set forth in Rule 5.9(b).

Why does a representative for an eligible participant (borrower) have to meet the requirements of both 5.9(a) and 5.9(b)?

Rule *The proposed amendment reads:*
16(2):

“2. The Administrator shall establish a Fee Schedule for the compensation of Mediators and publish the same at program offices and on the program website. The Fee Schedule shall take into account the level of effort required to schedule, convene and complete mediation. The fee for a mediation scheduled, convened and concluded by a mediator shall be \$400.”

My comments:

Refunding all or part of the \$400 fee may be justifiable if the borrower and lender reach an agreement before the mediator sends out the initial letter and schedules the mediation. It should become non-refundable once the mediator has been assigned. See proposed amended Rule 16(4)

Setting a fee schedule for such a relatively small amount of money seems, at best, unwarranted.

Rule *The proposed amendment reads:*
16(4):

“4. For those limited situations where a refund may be appropriate, the Administrator shall establish refund policy and procedures. However, in no case where a mediator assignment occurred, is a refund authorized.”

My comments:

If this amendment is adopted, then what is the purpose of creating a fee schedule under the proposed Rule 16(2) amendment?

Sincerely,


WAYNE S. CHIMARUSTI