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*Via E-Mail & First Class Mail*

December 8, 2016

Clerk of Supreme Court  
Attn: Deputy Clerk - Rules  
P.O. Box 1688  
Madison, WI 53701-1688

RECEIVED

DEC 12 2016

CLERK OF SUPREME COURT  
OF WISCONSIN

Re: Petition 16-04: Lawyer-Mediators to Draft Settlement Documents in Family Cases

Dear Clerk:

I write this letter in support of Petition 16-04, which would allow lawyer-mediators to draft settlement documents in family law cases, provided they follow the carefully prescribed rules. It also allows them to file those settlement documents in a court case in a mediator role, and not as advocate counsel for either of the parties.

I write not as a mediator, but as advocate counsel, an attorney who represents one or the other parties in family law matters. I am assuming, without knowing, that many of the settlement documents that would be drafted by lawyer-mediators pursuant to the proposed rule would be in cases where the parties are pro-se. In those cases, I certainly applaud the efforts behind this Petition to allow parties to proceed through, perhaps conclude, their divorce cases with a settlement document prepared by a lawyer, rather than something they cobble together from the internet.

I also do not object to this procedure in a case where I might represent a party because of the requirement in the rule that the parties be advised by the lawyer-mediator of the desirability of seeking the advice of independent counsel.

I see positive outcomes of enactment of such a rule. One is that pro-se parties might have much better-drafted settlement documents if the lawyer-mediator is allowed to draft them for them. We family law practitioners sometimes spend substantial time

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trying to interpret and unravel poorly drafted settlement documents crafted by lay people, often at greater expense to the parties than they would have spent having advocate counsel in the first place.

In addition, all family lawyers have experienced a situation where mediation is successful and the parties would have signed a mediation agreement upon conclusion of the mediation process. Without the rule in place contemplated by this Petition, however, the mediator typically writes a letter addressed to the parties telling them what was agreed to at mediation and suggesting that they retain counsel to draft the mediation agreement. One or both of the parties then has to retain counsel, pay him or her to get familiar with the case, and draft a settlement agreement intended to reflect the mediation agreement. This process can take weeks, at which time the agreement reached at mediation can fall apart. This is not to the benefit of the parties or the courts.

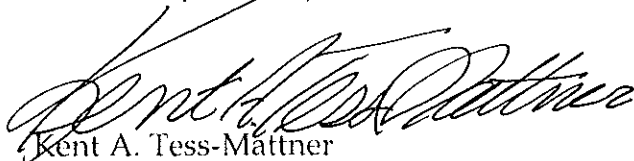
Although some advocate counsel might fear loss of business due to enactment of this rule, I see it as improving pro-se cases where advocate counsel would not be retained anyway, and not taking away from advocate counsel in cases where the parties desire independent counsel.

Please note that I have been practicing law for 36 years, am the immediate past chair of the Leander J. Foley, Jr. Matrimonial Chapter of the American Inns of Court, and for many years, including for 2017, have been named a "Super Lawyer" in family law, and one of the "Best Lawyers in America" in both family law and appellate law.

Thank you for taking this letter of support into consideration when reviewing the rule Petition.

Yours very truly,

SCHMIDT, RUPKE, TESS-MATTNER & FOX, S.C.



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